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8–3–05 Wednesday
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WHO: Sponsored by the Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

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3. The important elements of typical Federal Register documents.

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

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

WHEN: Tuesday, August 16, 2005
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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

Rules and Regulations

Federal Register
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Wednesday, August 3, 2005

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE201; Special Conditions No. 23–141–SC]

Special Conditions; Maule Aerospace Technology, Inc. M–7–230, M–7–230C, and M–9–230 Airplane Models; Installation of Full Authority Digital Engine Control (FADEC) System and the Protection of the System From the Effects of High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Maule Aerospace Technology, Inc., for the Maule Aerospace Technology, Inc. M–7–230, M–7–230C, and M–9–230 airplane models. These airplanes will have a novel or unusual design feature(s) associated with the installation of an engine that uses an electronic engine control system in place of the engine's mechanical system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards applicable to these airplanes. These special conditions were issued and effective in December 2003; however, they were inadvertently not published. This document is being published with the same effective date to correct that oversight.

DATES: The effective date of these special conditions is December 17, 2003. Comments must be received on or before September 2, 2005.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE201, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE201. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone 816–329–4127, fax 816–329–4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and, thus, delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE201." The postcard will be date stamped and returned to the commenter.

Background

On October 26, 2000, Maule Aerospace Technology, Inc. applied for a type certificate for the M–7–230, M–7–230C, and M–9–230 models. The M–7–230, M–7–230C, and M–9–230 models are powered by one reciprocating engine equipped with an electronic engine control system with full authority capability in place of the hydromechanical control system.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.17, Maule Aerospace Technology, Inc. must show that Models M–7–230, M–7–230C, and M–9–230 meet the applicable provisions of Part 3, Civil Air Regulations, effective May 15, 1956 as amended by 3–1 through 3–5; the following 14 CFR part 23 regulations at Amendment 23–55 that do not have equivalent rules in CAR 3: §§ 23.853(e)(f), 23.943, 23.1091, 23.1125, 23.1305, 23.1337, 23.863, 23.955, 23.1093, 23.1143, 23.1309, 23.1351, 23.865, 23.961, 23.1103, 23.1163, 23.1311, 23.1353(h), 23.903(f), 23.997, 23.1107, 23.1181, 23.1321, 23.1361, 23.909, 23.1043, 23.1121, 23.1182, 23.1322, 23.1365, 23.939(b), 23.1047, 23.1123, 23.1183, 23.1331; 14 CFR part 36, Amendment 36–24; exemptions, if any; and the special conditions adopted by this and other rulemaking actions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 23) do not contain adequate or appropriate safety standards for the Models M–7–230, M–7–230C, and M–9–230 because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Models M–7–230, M–7–230C, and M–9–230 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become

part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the models for which they are issued. Should the type certificate be amended later to include any other models that incorporate the same novel or unusual design feature, the special conditions would also apply to the other models under the provisions of § 21.101.

Novel or Unusual Design Features

The Models M–7–230, M–7–230C, and M–9–230 will incorporate the following novel or unusual design features:

Maule Aerospace Technology, Inc. Models M–7–230, M–7–230C, and M–9–230 airplanes will use an engine that includes an electronic control system with full engine authority capability.

Many advanced electronic systems are prone to either upsets or damage, or both, at energy levels lower than analog systems. The increasing use of high power radio frequency emitters mandates requirements for improved high intensity radiated fields (HIRF) protection for electrical and electronic equipment. Since the electronic engine control system used on the Maule Aerospace Technology, Inc. Models M–7–230, M–7–230C, and M–9–230 will perform critical functions, provisions for protection from the effects of HIRF fields should be considered and, if necessary, incorporated into the airplane design data. The FAA policy contained in Notice 8110.71, dated April 2, 1998, establishes the HIRF energy levels that airplanes will be exposed to in service. The guidelines set forth in this Notice are the result of an Aircraft Certification Service review of existing policy on HIRF, in light of the ongoing work of the ARAC Electromagnetic Effects Harmonization Working Group (EEHWG). The EEHWG adopted a set of HIRF environment levels in November 1997 that were agreed upon by the FAA, JAA, and industry participants. As a result, the HIRF environments in this notice reflect the environment levels recommended by this working group. This notice states that a full authority digital engine control is an example of a system that should address the HIRF environments.

Even though the control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to the possible effects on or by other airplane systems (*e.g.*, radio interference with other airplane electronic systems, shared engine and airplane power sources). The regulatory requirements in 14 CFR part 23 for evaluating the installation of complex systems, including electronic systems, are contained in § 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned; therefore, the § 23.1309 requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)). Also, electronic control systems often require inputs from airplane data and power sources and outputs to other airplane systems (*e.g.*, automated cockpit powerplant controls such as mixture setting). Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the integral nature of systems such as these makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system. However, § 23.1309(f)(1) again prevents complete evaluation of the installed airplane system since evaluation of the engine system's effects is not required.

Therefore, special conditions are proposed for the Maule Aerospace Technology, Inc. Models M–7–230, M–7–230C, and M–9–230 to provide HIRF protection and to evaluate the installation of the electronic engine control system for compliance with the requirements of § 23.1309(a) through (e) at Amendment 23–46.

Applicability

As discussed above, these special conditions are applicable to the Models M–7–230, M–7–230C, and M–9–230. Should Maule Aerospace Technology, Inc. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on the M–7–230, M–7–230C, and M–9–230 airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

PART 23—[AMENDED]

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Maule Aerospace Technology, Inc. M–7–230, M–7–230C, and M–9–230 models of airplanes.

1. *High Intensity Radiated Fields (HIRF) Protection.* In showing compliance with 14 CFR part 21 and the airworthiness requirements of 14 CFR part 23, protection against hazards caused by exposure to HIRF fields for the full authority digital engine control system, which performs critical functions, must be considered. To prevent this occurrence, the electronic engine control system must be designed and installed to ensure that the operation and operational capabilities of this critical system are not adversely affected when the airplane is exposed to high energy radio fields.

At this time, the FAA and other airworthiness authorities are unable to precisely define or control the HIRF energy level to which the airplane will be exposed in service; therefore, the FAA hereby defines two acceptable interim methods for complying with the requirement for protection of systems that perform critical functions.

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the external HIRF threat environment defined in the following table:

Frequency Field strength (volts per meter)	Peak	Average
10 kHz–100 kHz	50	50
100–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHZ	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz ...	100	100
200 MHz–400 MHz ...	100	100
400 MHz–700 MHz ...	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHZ	2000	200
2 GHz–4 GHZ	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHZ	2000	200
18 GHz–40 GHZ	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter peak electrical strength, without the benefit of airplane structural shielding, in the frequency range of 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation. Data used for engine certification may be used, when appropriate, for airplane certification.

2. *Electronic Engine Control System.* The installation of the electronic engine control system must comply with the requirements of § 23.1309(a) through (e) at Amendment 23–46. The intent of this requirement is not to re-evaluate the inherent hardware reliability of the control itself, but rather determine the effects, including environmental effects, addressed in § 23.1309(e), on the airplane systems and engine control system when installing the control on the airplane. When appropriate, engine certification data may be used when showing compliance with this requirement.

Issued in Kansas City, Missouri on July 25, 2005.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15310 Filed 8–2–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21337; Airspace Docket No. 05–ACE–16]

Establishment of Class E2 Airspace; and Modification of Class E5 Airspace; Storm Lake, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a Class E surface area at Storm Lake, IA. It also modifies the Class E airspace area extending upward from 700 feet above the surface at Storm Lake, IA.

The effect of this rule is to provide appropriate controlled Class E airspace for aircraft departing from and executing instrument approach procedures to Storm Lake Municipal Airport and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

EFFECTIVE DATE: 0901 UTC, September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

On Wednesday June 22, 2005, the FAA proposed to amend 14 CFR part 71 to establish a Class E surface area and to modify other Class E airspace at Storm Lake, IA (70 FR 19027). The proposal was to establish a Class E surface area at Storm Lake, IA. It was also to modify the Class E5 airspace area to bring it into compliance with FAA directives. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes Class E airspace designated as a surface area for an airport at Storm Lake, IA. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures to Storm Lake Municipal Airport. Weather observations will be provided by an Automatic Weather Observing/Reporting System (AWOS) and communications will be direct with Fort Dodge Automated Flight Service Station.

This rule also revises the Class E airspace area extending upward from 700 feet above the surface at Storm Lake, IA. An examination of this Class E airspace area for Storm Lake, IA revealed noncompliance with FAA directives. This corrects identified discrepancies by decreasing the width of the southeast extension from 2.6 miles to 2.5 miles each side of the 167° bearing from Storm Lake NDB and creating an extension within 2.5 miles each side of the 357° bearing from the Storm Lake NDB extending from the 6.6-mile radius of the airport to 7 miles north of the airport, defining airspace of appropriate dimensions to protect aircraft departing and executing instrument approach procedures to Storm Lake Municipal Airport and bringing the airspace area into compliance with FAA directives. Both areas will be depicted on appropriate aeronautical charts.

Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 15, 2004, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Storm Lake Municipal Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ACT IA E2 Storm Lake, IA

Storm Lake Municipal Airport, IA
(Lat. 42°35'50" N., long. 95°14'26" W.)
Storm Lake, NDB
(Lat. 42°36'02" N., long. 95°14'40" W.)

Within a 4.1-mile radius of Storm Lake Municipal Airport, and within 2.5 miles each side of the 167° bearing from the Storm Lake NDB extending from the 4.1-mile radius of the airport to 7 miles south of the airport, and within 2.5 miles each side of the 357° bearing from the Storm Lake NDB extending from the 4.1-mile radius of the airport to 7 miles north of the airport.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACT IA E5 Storm Lake, IA

Storm Lake Municipal Airport, IA
(Lat. 42°35'50" N., long. 95°14'26" W.)
Storm Lake, NDB
(Lat. 42°36'02" N., long. 95°14'40" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Storm Lake Municipal Airport, and within 2.5 miles each side of the 167° bearing from the Storm Lake NDB extending from the 6.6-mile radius of the airport to 7 miles south of the airport and within 2.5 miles each side of the 357° bearing from the Storm Lake NDB extending from the 6.6-mile radius of the airport to 7 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on July 21, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–15311 Filed 8–2–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2005–21957; Airspace Docket No. 05–AWP–8]

RIN 2120–AA66

Change of Controlling Agency for Restricted Area R–2531; Tracy, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the controlling agency for Restricted Area R–2531, Tracy, CA, from the FAA, Oakland Air Route Traffic Control Center (ARTCC) to the FAA, Northern California Terminal Radar Approach Control (TRACON). The FAA is taking this action in response to a realignment of airspace responsibilities in the state of California. There are no changes to the boundaries; designated altitudes; time of designation; or activities conducted within the affected restricted areas.

EFFECTIVE DATES: 0901 UTC, October 27, 2005.

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

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by changing the controlling agency of R–2531, Tracy, CA in response to a realignment of airspace responsibilities in the state of California. This is an administrative change and does not affect the boundaries, designated altitudes, or activities conducted within the restricted areas. Therefore, notice and public procedures under 5 U.S.C. 553(b) is unnecessary.

Section 73.25 of 14 CFR part 73 of the Federal Aviation Regulations was republished in the Regulatory/Non-Regulatory Special Use Airspace Areas compilation, dated January 27, 2005.

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with 311c., FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures." This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited Areas, Restricted Areas.

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.25 [Amended]

■ 2. § 73.25 is amended as follows:

* * * * *

R–2531 [Amended]

Under Controlling agency, by removing the words "FAA, Oakland ARTCC," and inserting the words "FAA Northern California, TRACON."

* * * * *

Issued in Washington, DC, July 27, 2005.

Edie Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–15313 Filed 8–2–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9217]

RIN 1545–BE61

Guidance Regarding the Simplified Service Cost Method and the Simplified Production Method

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the capitalization of costs under the simplified service cost method of the Income Tax Regulations and the simplified production method. The regulations affect taxpayers that use the simplified service cost method or the simplified production method for self-constructed assets that are produced on a routine and repetitive basis in the ordinary course of their businesses. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**. The portions of this rule that are final regulations provide necessary cross-references to the temporary regulations.

DATES: *Effective Date:* These regulations are effective August 2, 2005.

Applicability Date: These regulations apply to taxable years ending on or after August 2, 2005. See §§ 1.263A–1T(l) and 1.263A–2T(f).

FOR FURTHER INFORMATION CONTACT: Scott Rabinowitz, (202) 622–4970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 263A of the Internal Revenue Code (Code), producers of real or tangible personal property and resellers of real or personal property must capitalize the direct costs and a proper share of the indirect costs of such property. Indirect costs include indirect labor costs, overhead, and service costs. Service costs are indirect costs that can be identified specifically with an administrative or support department. Service costs consist of capitalizable service costs, deductible service costs, and mixed service costs. Capitalizable service costs are service costs that directly benefit, or are incurred by reason of, a production or resale activity. Deductible service costs are service costs that do not directly benefit, or are not incurred by reason of, a production or resale activity. Mixed service costs are service costs that are partially allocable to production or resale activities and partially allocable to non-production or non-resale activities.

Although section 263A requires capitalization of indirect costs, the statute generally does not set forth methods for allocating indirect costs, including mixed service costs. Instead, in accordance with the legislative history of the section, the regulations under section 263A generally provide that indirect costs are to be allocated to property using detailed or specific (facts-and-circumstances) cost allocation methods, including a specific identification method, the standard cost method, and methods using burden rates. The regulations further provide that allocations of mixed service costs are to be made on the basis of a factor or relationship that reasonably relates such costs with the benefit provided. To alleviate the administrative burdens of using these detailed or specific methods, the Treasury Department and the Internal Revenue Service developed simplified methods. In particular, the simplified production method provided by § 1.263A–2(b) determines aggregate amounts of additional section 263A costs allocable to produced "eligible property." Additional section 263A costs are those costs, other than interest, that were not capitalized under a taxpayer's method of accounting immediately prior to the effective date of section 263A, but that are required to be capitalized under section 263A. In addition, the final regulations provide a simplified method, the simplified service cost method provided by § 1.263A–1(h), for determining capitalizable mixed service costs incurred during the taxable year with respect to "eligible property."

On March 30, 1987, temporary regulations under section 263A were published in the **Federal Register** (TD 8131, 1987–1 C.B. 98, [52 FR 10052]). The temporary regulations limited the availability of the simplified production method and the simplified service cost method to two types of "eligible property": Stock in trade or other property properly includible in the inventory of the taxpayer and non-inventory property held by a taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. The preamble to the temporary regulations indicates that this limitation was prescribed because the simplified production method is not appropriate to account for the casual or occasional production of property (*i.e.*, property that is not mass-produced on a repetitive and routine basis and that does not have a high "turnover" rate.) Similarly, the simplified service cost method is not appropriate to account for the casual or occasional production of property.

On August 22, 1988, the IRS published Notice 88–86 (1988–2 C.B. 401). Notice 88–86 states that forthcoming regulations will expand the categories of property eligible for the simplified production method and simplified service cost method to other types of property that share characteristics that are appropriate for application of the methods. In particular, the notice indicates that the regulations will provide that the simplified production method and the simplified service cost method are available to (1) self-constructed assets substantially identical in nature to, and produced in the same manner as, inventory property or other property held primarily for sale to customers in the ordinary course of the taxpayer's trade or business, and (2) self-constructed assets produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's production activities.

On August 9, 1993, final regulations under section 263A were published in the **Federal Register** (TD 8482, 1993–2 C.B. 77, [58 FR 42198]). The final regulations follow Notice 88–86 and expand the categories of eligible property for the simplified production method and the simplified service cost method.

Notice 2003–36 (2003–1 C.B. 992), as modified by Notice 2003–59 (2003–59 C.B. 429), indicates that the Treasury Department and the IRS are aware that uncertainty exists as to what types of property constitute "eligible property" under §§ 1.263A–1(h)(2)(i)(D) and 1.263A–2(b)(2)(i)(D) for purposes of the simplified service cost method and the simplified production method. These sections provide that self-constructed assets produced by a taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's trade or business are "eligible property."

To provide guidance as to what types of property constitute "eligible property" under the final regulations, Rev. Rul. 2005–53, 2005–35 I.R.B. (dated August 29, 2005), holds that a taxpayer's production of property will be considered "routine and repetitive" for purposes of §§ 1.263A–1(h)(2)(i)(D) and 1.263A–2(b)(2)(i)(D) only if the property is mass-produced (*i.e.*, numerous identical goods are manufactured using standardized

designs and assembly line techniques) or the produced property has a high degree of turnover (*i.e.*, the costs of production are recovered over a relatively short amount of time).

Explanation of Provisions

Upon further consideration of the simplified service cost method and the simplified production method under §§ 1.263A–1(h)(2)(i)(D) and 1.263A–2(b)(2)(i)(D), the Treasury Department and the IRS believe that, to minimize the distortion of income that may arise from the use of those methods, a taxpayer's production of property is considered "routine and repetitive" for purposes of those sections only if the property is mass-produced and has a high degree of turnover. Accordingly, the temporary regulations provide that self-constructed property is considered produced on a routine and repetitive basis for purposes of the simplified service cost method and the simplified production method only if numerous substantially identical units of tangible personal property are produced within a taxable year using standardized designs and assembly line techniques *and* the applicable recovery period of the assets under § 168(c) is not longer than 3 years.

A change in a taxpayer's treatment of mixed service costs or additional section 263A costs to comply with these temporary regulations is a change in method of accounting to which the provisions of sections 446 and 481 and the regulations thereunder apply. For the taxpayer's first taxable year ending on or after August 2, 2005, the taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with these temporary regulations, provided the taxpayer follows the applicable administrative procedures for obtaining the Commissioner's automatic consent to a change in accounting method (for further guidance, for example, see Rev. Proc. 2002–9 (2002–1 C.B. 327), as modified and clarified by Announcement 2002–17 (2002–1 C.B. 561), modified and amplified by Rev. Proc. 2002–19 (2002–1 C.B. 696), and amplified, clarified, and modified by Rev. Proc. 2002–54 (2002–2 C.B. 432)). For purposes of Form 3115, "Application for Change in Accounting Method", the designated number for the automatic accounting method change authorized by this regulation is "95." If Form 3115 is revised or renumbered, any reference in this section to that form is treated as a reference to the revised or renumbered form. For the taxpayer's second and subsequent taxable years ending on or after August 2, 2005, requests to secure the consent of the Commissioner must be made under the administrative procedures for obtaining the Commissioner's advance consent to a change in accounting method (for further guidance, for example, see Rev. Proc. 97–27 (1997–1 C.B. 680), as modified and amplified by Rev. Proc. 2002–19 (2002–1 C.B. 696), as amplified and clarified by Rev. Proc. 2002–54 (2002–2 C.B. 432)). However, notwithstanding section 5.04(1) of Rev. Proc. 2002–9 and section 5.02(3)(a) of Rev. Proc. 97–27, the section 481(a) adjustment period is two taxable years for a net positive adjustment for an accounting method change that is made to conform to these temporary regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register** for applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Scott Rabinowitz of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.263A–1 is amended by revising paragraph (h)(2)(i)(D) and adding paragraphs (k) and (l) to read as follows:

§ 1.263A–1 Uniform capitalization of costs.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(D) [Reserved]. For further guidance, see § 1.263A–1T(h)(2)(i)(D).

* * * * *

(k) and (l) [Reserved]. For further guidance, see § 1.263A–1T(k) and (l).

■ **Par 3.** Section 1.263A–1T is added to read as follows:

§ 1.263A–1T Uniform capitalization of costs (temporary).

(a) through (h)(2)(i)(C) [Reserved]. For further guidance, see § 1.263A–1(a) through (h)(2)(i)(C).

(D) *Self-constructed tangible personal property produced on a routine and repetitive basis*—(1) *In general.* Self-constructed tangible personal property produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's trade or business. Self-constructed tangible personal property is produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's trade or business when units of tangible personal property (as defined in § 1.263A–10(c)) are mass-produced, *i.e.*, numerous substantially identical assets are manufactured within a taxable year using standardized designs and assembly line techniques, and the applicable recovery period of the property determined under section 168(c) is not longer than 3 years. For purposes of this paragraph, the applicable recovery period of the assets will be determined at the end of the taxable year in which the assets are placed in service for purposes of § 1.46–3(d). Subsequent changes to the applicable recovery period after the assets are placed in service will not affect the determination of whether the assets are produced on a routine and repetitive basis for purposes of this paragraph.

(2) *Examples.* The following examples illustrate this paragraph (h)(2)(i)(D):

Example 1. Y is a manufacturer of automobiles. During the taxable year Y produces numerous substantially identical dies and molds using standardized designs and assembly line techniques. The dies and molds have a 3-year applicable recovery period for purposes of section 168(c). Y uses the dies and molds to produce or process particular automobile components and does not hold them for sale. The dies and molds are produced on a routine and repetitive basis in the ordinary course of Y's business for purposes of this paragraph because the dies and molds are both mass-produced and have a recovery period of not longer than 3 years.

Example 2. Z is an electric utility that regularly manufactures and installs identical poles that are used in transmitting and distributing electricity. The poles have a 20-year applicable recovery period for purposes of section 168(c). The poles are not produced on a routine and repetitive basis in the ordinary course of Z's business for purposes of this paragraph because the poles have an applicable recovery period that is longer than 3 years.

(h)(2)(ii) through (j) [Reserved]. For further guidance, see § 1.263A–1(h)(2)(ii) through (j).

(k) *Change in method of accounting*—(1) *In general.* A change in a taxpayer's treatment of mixed service costs to comply with these temporary regulations is a change in method of accounting to which the provisions of sections 446 and 481 and the regulations thereunder apply. See § 1.263A–7. For a taxpayer's first taxable year ending on or after August 2, 2005, the taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with these temporary regulations, provided the taxpayer follows the administrative procedures, as modified by paragraphs (k)(2) through (4) of this section, issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in accounting method (for further guidance, for example, see Rev. Proc. 2002–9 (2002–1 C.B. 327), as modified and clarified by Announcement 2002–17 (2002–1 C.B. 561), modified and amplified by Rev. Proc. 2002–19 (2002–1 C.B. 696), and amplified, clarified, and modified by Rev. Proc. 2002-54 (2002–2 C.B. 432), and § 601.601(d)(2)(ii)(*b*) of this chapter). For purposes of Form 3115, "Application for Change in Accounting Method," the designated number for the automatic accounting method change authorized by this paragraph (k) is "95." If Form 3115 is revised or renumbered, any reference in this section to that form is treated as a reference to the revised or renumbered form. For the taxpayer's second and subsequent taxable years ending on or after August 2, 2005, requests to secure the consent of the Commissioner must be made under the administrative procedures, as modified by paragraphs (k)(2) through (4) of this section, for obtaining the Commissioner's advance consent to a change in accounting method (for further guidance, for example, see Rev. Proc. 97–27 (1997–1 C.B. 680), as modified and amplified by Rev. Proc. 2002–19 (2002–1 C.B. 696), as amplified and clarified by Rev. Proc. 2002–54 (2002–2 C.B. 432), and § 601.601(d)(2)(ii)(b) of this chapter).

(2) *Scope limitations.* Any limitations on obtaining the automatic consent of the Commissioner do not apply to a taxpayer seeking to change its method of accounting to comply with this section for its first taxable year ending on or after August 2, 2005.

(3) *Audit protection.* A taxpayer that changes its method of accounting in accordance with this paragraph (k) to comply with these temporary regulations does not receive audit protection if its method of accounting for mixed service costs is an issue under consideration at the time the application is filed with the national office.

(4) *Section 481(a) adjustment.* A change in method of accounting to conform to these temporary regulations requires a section 481(a) adjustment. The section 481(a) adjustment period is two taxable years for a net positive adjustment for an accounting method change that is made to conform to these temporary regulations.

(l) *Effective date.* This section applies for taxable years ending on or after August 2, 2005.

■ **Par. 4.** Section 1.263A–2 is amended by revising paragraph (b)(2)(i)(D) and adding paragraphs (e) and (f) to read as follows:

§ 1.263A–2 Rules relating to property produced by the taxpayer.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(D) [Reserved]. For further guidance, see § 1.263A–2T(b)(2)(i)(D).

* * * * *

(e) and (f) [Reserved]. For further guidance, see § 1.263A–2T(e) and (f).

■ **Par. 5.** Section 1.263A–2T is added to read as follows:

§ 263A–2T Rules relating to property produced by the taxpayer (temporary).

(a) through (b)(2)(i)(C) [Reserved]. For further guidance, see § 1.263A–2(a) through (b)(2)(i)(C).

(D) *Self-constructed tangible personal property produced on a routine and repetitive basis*—(1) *In general.* Self-constructed tangible personal property produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's trade or business. Self-constructed tangible personal property is produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's trade or business when units of tangible personal property (as defined in § 1.263A–10(c)) are mass-produced, *i.e.*, numerous substantially identical assets are manufactured within a taxable year using standardized designs and assembly line techniques, and the applicable recovery period of the property determined under section 168(c) is not longer than 3 years. For purposes of this paragraph, the applicable recovery period of the assets will be determined at the end of the taxable year in which the assets are placed in service for purposes of § 1.46–3(d). Subsequent changes to the applicable recovery period after the assets are placed in service will not affect the determination of whether the assets are produced on a routine and repetitive basis for purposes of this paragraph.

(2) *Examples.* The following examples illustrate this paragraph (D):

Example 1. Y is a manufacturer of automobiles. During the taxable year Y produces numerous substantially identical dies and molds using standardized designs and assembly line techniques. The dies and molds have a 3-year applicable recovery period for purposes of section 168(c). Y uses the dies and molds to produce or process particular automobile components and does not hold them for sale. The dies and molds are produced on a routine and repetitive basis in the ordinary course of Y's business for purposes of this paragraph because the dies and molds are both mass-produced and have an applicable recovery period of not longer than 3 years.

Example 2. Z is an electric utility that regularly manufactures and installs identical poles that are used in transmitting and distributing electricity. The poles have a 20-year applicable recovery period for purposes of section 168(a). The poles are not produced on a routine and repetitive basis in the ordinary course of Z's business for purposes of this paragraph because the poles have an applicable recovery period that is longer than 3 years.

(b)(2)(ii) through (d) [Reserved]. For further guidance, see § 1.263A–2(b)(2)(ii) though (d).

(e) *Change in method of accounting*—(1) *In general.* A change in a taxpayer's treatment of additional section 263A costs to comply with these temporary regulations is a change in method of accounting to which the provisions of sections 446 and 481 and the regulations thereunder apply. See § 1.263A–7. For a taxpayer's first taxable year ending on or after August 2, 2005, the taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with these temporary regulations, provided the taxpayer follows the administrative procedures, as modified by paragraphs (e)(2) through (4) of this section, issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in accounting method (for further guidance, for example, see Rev. Proc. 2002–9 (2002–1 C.B. 327), as

modified and clarified by Announcement 2002–17 (2002–1 C.B. 561), modified and amplified by Rev. Proc. 2002–19 (2002–1 C.B. 696), and amplified, clarified, and modified by Rev. Proc. 2002-54 (2002–2 C.B. 432), and § 601.601(d)(2)(ii)(*b*) of this chapter). For purposes of Form 3115, "Application for Change in Accounting Method," the designated number for the automatic accounting method change authorized by this paragraph (e) is "95." If Form 3115 is revised or renumbered, any reference in this section to that form is treated as a reference to the revised or renumbered form. For the taxpayer's second and subsequent taxable years ending on or after August 2, 2005, requests to secure the consent of the Commissioner must be made under the administrative procedures, as modified by paragraphs (e)(2) through (4) of this section, for obtaining the Commissioner's advance consent to a change in accounting method (for further guidance, for example, see Rev. Proc. 97–27 (1997–1 C.B. 680), as modified and amplified by Rev. Proc. 2002–19 (2002–1 C.B. 696), as amplified and clarified by Rev. Proc. 2002–54 (2002–2 C.B. 432), and § 601.601(d)92)(ii)(b) of this chapter).

(2) *Scope limitations.* Any limitations on obtaining the automatic consent of the Commissioner do not apply to a taxpayer seeking to change its method of accounting to comply with this section for its first taxable year ending on or after August 2, 2005.

(3) *Audit protection.* A taxpayer that changes its method of accounting in accordance with this paragraph (e) to comply with these temporary regulations does not receive audit protection if its method of accounting for additional section 263A costs is an issue under consideration at the time the application is filed with the national office.

(4) *Section 481(a) adjustment.* A change in method of accounting to conform to these temporary regulations requires a section 481(a) adjustment. The section 481(a) adjustment period is two taxable years for a net positive adjustment for an accounting method change that is made to conform to these temporary regulations.

(f) *Effective date.* This section applies for taxable years ending on or after August 2, 2005.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: July 14, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 05–15363 Filed 8–2–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100 and Part 165

[CGD13–05–029]

RIN 1625–AA08 and 1625–AA00

Special Local Regulation (SLR) and Safety Zone Regulations: Seattle Seafair Unlimited Hydroplane Race and Blue Angels Air Show Performance 2005, Lake Washington, WA

AGENCY: Coast Guard; DHS.

ACTION: Notice of enforcement.

SUMMARY: The Captain of the Port (COTP) Puget Sound will begin enforcing the Seattle Seafair Unlimited Hydroplane Race Special Local Regulation (SLR) and Seafair Blue Angels Air Show Performance Safety Zone Regulation. This year's events will be held on Thursday, August 4, 2005, through Sunday, August 7, 2005.

DATES: The regulations found in 33 CFR 100.1301 and in 33 CFR 165.1319 will be enforced from 8 a.m. to 8 p.m. Pacific daylight time from August 4, 2005 to August 7, 2005.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jessica Hagen, c/o Captain of the Port Puget Sound, Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle WA 98134 at (206) 217–6232 to obtain information concerning enforcement of this rule.

SUPPLEMENTARY INFORMATION: On July 2, 2001, the Coast Guard published a final rule (66 FR 34822) modifying the regulations in 33 CFR 100.1301, for the safe execution of the Seattle Seafair Unlimited Hydroplane races on the waters of Lake Washington. On June 24, 2004, the Coast Guard published a final rule (69 FR 35250) in 33 CFR 165.1319, to safeguard participants and spectators from the safety hazards associated with the Seattle Seafair Blue Angels Air Show Performance.

The Special Local Regulation (33 CFR 100.1301) provides for a regulated area to protect spectators while providing unobstructed vessel traffic lanes to ensure timely arrival of emergency response craft. Movements are regulated for all vessels in the area described unless otherwise regulated by the COTP or his designee. The COTP may be assisted by other Federal, State, or local law enforcement agencies in enforcing this SLR.

The safety zone regulation (33 CFR 165.1319) establishes requirements for all vessels to obtain permission of the COTP or the COTP's designated representative to enter, move within, or exit the safety zone when it is enforced. Entry into this safety zone is prohibited unless otherwise exempted or excluded under 33 CFR 165.1319 or unless authorized by the COTP or his designee. The Captain of the Port Puget Sound will begin enforcing the Seattle Seafair Unlimited Hydroplane Race Special Local Regulation (SLR) as per 33 CFR 100.1301, and the Seafair Blue Angels Air Show Performance Safety Zone as per 33 CFR 165.1319, on Thursday, August 4, 2005 at 8 a.m. Pacific daylight time. These regulations will be enforced until Sunday, August 7, 2005 at 8 p.m. Pacific daylight time. All persons and vessels are authorized to enter, move within, and exit the regulated area or safety zone on or after Sunday, August 7, 2005 at 8 p.m. Pacific daylight time unless a new notice of enforcement is issued before then.

Dated: July 22, 2005.

Stephen P. Metruck,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 05–15309 Filed 8–2–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 81

[FRL–7947–4]

Identification of Ozone Areas for Which the 1-Hour Standard Has Been Revoked and Technical Correction to Phase 1 Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On April 30, 2004, EPA published the first phase of its final rule to implement the 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) (Phase 1 Rule). At that same time, EPA also published 8-hour ozone

designations for all areas of the country. For most areas, the 8-hour ozone designations became effective on June 15, 2004. The Phase 1 Rule provided that the 1-hour ozone NAAQS would no longer apply (*i.e.*, would be revoked) for an area 1 year following the effective date of the area's designation for the 8-hour ozone NAAQS. This rule codifies the revocation of the 1-hour standard for those areas with effective 8-hour ozone designations. Because the Phase 1 Rule, as modified in a recent reconsideration rule, also provided that certain 1-hour nonattainment and maintenance obligations that applied as of the effective date of designation for the 8-hour NAAQS remain in place for an area, we are retaining the tables in 40 CFR part 81 that identify each area's 1-hour designation and classification status as of the effective date of the 8-hour designation for the area. The regulatory changes do not modify the tables for Early Action Compact areas for which the 1-hour NAAQS continues to apply. In addition, today's rule makes a technical correction to the last sentence in 40 CFR 51.905(c)(1) to reference 40 CFR part 81, subpart C as identifying the boundaries of areas and the area designations and classifications for the 1-hour ozone NAAQS that were in place as of the effective date of designation of the area for the 8-hour NAAQS. This rule eliminates the reservation of subpart E of part 81 for the above identification purpose.

DATES: This final rule is effective September 2, 2005.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. OAR–2003–0079. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center (Air Docket), EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Annie Nikbakht, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5246, fax number (919) 541–0824 or by e-mail at *nikbakht.annie@epa.gov*.

SUPPLEMENTARY INFORMATION:

Outline

I. Background

On April 30, 2004, EPA took final action on key elements of the program to implement the 8-hour ozone (NAAQS or standard) (Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1) (69 FR 23951) (Phase 1 Rule). In the Phase 1 Rule, EPA established regulatory provisions governing when the 1-hour NAAQS would no longer apply to areas (*i.e.*, would be revoked) (40 CFR 50.9(b)) and promulgated "anti-backsliding" provisions that provided which 1-hour ozone control obligations would continue to apply in areas that were designated nonattainment or attainment subject to a maintenance plan for the 1-hour standard as of the effective date of the area's 8-hour ozone designation (40 CFR 51.905). The Phase 1 Rule provided that the 1-hour control obligations that continue to apply be the control obligations required as of the date of signature on the Phase 1 Rule (*i.e.*, April 15, 2004). In response to a Petition for Reconsideration (May 26, 2005, 70 FR 30592), EPA reconsidered this issue and changed that date to the effective date of an area's 8-hour ozone designation (*i.e.*, for most areas, June 15, 2004).

On April 30, 2004, EPA also published air quality designations and classifications for every area in the United States, including Indian country, for the 8-hour ozone NAAQS (Air Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air Quality Standards; Early Action Compact Areas With Deferred Effective Dates) (69 FR 23858). For most areas of the country, the 8-hour ozone NAAQS designations and classifications became effective on June 15, 2004. For areas participating in the early action compact (EAC) process, EPA deferred the effective date of the designations and classifications until September 30, 2005.[1] In addition, on June 15, 2004, we deferred the effective date of the 8-hour designation for Clark County, Nevada in order to consider additional information submitted by the State (69 FR 34076). We took final action designating and classifying that area on September 10, 2004, with an effective date of September 13, 2004 (69 FR 55956).

II. What Is the Purpose of This Rule?

The purpose of this rule is to revise the 1-hour ozone NAAQS tables in 40 CFR part 81 to reflect the application of our revocation rule at 40 CFR 50.9(b). We are revising the tables to indicate for which areas the 1-hour standard has been revoked, but we are retaining the 1-hour ozone NAAQS designation and classification status as of the time of the effective date of designation for the 8-hour NAAQS for purposes of our anti-backsliding regulations at 40 CFR 51.905, which apply after revocation of the 1-hour ozone NAAQS.

In addition, EPA is making two technical corrections to the last sentence in 40 CFR 51.905(c)(1). That sentence currently provides that "40 CFR Part 81, Subpart E identifies the boundaries of areas and the area designations and classifications for the 1-hour NAAQS at the time the 1-hour NAAQS no longer applied to each area." First, EPA is changing the reference to subpart E of part 81 to instead reference subpart C of part 81. The EPA initially planned to move the 1-hour NAAQS tables to subpart E upon revocation of the 1-hour standard for an area, but has now concluded that it makes more sense to leave the tables in subpart C and to modify the existing tables to identify the areas for which the 1-hour standard has been revoked. Second, we are correcting an error in the last clause of that sentence. That sentence indicates that the tables will reflect an area's 1-hour designation and classification "at the time the 1-hour NAAQS no longer applied" in the area. This language is a remnant from the proposed regulatory text which was released for public comment on August 2, 2003 (68 FR 46536). As explained in the preamble to the Phase 1 Rule, in that final rule, we instead adopted the approach set forth in the June 3, 2003 proposal, which was to retain certain 1-hour obligations that applied as of the date of designation for the 8-hour NAAQS. We made the appropriate changes to other aspects of the regulatory text (*see e.g.*, 51.905(a)(1) and (2)) and indicated in the preamble that this section would refer to the time

[1] If such areas continue to meet the milestones provided in our regulations (40 CFR 81.300), EPA plans to extend the effective date of designation for these areas until EPA can determine in early 2008 whether such areas attained the 8-hour ozone NAAQS by December 31, 2007. For more details on this process, see 69 FR 84 23864–23872.

of designation for the 8-hour standard (69 FR 23984, column 1). We erroneously neglected to change the regulatory text in this section. The purpose of the tables is to identify the areas subject to the anti-backsliding provisions. Since the anti-backsliding provisions apply based on an area's status as of the time of designation for the 8-hour standard, this regulatory provision should indicate that the modified tables in subpart C of part 81 will reflect each area's status as of that date.

III. What Happens to Subparts C and E of Part 81?

Subpart C of part 81 is being amended to add footnotes to the existing 1-hour ozone NAAQS tables for every State in the country. The footnotes indicate whether, and if so when, the 1-hour ozone NAAQS has been revoked for areas within the State. We had previously reserved subpart E of part 81 for the purpose of reflecting where (and when) the 1-hour ozone NAAQS has been revoked. However, we have concluded that it makes more sense to retain and modify the tables in subpart C to include the necessary information. Therefore, we are eliminating the reservation of subpart E in our regulatory text.

This action is not subject to the notice-and-comment requirements of the Administrative Procedure Act. Today's action codifies regulatory changes that implement the Phase 1 Implementation Rule that was issued after notice-and-comment rulemaking. Notice and comment is unnecessary because the action codifying the areas where the 1-hour standard no longer applies is a straightforward application of the rule based on the regulatory status of areas for the 1-hour ozone standard as of June 15, 2004. Additionally, we are making two technical revisions to § 51.905(c)(1) of our regulations. The decision to retain the tables in subpart C, rather than to move them to subpart E has no practical effect on any party or area. This decision is for administrative ease of EPA and there are no regulatory implications for any other party. We are also revising the regulatory language to correct an oversight in our conversion of the draft regulatory text to the final regulation. It was clear from our preamble statements and from our definition of "applicable requirements" that this regulatory text should reflect the date an area was designated for the 8-hour standard rather than the date of revocation of the 1-hour standard. Thus, notice and comment is unnecessary for these revisions as well. Finally, we note that the regulatory implications of revocation of the 1-hour standard and of the anti-backsliding provisions were established in the Phase 1 Rule. The regulatory changes being made today are for the purpose of ensuring that other portions of the Code of Federal Regulations accurately reflect the status of areas as modified through the Phase 1 Rule. Thus, it is in the public interest to make this information available without a protracted notice-and-comment process.

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 the 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.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" because none of the above factors applies. As such, this final rule was not formally submitted to OMB for review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This final action to identify 1-hour ozone areas where the 1-hour standard is no longer applicable as of June 15, 2005 and the boundaries of the 1-hour ozone areas and their respective designations and classifications as of June 15, 2004 does not require the collection of any information.

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 of EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

Today's final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute.

Today's action codifies regulatory changes that implement the Phase 1 Implementation Rule that was issued after notice-and-comment rulemaking. Notice and comment is unnecessary because the action codifying the areas where the 1-hour standard no longer applies is a straightforward application of the rule based on the regulatory status of areas for the 1-hour ozone standard as of June 15, 2004.

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 the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final action does not include a Federal mandate within the meaning of UMRA that may result in expenditures of $100 million or more in any 1 year by either State, local, or Tribal governments in the aggregate or to the private sector, and therefore, is not subject to the requirements of sections 202 and 205 of the UMRA. It does not create new requirements. The EPA's Phase 1 Ozone Implementation Rule established "anti-backsliding" requirements that apply based on the area's 1-hour ozone designation and classification as of designation for the 8-hour NAAQS and provided for revocation of the 1-hour NAAQS 1 year after an area's 8-hour designation. This rule modifies the tables in part 81 to reflect in which areas the 1-hour standard has been revoked and to ensure the tables reflect the area's 1-hour designation and classification status as of the effective date of the area's 8-hour designation.

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 final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The Clean Air Act (CAA) establishes the scheme whereby States take the lead in developing plans to meet the NAAQS. This rule will not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have "Tribal implications" as specified in Executive Order 13175. This rule identifies those areas of the country where the 1-hour ozone standard is no longer applicable as of June 15, 2005, pursuant to 40 CFR 50.9(b) and ensures the tables in part 81 reflect the 1-hour ozone designation and classification status of areas as of the effective date of each area's 8-hour designation. The CAA and the Tribal Authority Rule (TAR) give Tribes the opportunity to develop and implement CAA programs such as programs to attain and maintain the 8-hour ozone NAAQS, but leave to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, they will adopt. This rule does not affect those provisions of the CAA or the TAR.

This final rule does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes. This rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Because this rule does not have Tribal implications, Executive Order 13175 does not apply. Although Executive Order 13175 does not apply to this rule, EPA did communicate to Tribal representatives regarding today's action.

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

Executive Order 13045: "Protection of Children From Environmental Health 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 disproportionate effects 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.

The final 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 risks or safety risks addressed by this rule present a disproportionate risk to children. This rule does not alter any applicable requirements; it merely ensures that the tables in 40 CFR part 81 reflect for which areas the 1-hour standard has been revoked and for these areas the 1-hour designation and classification status of the area as of the time of designation for the 8-hour NAAQS. We evaluated the environmental health or safety effects of the 8-hour ozone NAAQS on children. The results of this risk assessment are contained in the National Ambient Air Quality Standards for Ozone, Final Rule, July 18, 1997 (62 FR 38855–38896; specifically, 62 FR 38854, 62 FR 38860 and 62 FR 38865).

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

This rule is not subject to Executive Order 13211, "Actions That Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

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

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying, and addressing, as appropriate, disproportionate high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations.

This rule does not raise any environmental justice issues. This rule does not alter any applicable requirements; it merely ensures that the tables in 40 CFR part 81 reflect the status of areas pursuant to EPA's Phase 1 Rule implementing the 8-hour ozone NAAQS. The health and environmental risks associated with ozone were considered in the establishment of the 8-hour NAAQS. The level is designed to be protective with an adequate margin of safety.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing 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).

L. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal courts of Appeal have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator" or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

The actions taken in this rule are "nationally applicable" and of "nationwide scope and effect" within the meaning of section 307(b)(1). This rule modifies the tables in subpart C for each State, as defined in section 301(d) of the CAA. These modifications are being made consistent with 40 CFR 51.905(c), a regulation that applies in the same manner to all areas across the United States. Additionally, EPA is making a technical correction to the last sentence of section 51.905(c) of EPA's Phase 1 Rule.

In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that an action is of "nationwide scope or effect" would be appropriate for any action that has "scope or effect beyond a single judicial circuit." H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of this rulemaking extend to numerous judicial circuits since the revisions to part C apply to all areas of the country. In these circumstances, section 307(b)(1) and its legislative history calls for the Administrator to find the rule to be of "nationwide scope or effect" and for venue to be in the D.C. Circuit.

Thus, any petitions for review of this action must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

List of Subjects

40 CFR Part 51

Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Transportation, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 26, 2005.

Stephen L. Johnson,

Administrator.

■ For reasons stated in the preamble, parts 51 and 81 of Chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. Section 51.905 is amended by revising the last sentence in paragraph (c)(1) to read as follows:

§ 51.905 How do areas transition from the 1-hour NAAQS to the 8-hour NAAQS and what are the anti-backsliding provisions?

* * * * *

(c) * * *

(1) 40 CFR part 81, subpart C identifies the boundaries of areas and the area designations and classifications for the 1-hour NAAQS in place as of the effective date of designation for the 8-hour NAAQS.

* * * * *

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

Subpart C—[Amended]

■ 2. In § 81.301 the table titled "Alabama—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.301 Alabama.

* * * * *

Alabama—Ozone (1-Hour Standard) [2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all of Alabama. The Birmingham area is a maintenance area for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.

■ 3. In § 81.302 the table titled "Alaska—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.302 Alaska.

* * * * *

Alaska—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Alaska.

■ 4. In § 81.303 the table titled "Arizona—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.303 Arizona.

* * * * *

Arizona—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Arizona.

■ 5. In § 81.304 the table titled "Arkansas—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.304 Arkansas.

* * * * *

Arkansas—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Arkansas.

■ 6. In § 81.305 the table titled "California—Ozone (1-Hour Standard)" is amended by adding footnote 4 to read as follows:

§ 81.305 California.

* * * * *

California—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in California. The Monterey Bay, San Diego, and Santa Barbara-Santa Maria-Lompoc areas are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.

■ 7. In § 81.306 the table titled "Colorado—Ozone (1-Hour Standard)" is amended by adding footnote 4 to read as follows:

§ 81.306 Colorado.

* * * * *

Colorado—Ozone (1-Hour Standard)[4]

* * * * *

[4] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Colorado except the Denver (Denver-Boulder-Greeley-Ft.Collins-Love) area.

■ 8. In § 81.307 the table titled "Connecticut—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.307 Connecticut.

* * * * *

Connecticut—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Connecticut.

■ 9. In § 81.308 the table titled "Delaware—Ozone (1-Hour Standard)" is amended by adding footnote 3 to read as follows:

§ 81.308 Delaware.

* * * * *

Delaware—Ozone (1-Hour Standard)[3]

* * * * *

[3] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Delaware.

■ 10. In § 81.309 the table titled "District of Columbia—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.309 District of Columbia.

* * * * *

District of Columbia—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in the District of Columbia.

■ 11. In § 81.310 the table titled "Florida—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.310 Florida.

* * * * *

Florida—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Florida. The Jacksonville, Miami-Fort Lauderdale-W. Palm Beach, and Tampa-St. Petersburg-Clearwater areas are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.

■ 12. In § 81.311 the table titled "Georgia—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.311 Georgia.

* * * * *

Georgia—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Georgia except the Chattanooga (Catoosa Co.) area.

■ 13. In § 81.312 the table titled "Hawaii—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.312 Hawaii.

* * * * *

Hawaii—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Hawaii.

■ 14. In § 81.313 the table titled "Idaho—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.313 Idaho.

* * * * *

Idaho—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Idaho.

■ 15. In § 81.314 the table titled "Illinois—Ozone (1-Hour Standard)" is amended by adding footnote 3 to read as follows:

§ 81.314 Illinois.

* * * * *

Illinois—Ozone (1-Hour Standard)[3]

* * * * *

[3] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Illinois. The Jersey Co. and St. Louis areas are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.

■ 16. In § 81.315 the table titled "Indiana—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.315 Indiana.

* * * * *

Indiana—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Indiana. The Evansville, Indianapolis, Louisville, and South Bend-Elkhart areas are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.

■ 17. In § 81.316 the table titled "Iowa—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.316 Iowa.

* * * * *

Iowa—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Iowa.

■ 18. In § 81.317 the table titled "Kansas—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.317 Kansas.

* * * * *

Kansas—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Kansas. The Kansas City area is a maintenance area for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.

■ 19. In § 81.318 the table titled "Kentucky—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.318 Kentucky.

* * * * *

Kentucky—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Kentucky. The Cincinnati-Hamilton, Edmonson Co, Huntington-Ashland, Lexington-Fayette, Louisville, Owensboro, and Paducah areas are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.

■ 20. In § 81.319 the table titled "Louisiana—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.319 Louisiana.

* * * * *

Louisiana—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Louisiana. The Lafayette, Lake Charles, New Orleans, Pointe Coupee Parish, Beauregard Par, Grant Par, LaFourche Par, St James Par, and St Mary Par areas are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.

■ 21. In § 81.320 the table titled "Maine—Ozone (1-Hour Standard)" is amended by adding footnote 4 to read as follows:

§ 81.320 Maine.

* * * * *

Maine—Ozone (1-Hour Standard)[4]

* * * * *

[4] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Maine. Hancock and Waldo Counties are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.

■ 22. In § 81.321 the table titled "Maryland—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.321 Maryland.

* * * * *

Maryland—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Maryland except the Washington Co. area.

■ 23. In § 81.322 the table titled "Massachusetts—Ozone (1-Hour Standard)" is amended by adding footnote 3 to read as follows:

§ 81.322 Massachusetts.

* * * * *

Massachusetts—Ozone (1-Hour Standard)[3]

* * * * *

[3] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Massachusetts.

■ 24. In § 81.323 the table titled "Michigan—Ozone (1-Hour Standard)" is amended by adding footnote 4 to read as follows:

§ 81.323 Michigan.

* * * * *

Michigan—Ozone (1-Hour Standard)[4]

* * * * *

[4] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Michigan. The Detroit-Ann Arbor, Flint, Grand Rapids, Muskegon, Allegan Co, and Saginaw-Bay City-Midland areas are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.

■ 25. In § 81.324 the table titled "Minnesota—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.324 Minnesota.

* * * * *

Minnesota—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Minnesota.

■ 26. In § 81.325 the table titled "Mississippi—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.325 Mississippi.

* * * * *

Mississippi—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Mississippi.

■ 27. In § 81.326 the table titled "Missouri—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.326 Missouri.

* * * * *

Missouri—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Missouri. The Kansas City and St. Louis areas are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.

■ 28. In § 81.327 the table titled "Montana—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.327 Montana.

* * * * *

Montana—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Montana.

■ 29. In § 81.328 the table titled "Nebraska—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.328 Nebraska.

* * * * *

Nebraska—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Nebraska.

■ 30. In § 81.329 the table titled "Nevada—Ozone (1-Hour Standard)" is amended by adding footnote 3 to read as follows:

§ 81.329 Nevada.

* * * * *

Nevada—Ozone (1–Hour Standard)[3]

* * * * *

[3] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Nevada except the portion of Clark County designated nonattainment for the 8-hour ozone standard effective September 13, 2004 for which the 1-hour ozone standard is revoked effective September 13, 2005.

■ 31. In § 81.330 the table titled "New Hampshire—Ozone (1-Hour Standard)" is amended by adding footnote 3 to read as follows:

§ 81.330 New Hampshire.

* * * * *

New Hampshire—Ozone (1-Hour Standard)[3]

* * * * *

[3] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in New Hampshire.

■ 32. In § 81.331 the table titled "New Jersey—Ozone (1-Hour Standard)" is amended by adding footnote 3 to read as follows:

§ 81.331 New Jersey.

* * * * *

New Jersey—Ozone (1-Hour Standard)[3]

* * * * *

[3] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in New Jersey.

■ 33. In § 81.332 the table titled "New Mexico—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.332 New Mexico.

* * * * *

New Mexico—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in New Mexico.

■ 34. In § 81.333 the table titled "New York—Ozone (1-Hour Standard)" is amended by adding footnote 3 to read as follows:

§ 81.333 New York.

* * * * *

New York—Ozone (1-Hour Standard)[3]

* * * * *

[3] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in New York.

■ 35. In § 81.334 the table titled "North Carolina—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.334 North Carolina.

* * * * *

North Carolina—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in North Carolina except the Cumberland Co. (Fayetteville), Triad (Greensboro-Winston-Salem-High Point), and Unifour (Hickory-Morganton-Lenoir) areas. The Charlotte-Gastonia and Raleigh-Durham areas are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.

■ 36. In § 81.335 the table titled "North Dakota—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.335 North Dakota.

* * * * *

North Dakota—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in North Dakota.

■ 37. In § 81.336 the table titled "Ohio—Ozone (1-Hour Standard)" is amended by adding footnote 3 to read as follows:

§ 81.336 Ohio.

* * * * *

Ohio—Ozone (1-Hour Standard)[3]

* * * * *

[3] The 1-hour standard is revoked effective June 15, 2005 for all areas in Ohio. The Canton, Cleveland-Akron-Lorain, Clinton Co, Columbus, Dayton-Springfield, Preble Co, Steubenville, Toledo, Youngstown-Warren-Sharon, and Columbiana Co. areas are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.

■ 38. In § 81.337 the table titled "Oklahoma—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.337 Oklahoma.

Oklahoma—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Oklahoma.

■ 39. In § 81.338 the table titled "Oregon—Ozone (1-Hour Standard)" is amended by adding footnote 3 to read as follows:

§ 81.338 Oregon.

* * * * *

Oregon—Ozone (1-Hour Standard)[3]

* * * * *

[3] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Oregon. Portland-Vancouver AQMA is a maintenance area for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.

■ 40. In § 81.339 the table titled "Pennsylvania—Ozone (1-Hour Standard)" is amended by adding footnote 4 to read as follows:

§ 81.339 Pennsylvania.

* * * * *

Pennsylvania—Ozone (1-Hour Standard)[4]

* * * * *

[4] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Pennsylvania. The Pittsburgh-Beaver Valley and Reading areas are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.

■ 41. In § 81.340 the table titled "Rhode Island—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.340 Rhode Island.

* * * * *

Rhode Island—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Rhode Island.

■ 42. In § 81.341 the table titled "South Carolina—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.341 South Carolina.

* * * * *

South Carolina—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in South Carolina except the Central Midlands-I (Columbia) and Appalachian-A (Greenville-Spartanburg-Anderson) areas. Cherokee Co. is a maintenance area for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.

■ 43. In § 81.342 the table titled "South Dakota—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.342 South Dakota.

* * * * *

South Dakota—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in South Dakota.

■ 44. In § 81.343 the table titled "Tennessee—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.343 Tennessee.

* * * * *

Tennessee—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Tennessee except the Chattanooga, Johnson City-Kingsport-Bristol, and Nashville areas. Knoxville and Memphis are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.

■ 45. In § 81.344 the table titled "Texas—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.344 Texas.

* * * * *

Texas—Ozone (1-Hour Standard)[2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Texas except the San Antonio area. The Victoria area is a maintenance area for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.

■ 46. In § 81.345 the table titled "Utah—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.345 Utah.

* * * * *

Utah—Ozone (1-Hour Standard) [2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Utah. The Salt Lake City area is a maintenance area for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.

■ 47. In § 81.346 the table titled "Vermont—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.346 Vermont.

* * * * *

Vermont—Ozone (1-Hour Standard) [2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Vermont.

■ 48. In § 81.347 the table titled "Virginia—Ozone (1-Hour Standard)" is amended by adding footnote 3 to read as follows:

§ 81.347 Virginia.

* * * * *

Virginia—Ozone (1-Hour Standard) [3]

* * * * *

[3] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Virginia except Northern Shenandoah Valley Region (Winchester City and Frederick County) and Roanoke areas. The Norfolk-Virginia Beach-Newport News and Richmond Areas are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.

■ 49. In § 81.348 the table titled "Washington—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.348 Washington.

* * * * *

Washington—Ozone (1-Hour Standard) [2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Washington. The Portland-Vancouver AQMA and Seattle-Tacoma areas are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.

■ 50. In § 81.349 the table titled "West Virginia—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.349 West Virginia.

* * * * *

West Virginia—Ozone (1-Hour Standard) [2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in West Virginia except the Eastern Pan Handle Region (Berkeley and Jefferson Counties). The Charleston, Greenbrier Co., Huntington-Ashland, and Parkersburg areas are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.

■ 51. In § 81.350 the table titled "Wisconsin—Ozone (1-Hour Standard)" is amended by adding footnote 4 to read as follows:

§ 81.350 Wisconsin.

* * * * *

Wisconsin—Ozone (1-Hour Standard) [4]

* * * * *

[4] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Wisconsin. The Door Co., Kewaunee Co., Manitowoc Co., Sheboygan, and Walworth Co. areas are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR part 51 subpart X.

■ 52. In § 81.351 the table titled "Wyoming—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.351 Wyoming.

* * * * *

Wyoming—Ozone (1-Hour Standard) [2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Wyoming.

■ 53. In § 81.352 the table titled "American Samoa—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.352 American Samoa.

* * * * *

American Samoa—Ozone (1-Hour Standard) [2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in American Samoa.

■ 54. In § 81.353 the table titled "Guam—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.353 Guam.

* * * * *

Guam—Ozone (1-Hour Standard) [2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Guam.

■ 55. In § 81.354 the table titled "Northern Mariana Islands—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.354 Northern Mariana Islands.

* * * * *

Northern Mariana Islands—Ozone (1-Hour Standard) [2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Northern Mariana Islands.

■ 56. In § 81.355 the table titled "Puerto Rico—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.355 Puerto Rico.

* * * * *

Puerto Rico—Ozone (1-Hour Standard) [2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Puerto Rico.

■ 57. In § 81.356 the table titled "Virgin Islands—Ozone (1-Hour Standard)" is amended by adding footnote 2 to read as follows:

§ 81.356 Virgin Islands.

* * * * *

Virgin Islands—Ozone (1-Hour Standard) [2]

* * * * *

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in the Virgin Islands.

■ 58. Subpart E is removed.

[FR Doc. 05–15218 Filed 8–2–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CMNI 124–NBK; FRL–7938–6]

Revisions to the Commonwealth of the Northern Mariana Islands State Implementation Plan, Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by the Commonwealth of the Northern Mariana Islands that are incorporated by reference (IBR) into the Commonwealth of the Northern Mariana Islands State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the

territorial agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), Office of Air and Radiation Docket and Information, and the Regional Office.

DATES: Effective Date: This rule is effective on August 3, 2005.

ADDRESSES: SIP materials that are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations and online at EPA Region IX's Web site:

Air Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, EPA Region IX, (415) 947–4126, *rose.julie@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. State Implementation Plan History and Process

Each State is required to have a SIP that contains the control measures and strategies that will be used to attain and maintain the national ambient air quality standards (NAAQS). The control measures and strategies must be formally adopted by each State after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

Once these control measures are approved by EPA after notice and comment, they are incorporated into the SIP and are identified in part 52, Approval and Promulgation of Implementation Plans, Title 40 of the Code of Federal Regulations (40 CFR part 52). The actual State regulations that are approved by EPA are not reproduced in their entirety in 40 CFR part 52, but are "incorporated by reference," which means that the citation of a given State regulation with a specific effective date has been approved by EPA. This format allows both EPA and the public to know which measures are contained in a given SIP and insures that the State is enforcing the regulations. It also allows EPA and the public to take enforcement action should a State not enforce its SIP-approved regulations.

The SIP is a living document that the State can revise as necessary to address the unique air pollution problems in the State. From time to time, therefore, EPA must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), as a result of consultations between EPA and OFR, EPA revised the procedures for incorporating by reference federally-approved SIPs. EPA began the process of developing (1) a revised SIP document for each State that would be incorporated by reference under the provisions of 1 CFR part 51; (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR, and (3) a revised format of the "Identification of plan" sections for each applicable subpart to reflect these revised IBR procedures. The description of the revised SIP document, IBR procedures, and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

B. Content of Revised IBR Document

The new SIP compilations contain the Federally-approved portion of regulations submitted by each State agency. These regulations have all been approved by EPA through previous rule making actions in the **Federal Register**. The compilations are stored in hard covered folders and will be updated, usually on an annual basis.

Each compilation contains two parts. Part 1 contains the regulations and Part 2 contains nonregulatory provisions that have been EPA-approved. Each part consists of a table of identifying information for each regulation and each nonregulatory provision. The table of identifying information corresponds to the table of contents published in 40 CFR part 52 for each State and Territory. The Regional EPA Offices have the primary responsibility for ensuring accuracy and updating the compilations. The Region IX EPA Office developed and will maintain the compilation for the Commonwealth of the Northern Mariana Islands. A copy of the full text of each State's current compilation will also be maintained at the Office of the Federal Register and EPA's Air Docket and Information Center.

C. Revised Format of the "Identification of Plan" Section in Subpart FFF

In order to better serve the public, EPA is revising the organization of the "Identification of plan" section to include additional information that will make it clearer as to what provisions constitute the enforceable elements of the SIP.

The revised "Identification of plan" section will contain five subsections: (a) Purpose and scope, (b) Incorporation by reference, (c) EPA approved regulations, (d) EPA approved source specific permits, and (e) EPA approved nonregulatory provisions such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

D. Enforceability and Legal Effect

All revisions to the applicable SIP become federally enforceable as of the effective date of the revisions to paragraph (c), (d), or (e) of the applicable "Identification of plan" found in each subpart of 40 CFR part 52. To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA is retaining the original "Identification of plan" section, previously appearing in the CFR as the first section of part 52 for subpart FFF, Commonwealth of the Northern Mariana Islands.

E. Notice of Administrative Change

Today's rule constitutes a "housekeeping" exercise to ensure that all revisions to State programs that have occurred are accurately reflected in 40 CFR part 52. State SIP revisions are controlled by EPA regulations at 40 CFR part 51. When EPA receives a formal SIP revision request, the Agency must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

II. Public Comments

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) that, upon finding "good cause," authorizes agencies to dispense with public participation; and section 553(d)(3), which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions that are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the

APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This rule does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules are discussed in previous actions taken on the State's rules.

B. Submission to Congress and the Comptroller General

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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. Today's action simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective August 3, 2005. 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**. These corrections to the "Identification of plan" for the Commonwealth of the Northern Mariana Islands are not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Commonwealth of the Northern Mariana Islands SIP compilation had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for these "Identification of plan" reorganization actions for the Commonwealth of the Northern Mariana Islands.

List of Subjects in 40 CFR Part 52

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

Dated: June 24, 2005.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart FFF—Commonwealth of the Northern Mariana Islands"

■ 2. Section 52.2920 is redesignated as § 52.2921 and the Section heading and paragraph (a) are revised to read as follows:

§ 52.2921 Original identification of plan.

(a) This section identified the original "Implementation Plan for Compliance With the Ambient Air Quality Standards for the Commonwealth of the Northern Mariana Islands' and all revisions submitted by the Commonwealth of the Northern Mariana Islands that were federally approved prior to June 1, 2005.

* * * * *

■ 3. A new § 52.2820 is added to read as follows:

§ 52.2920 Identification of plan.

(a) Purpose and scope. This section sets forth the applicable State implementation plan for the Commonwealth of the Northern Mariana Islands under section 110 of the Clean Air Act, 42 U.S.C. 7401–7671q and 40 CFR part 51 to meet national ambient air quality standards.

(b) Incorporation by reference.

(1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to June 1, 2005, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after June 1, 2005, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region IX certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of June 1, 2005.

(3) Copies of the materials incorporated by reference may be inspected at the Region IX EPA Office at 75 Hawthorne Street, San Francisco, CA 94105; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC; or 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.*

(c) EPA approved regulations.

TABLE 52.2920.—EPA APPROVED COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS REGULATIONS

State citation	Title/subject	Effective date	EPA approval date	Explanation
Air Pollution Control Regulations:				
Part I	Authority	01/19/1987	11/13/1987, 52 FR 43574	
Part II	Purpose and Policy	01/19/1987	11/13/1987, 52 FR 43574	
Part III	Policy	01/19/1987	11/13/1987, 52 FR 43574	
Part IV	Definitions (a—www)	01/19/1987	11/13/1987, 52 FR 43574	
Part V	Permitting of New Sources And Modifications (A—M).	01/19/1987	11/13/1987, 52 FR 43574	
Part VI	Registration of Existing Sources (A—D)	01/19/1987	11/13/1987, 52 FR 43574	
Part VII	Sampling, Testing and Reporting Methods (A—D).	01/19/1987	11/13/1987, 52 FR 43574	
Part VIII	Prohibition of Air Pollution	01/19/1987	11/13/1987, 52 FR 43574	
Paragraph A	Control of Open Burning			
Paragraph B	Control of Visible Emissions			
Paragraph C	Control of Emissions from Motor Vehicles			
Paragraph D	Control of Fugitive Dust and Other Particulate Matter			
Paragraph E	Control of Incineration			
Paragraph F	Control of Process Industries			
Table VIII–1	Process Weight Rate			
Paragraph G	Control of Sulfur Oxides From Fuel Combustion			
Paragraph H	Variances to Prohibition of Air Pollution			
Part IX	Fees (A—B)	01/19/1987	11/13/1987, 52 FR 43574	
Part X	Public Participation (A–E)	01/19/1987	11/13/1987, 52 FR 43574	
Part XI	Enforcement (A—E)	01/19/1987	11/13/1987, 52 FR 43574	
Part XII	Severability	01/19/1987	11/13/1987, 52 FR 43574	
Part XIII	Effective Date	01/19/1987	11/13/1987, 52 FR 43574	
Part XIV	Certification	01/19/1987	11/13/1987, 52 FR 43574	

(d) EPA approved State source specific requirements.

Name of source	Permit number	Effective date	EPA approval date	Explanation
None				

(e) [Reserved].

[FR Doc. 05–15326 Filed-8–2–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R10–OAR–2005–OR–0005; FRL–7944–1]

Approval and Promulgation of Air Quality Implementation Plans; Oregon; Correcting Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correcting amendments.

SUMMARY: EPA is taking direct final action to correct an error in the instructions amending the Code of Federal Regulations in the notice which approved the removal of Oregon's control technology guidelines for perchloroethylene (perc) dry cleaning systems and related definitions and provisions, published on December 1,

2004. Perc is a solvent commonly used in dry cleaning, maskant operations, and degreasing operations. In the document published on December 1, 2004 (69 FR 69823), EPA inadvertently listed an incorrect State effective date in the incorporation by reference section which listed revised provisions of the Oregon Administrative Rules. This action corrects the erroneous date so that the appropriate version of the Oregon Administrative Rules is incorporated by reference.

DATES: This direct final rule will be effective October 3, 2005, without further notice, unless EPA receives adverse comments by September 2, 2005. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. R10–OAR–2005–OR–0005, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Agency Web Site: http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *Mail:* Colleen Huck, Office of Air, Waste and Toxics, AWT–107, EPA, Region 10, 1200 Sixth Ave., Seattle, Washington 98101.
- *Hand Delivery:* Colleen Huck, Office of Air, Waste and Toxics, AWT–107, 9th Floor, EPA, Region 10, 1200 Sixth Ave., Seattle, Washington 98101. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. R10–OAR–2005–OR–0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through E-DOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at EPA, Region 10, Office of Air, Waste and Toxics, 1200 Sixth Avenue, Seattle, Washington, from 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Colleen Huck at telephone number: (206) 553–1770, e-mail address: *Huck.Colleen@epa.gov*, fax number: (206) 553–0110, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION:

I. Background

On December 1, 2004 (69 FR 69823), EPA approved a revision to the Oregon State Implementation Plan (SIP) removing control technology guidelines for perc dry cleaning systems and related definitions and provisions contained in Oregon Administrative Rules (OAR) chapter 340, Division 232. On February 7, 1996, (61 FR 4588) EPA had excluded perc from the Federal definition of volatile organic compounds for purposes of preparing SIPs for attainment of the national ambient air quality standards for ozone. Therefore, States were no longer required to have rules based on EPA's perc dry cleaning control technology guidelines included in their SIPs. Because of this, the State of Oregon, Division of Environmental Quality (ODEQ) repealed its control technology guidelines for perc dry cleaning systems and the related definitions and provisions on December 7, 2001, and submitted the repeal as a formal SIP revision. The State requested approval of the removal of the perc rules because maintaining the SIP rules for perc was no longer required for ozone control and would have been largely duplicative of National Emission Standards for Hazardous Air Pollutants (NESHAPs) under which emissions from perc dry cleaning systems are still regulated.

In approving the revision, EPA inadvertently listed the State effective date as October 14, 1999, rather than the correct State effective date of the repeal of the perc rules which was December 26, 2001. The error was made in the incorporation by reference section of the Code of Federal Regulations (CFR) amendatory instructions at the end of the notice. EPA's intention was to approve and incorporate by reference the more recent version of OAR 340–232–010 and -030, which was effective December 26, 2001. This document corrects the erroneous amendatory language.

II. Direct Final Action

EPA is publishing this action without a prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. In the proposed rules section of this **Federal Register** publication, however, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This direct final rule is effective on October 3, 2005 without further notice, unless EPA receives adverse comment by September 2, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For

this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, 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 6, 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. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 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 October 3, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2))

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 18, 2005.

Julie M. Hagensen,

Acting Regional Administrator, Region 10.

■ Chapter I, title 40 of the Code of Federal Regulations is corrected by making the following correcting amendment:

PART 52—[AMENDED]

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

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

Subpart MM—Oregon

■ 2. Section 52.1970 is amended by revising paragraph (c)(143)(i)(A) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(143) * * *

(i) * * *

(A) The following sections of the Oregon Administrative Rules 340: 232–0010 and 232–0030, as effective December 26, 2001.

* * * * *

[FR Doc. 05–15338 Filed 8–2–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0154; FRL–7717–2]

Acetic Acid; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of acetic acid when used as a preservative for post-harvest stored grains and hay intended for animal feed. Eastman Chemical Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of acetic acid for this use.

DATES: This regulation is effective August 3, 2005. Objections and requests for hearings must be received on or before October 3, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0154. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy

form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Driss Benmhend, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9525; e-mail address: *Benmhend.driss@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm/*.

II. Background and Statutory Findings

In the **Federal Register** of June 11, 2003 (68 FR 34955) (FRL–7308–7), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 3F6516) by Eastman Chemical Company, P.O. Box 511, Kingsport, TN 37662. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of acetic acid. This notice included a summary of the petition prepared by the petitioner, Eastman Chemical Company. There were no comments received in response to the notice of filing.

Acetic acid was previously registered by EPA and was exempt from the requirement of a tolerance when used as a hay and grain preservative under 40 CFR 180.1029. However, the registration was canceled and the tolerance was revoked due to failure by the registrant to respond to a January 1987 generic Data Call-In, and also for failure to submit the required annual pesticide registration maintenance fees (58 FR 47214, September 8, 1993).

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of acetic acid when used as a preservative for post-harvest stored grains and hay intended for animal feed.

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

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

III. Toxicological Profile

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

Acetic acid is a naturally occurring substance found in all plants, animals, and humans. An intermediate produced in aerobic metabolism of foods during digestion (FDA, 1977), acetic acid has a long history of safe use as a food additive, and when diluted, is most commonly used and referred to as vinegar. It is a natural component of apple cider vinegar and other fruit and distilled vinegars, at a concentration ranging from 4-8%. This rule supports the use of acetic acid as the active ingredient in pesticide products that will be used as a preservative for post-harvest stored grains and hay intended for animal feed. The application rate will be based on the moisture content of the commodity, but concentrations of acetic acid as applied will be between 1% on hay and about 1.5% on grain. Any resulting residues of acetic acid will be less than those that result from the use of vinegar in or on foods.

In support of this tolerance exemption, data waivers were requested for the required mammalian toxicity studies, including acute toxicity and other toxicological studies used to determine risk to human health, based on the lack of toxicity associated with acetic acid in commonly consumed food and information available from the public literature. Additionally, acetic acid is considered GRAS (Generally Recognized As Safe) by the Food and Drug Administration when applied directly to foods (21 CFR 184.1005).

Data waivers were sought and granted for the following toxicity studies based

on information from the open scientific literature:

- Acute Oral Toxicity (OPPTS 870.1100)
- Acute Dermal Toxicity (OPPTS 870.1200)
- Acute Inhalation Toxicity (OPPTS 870.1300)
- Primary Eye Irritation (OPPTS 870.2400)
- Primary Dermal Irritation (OPPTS 870.2500)

Acetic acid is a commonly known food material that has been tested and written about for years. As a result, a lot of toxicity studies about aa are found in the public literature. As demonstrated in the public literature supplied by the applicant, acetic acid has a low pH (pH 2.4) and low corrosivity. Indeed, the effects on targeted microbial pest species are due to the low pH. Similarly, primary eye irritation and primary dermal irritation testing was not deemed necessary due to the low pH and low corrosivity of the active ingredient. As a result, the Agency concluded that additional acute oral, acute dermal, and acute inhalation toxicity testings are not necessary.

1. *Hypersensitivity* (OPPTS 870.2600). The potential for repeated contact of the product with human skin is a concern only to applicators of the end-use products. However, the risk to applicators from exposure is mitigated as they are required to wear protective chemical-resistant gloves, aprons, and footwear. There are no reports of dermal sensitization to low concentrations of acetic acid at concentrations such as those found in vinegars. Accordingly, a hypersensitivity study is not required for registration of this product (per 40 CFR 158.690(c)(2)(iii)).

The registrant has reported no hypersensitivity incidents to date (OPPTS Guideline 885.3400). Nonetheless, pursuant to FIFRA section 6(a)(2), the registrant is required to report to the Agency any future incidents of hypersensitivity associated with acetic acid.

2. *Genotoxicity* (OPPTS 870.5100 and 870.5375). In lieu of guideline studies, the registrant submitted a waiver request with supporting studies/data/information from the open technical literature (Master Record Identification Number (MRID) 457691–06)). Two non-guideline gene mutation studies in bacteria (Ames test) were conducted as part of a larger screening study of large numbers of chemicals. Reviews of these studies showed that this compound is not anticipated to induce mutagenic responses. Moreover, acetic acid is not structurally related to any known mutagens. As a result, the agency approved the waiver request for genotoxicity studies.

3. *Immune response* (OPPTS 870.7800). The registrant requested a waiver for this study, and submitted supporting studies/data/information from the open technical literature. EPA's review concluded that acetic acid is a common component of the diet in humans and is a naturally-occurring metabolite found in all plants and animals (including humans). Acetic acid is non-toxic at levels (4%-8%) consumed by humans in or on foods. With no known incidences of allergic responses to acetic acid, there is reasonable evidence that acetic acid would not induce adverse immune responses in humans, particularly at the very low levels anticipated from the proposed pesticidal uses. As a result, the agency approved the waiver request for the Immune Response study.

4. *90–Day feeding* (OPPTS 870.3100). Data waivers were sought and granted for this study. The conditions of potential exposure requiring this study are not triggered. Acetic acid is a food acid and is naturally occurring. Acetic acid is absorbed from the gastrointestinal tract and through the lungs and is readily, although not completely, oxidized in the organism. Acetic acid is proposed to be used as a hay and grain preservative at low concentrations and for animal food only. When the product is applied according to label directions, the treated hay and grains will contain less than 2% of acetic acid. After consumption by the animal, AA will then be rapidly metabolized. Moreover, acetic acid is consumed (by humans) at higher concentrations found in commercially available vinegar (4%-8%), without any reported negative effects. Therefore, there would be no expected subchronic effects from the use of acetic acid in products intended for hay and grain treatment.

5. *90–Day dermal* (OPPTS 870.3250). A data waiver was sought and granted for this study. The active ingredient acetic acid is intended for use as a preservative on stored grain and hay used as animal feed. There will be no intentional application to human skin and there will be no prolonged human dermal exposure. Acetic acid is not expected to be metabolized differently by the dermal route of exposure.

6. *90–Day inhalation* (OPPTS 870.3465). A data waiver was sought and granted for this study. Repeated inhalation exposure to acetic acid is not expected because application will occur seasonally and the product is rapidly diluted in the air. Furthermore, the applicator/operator is separated from the point of application by 15-20 feet and is typically, but not always, within an enclosed tractor cab.

7. *Developmental toxicity* (OPPTS 870.3550). In three developmental toxicity studies (MRID 457691–07), acetic acid was administered to presumed pregnant rats, mice, and rabbits by gavage at 0, 16, 74.3, 345, or 1,600 milligrams/kilograms/day (mg/kg/day). Rats, mice, and rabbits were sacrificed for examination on days 17, 20, and 29, respectively. No treatment-related maternal deaths occurred in any species. Maternal body weights for rats and rabbits were not affected by treatment. For high-dose mice, body weights were 90% of the control level on day 11 and 88% of the controls on days 15 and 17. Therefore, the maternal toxicity lowest observed adverse effect level (LOAEL) for acetic acid is 1,600 mg/kg/day for mice based on reduced body weight; the LOAEL was not identified for rats and rabbits. The maternal toxicity no observed adverse effect level (NOAEL) was 345 mg/kg/day for mice and was ≥1,600 mg/kg/day for rats and rabbits. For all three species, the numbers of implantations, resorptions, and live fetuses per litter were similar between the treated and control groups. No effects on numbers of dead fetuses or fetal body weights were observed in rats or rabbits. In mice, a greater number of litters in the high-dose group contained dead fetuses compared with the controls (7/21 vs. 2/22 respectively). Mean fetal body weight from high-dose mice was 0.84 gram (g) compared with 0.92 g for the controls. No treatment-related external, visceral, or skeletal malformations or variations were observed in fetuses from rats, mice, or rabbits. Therefore, the developmental toxicity LOAEL for acetic acid is 1,600 mg/kg/day for mice based on an increased number of dead fetuses/litter and decreased fetal body weight; the LOAEL for rats and rabbits was not identified. The developmental toxicity NOAEL for acetic acid is 345 mg/kg/day for mice and ≥1,600 mg/kg/day for rats and rabbits. It should be noted that the highest dose tested in all three species, 1,600 mg/kg/day, is greater than the limit dose of 1,000 mg/kg/day. As a result, developmental toxicity is not expected from the use sought for acetic acid as a post-harvest grain and hay preservative.

Based on the data or data waivers submitted in accordance with the Tier I toxicology data requirements set forth in 40 CFR 158.690(c), the Tier II and Tier III toxicology data requirements also set forth therein were not triggered and, therefore, not required in connection with this action.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

Acetic acid is a common metabolite in plants and animals. It is normally produced in relatively large amounts during the digestion and metabolism of foods (FDA, 1977). It is not a known mutagen, teratogen, nor oncogen; neither is it chemically related to any known class of mutagens, teratogens, or oncogens. Moreover, the acetic acid contained in this product is intended solely for use as a post-harvest preservative on hay and grain. After the treated feed is ingested by animals, acetic acid is readily metabolized into a source of energy for the animal. As a result, the possibility of human exposure through consumption of meat or milk from these animals, is not expected.

A. Dietary Exposure

1. *Food.* When end-use products containing the active ingredient acetic acid are used in the manner intended for stored hay and grains, residues of acetic acid will not be present on the feed commodities at levels greater than 2%. While human dietary exposure from the use of this product is not expected in connection with the proposed uses, even if humans were to consume acetic acid at these levels, the dietary intake would be 2 to 3 times less than when consuming vinegar in vegetable salads and other commonly consumed foods. Moreover, human dietary exposure is also not anticipated from the consumption of meat and milk of animals that were fed treated grains and hay (see Unit IV. above).

2. *Drinking water exposure.* When used according to label directions, no dietary exposure through drinking water is expected from the use of acetic acid to treat stored hay and grains. The product is not intended for use in drinking water, nor are the approved uses likely to result in acetic acid reaching surface or ground water that might be used as drinking water. Furthermore, in the unlikely event that the use of acetic acid to treat stored hay and grains does result in acetic acid reaching water that ultimately is consumed, it would not pose any health risk due to its inherent low toxicity and ability to be metabolized just like vinegar.

B. Other Non-Occupational Exposure

Based on the proposed post-harvest use on stored hay and grains that will be used as feed only, the potential for non-occupational, non-dietary exposures to acetic acid residues by the general population, including infants and children, is unlikely. Moreover, in the unlikely event of non-occupational, non-dietary exposures to acetic acid residues as a result of the proposed post-harvest uses, no harm is expected because of acetic acid's low toxicity. Based on available data, therefore, it is highly unlikely that any adverse effects will occur to humans via use of acetic acid as a post-harvest preservative for stored hay and grains.

V. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." These considerations include the possible cumulative effects of such residues on infants and children. Acetic acid is used in a manner similar to propionic acid as a preservative of post-harvest hay and grain. Under aerobic conditions, propionic acid acts as a carbon source for various microbes and is metabolized to acetic acid. Propionic acid is also used on other food commodities. Certain uses of propionic acid are exempt from the requirement of a tolerance under 40 CFR 180.1023. Since there will be no dietary or non-dietary, non-occupational exposure to acetic acid when the end-use product is used according to label directions, no cumulative or incremental effects to humans are anticipated.

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

1. *U.S. population.* There is reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of acetic acid due to its use as a preservative for post-harvest stored grains and hay intended for animal feed. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The agency has arrived at this conclusion based on the function of acetic acid as a natural component of metabolism in the human body, the anticipated low acute exposure estimates from its pesticidal use, the common use of acetic acid in the human diet and its classification by the FDA as GRAS as a direct food additive.

2. *Infants and children.* FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold margin of exposure (MOE) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure, unless EPA determines that a different MOE will be safe for infants and children. Margins of exposure, which are often referred to as uncertainty (safety) factors, are incorporated into EPA risk assessments either directly, or through the use of a MOE analysis or by using uncertainty factors in calculating a dose level that poses no appreciable risk. In this instance, based on all available information, the Agency concludes that acetic acid is non-toxic to mammals, including infants and children. Because there are no threshold effects of concern to infants, children and adults when acetic acid is used as labeled, the Agency concludes that the additional MOE is not necessary to protect infants and children and that not adding any additional MOE will be safe for infants and children.

VII. Other Considerations

A. Endocrine Disruptors

EPA is required under section 408(p) of the FFDCA, as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) "may have an effect in humans that is similar to an effect produced by a naturally-occurring estrogen, or other such endocrine effects as the Administrator may designate." Acetic acid is not a known endocrine disruptor nor is it related to any class of known endocrine disruptors. Thus, there is no impact via endocrine-related effects on this Agency's safety finding set forth in this final rule for acetic acid.

B. Analytical Method

Through this action, the Agency proposes to establish an exemption from the requirement of a tolerance for acetic acid when used as a preservative on post-harvest hay and grain intended for use as animal feed. For the very same reasons that support the granting of this tolerance exemption, the Agency has concluded that an analytical method is not required for enforcement purposes for these proposed uses of acetic acid.

C. Codex Maximum Residue Level

There are no codex maximum residue levels established for acetic acid.

VIII. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0154 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 3, 2005.

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

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

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0154 to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

IX. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

X. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 1, 2005.

James Jones,

Director, Office of Pesticide Programs.

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

PART 180—AMENDED

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1258 is added to subpart D to read as follows:

§ 180.1258 Acetic acid; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the biochemical pesticide acetic acid when used as a preservative on post-harvest agricultural commodities intended for animal feed, including alfalfa, barley grain, Bermuda grass, bluegrass, brome grass, clover, corn grain, cowpea hay, fescue, lespedeza, lupines, oat grain, orchard grass, peanut grass, Timothy, vetch, and wheat grain, or commodities described as grain or hay.

[FR Doc. 05–15148 Filed 8–2–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0183; FRL–7725–6]

Alachlor, Carbaryl, Diazinon, Disulfoton, Pirimiphos-methyl, and Vinclozolin; Tolerance Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking certain tolerances for residues of the herbicide alachlor, insecticides carbaryl, diazinon, disulfoton, and pirimiphos-methyl, and the fungicide vinclozolin because these specific tolerances are no longer needed or are associated with food uses that are no longer current or registered in the United States. The regulatory actions in this document contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. The regulatory actions in this document pertain to the revocation of 15 tolerances of which 9 count as tolerance reassessments toward the August, 2006 review deadline.

DATES: This regulation is effective August 3, 2005. Objections and requests for hearings must be received on or before October 3, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0183. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail address: *nevola.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

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

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of March 23, 2005 (70 FR 14618) (FRL–7701–4), EPA issued a proposed rule to revoke certain tolerances for residues of the herbicide alachlor, insecticides carbaryl, diazinon, disulfoton, and pirimiphos-methyl, and the fungicide vinclozolin. Also, the proposal of March 23, 2005 provided a 60–day comment period which invited public comment for consideration and for support of tolerance retention under the FFDCA standards. In this final rule, EPA is revoking these tolerances because they pertain to commodities which are either no longer considered to be significant livestock feed items or which have restrictions against feeding to livestock, or to uses no longer current or registered under FIFRA in the United States. The tolerances revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to revoke those tolerances and tolerance exemptions for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or domestic commodities legally treated.

EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of the following conditions applies:

1. Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance is no longer needed.

3. The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

In response to the proposal published in the **Federal Register** of March 23, 2005 (70 FR 14618) (FRL–7701–4), EPA received one comment during the 60–day public comment period, as follows:

•*Comment.* A private citizen expressed a general concern about the sale of existing pesticide stocks.

Agency response. The private citizen's comment did not take issue with the Agency's proposal to revoke certain tolerances which were no longer needed or whose associated food uses were no longer current or registered in the United States. It is EPA's general practice to revoke tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. However, cancellation orders issued by EPA will generally permit a registrant to sell or distribute existing pesticide stocks for 1–year after the date the cancellation request was received by the Agency. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Typically, existing stocks of registered pesticide products in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with EPA-approved label and labeling of affected product. In the proposal of March 23, 2005 (70 FR 14618), EPA noted that certain registrations had been canceled for several years. The Agency believes that the existing stocks of canceled pesticide products have been exhausted and treated commodities have had sufficient time for passage through the channels of trade.

No comments were received by the Agency concerning the following.

1. *Alachlor.* Active registrations for use of the herbicide alachlor have restrictions against feeding peanut forage; peanut, hay; soybean, forage; and soybean, hay to livestock. Also, peanut forage is no longer considered a significant livestock feed item. On June 22, 1994, EPA canceled the two registrations which had lacked the restriction. These cancellations had followed publication of a notice in the **Federal Register** of March 17, 1994 (59 FR 12599) (FRL–4764–1), which announced EPA's receipt of requests to voluntarily cancel certain registrations. The restrictions against the feeding of alachlor treated peanut forage and hay for all alachlor products have been on labels since 1993.

The tolerances for peanut forage, peanut hay, soybean forage, and soybean hay were recommended by the Agency for revocation in the 1998 Alachlor Reregistration Eligibility Decision (RED). A printed copy of the Alachlor RED may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419, telephone 1–800–490–9198; fax 1–513–489–8695; internet at *http://www.epa.gov/ncepihom/* and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone 1–800–553–6847 or 703–605–6000; internet at *http://www.ntis.gov/*. An electronic copy of the Alachlor RED is available on the internet at *http://www.epa.gov/pesticides/reregistration/status.htm*. Therefore, because there is no longer a need for them, EPA is revoking the tolerances in 40 CFR 180.249 for the combined residues of the herbicide alachlor and its metabolites (calculated as alachlor) in or on peanut, forage; peanut, hay; soybean, forage; and soybean, hay.

2. *Carbaryl.* Because flax straw is no longer a regulated feed item (no longer considered a raw agricultural commodity (RAC) of flax), the tolerance is no longer needed. Therefore, EPA is revoking the tolerance in 40 CFR 180.169(a)(1) for residues of the insecticide carbaryl, including its hydrolysis product 1-naphthol, calculated as 1-naphthyl *N*-methylcarbamate, in or on flax, straw.

Because bean forage and bean hay are no longer considered significant

livestock feed items, the tolerances are no longer needed. Therefore, EPA is revoking the tolerances in 40 CFR 180.169(a)(1) for residues of the insecticide carbaryl, including its hydrolysis product 1-naphthol, calculated as 1-naphthyl *N*-methylcarbamate, in or on bean, forage and bean, hay.

Because pineapple bran is no longer a regulated feed item (no longer considered a RAC of pineapple), the tolerance is no longer needed. Therefore, EPA is revoking the tolerance in 40 CFR 180.169(a)(4) for residues of the insecticide carbaryl in or on pineapple bran.

3. *Diazinon.* There have been no registered uses of diazinon on coffee beans and dandelions since 1995 and 1991, respectively. Therefore, EPA is revoking the tolerances in 40 CFR 180.153(a)(1) for residues of the insecticide diazinon (O,O-diethyl O-[6-methyl-2-(1-methylethyl)-4-pyrimidinyl]phosphorothioate) in or on coffee bean and dandelion, leaves.

4. *Disulfoton.* There have been no registered uses of disulfoton on hops since 1991. Therefore, EPA is revoking the tolerance in 40 CFR 180.183(a) for the combined residues of the insecticide O,O-diethyl S-[2-(ethylthio)ethyl]phosphorodithioate and its cholinesterase-inhibiting metabolites, calculated as demeton, in or on hop, dried cones.

5. *Pirimiphos-methyl.* There have been no registered uses of pirimiphos-methyl on kiwifruits for at least 10–years. Therefore, EPA is revoking the tolerance in 40 CFR 180.409(a)(1) for the combined residues of the insecticide pirimiphos-methyl, O-(2-diethylamino-6-methyl-4-pyrimidinyl) O,O-dimethyl phosphorothioate, the metabolite O-(2-ethylamino-6-methyl-pyrimidin-4-yl) O,O-dimethyl phosphorothioate and, in free and conjugated form, the metabolites 2-diethylamino-6-methyl-pyrimidin-4-ol, 2-ethylamino-6- methyl-pyrimidin-4-ol, and 2-amino-6-methyl-pyrimidin-4-ol in or on kiwifruit.

In 2001, EPA published an Interim Reregistration Eligibility Decision (IRED) for pirimiphos-methyl and made a determination that pirimiphos-methyl residues of concern do not concentrate in wheat flour. Because the tolerance is no longer needed, EPA is revoking the tolerance in 40 CFR 180.409(a)(2) for residues of the insecticide pirimiphos-methyl and its metabolite O-(2-ethylamino-6-methyl-pyrimidin-4-yl) O,O-dimethyl phosphorothioate and, in free and conjugated form, the metabolites 2-diethylamino-6-methyl-pyrimidin-4-ol, 2-ethylamino-6-methyl-pyrimidin-4-ol, and 2-amino-6-methyl-pyrimidin-4-ol in or on wheat flour as a result of application to stored wheat grain.

A printed copy of the pirimiphos-methyl IRED may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419, telephone 1–800–490–9198; fax 1–513–489–8695; internet at *http://www.epa.gov/ncepihom/* and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone 1–800–553–6847 or 703–605–6000; internet at *http://www.ntis.gov/*. An electronic copy of the pirimiphos-methyl IRED is available on the internet at *http://www.epa.gov/pesticides/reregistration/status.htm*.

6. *Vinclozolin.* In the **Federal Register** notice of August 22, 2001 (66 FR 44134) (FRL–6795–7), EPA announced use cancellations for certain vinclozolin registrations, including uses of the fungicide vinclozolin on onions and raspberries with a last date for legal use as December 15, 2001. EPA believes that there has been sufficient time for treated commodities to have cleared the channels of trade. Therefore, EPA is revoking the tolerances in 40 CFR 180.380(a) for the combined residues of the fungicide vinclozolin and its metabolites containing the 3,5-dichloroaniline moiety in or on onion, dry bulb and raspberry.

B. What is the Agency's Authority for Taking this Action?

EPA's general practice is to revoke tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore, no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

C. When Do These Actions Become Effective?

The actions in this final rule become effective on the date of publication of this final rule in the **Federal Register** because the specific tolerances revoked herein are no longer needed or are associated with food uses that have been canceled for several years. The Agency believes that treated commodities have had sufficient time for passage through the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration (FDA) that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. As of June 29, 2005, EPA has reassessed over 7,330 tolerances. This document revokes a total of 15 tolerances of which 9 are counted as tolerance reassessments toward the August, 2006 review deadline of FFDCA section 408(q), as amended by FQPA in 1996. Alachlor and vinclozolin tolerances revoked herein were previously reassessed.

III. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When

possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. EPA has developed guidance concerning submissions for import tolerance support in the **Federal Register** of June 1, 2000 (65 FR 35069) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select "Laws and Regulations," then select "Regulations and Proposed Rules" and then look up the entry for this document under "**Federal Register**--Environmental Documents." You can also go directly to the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

IV. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0183 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 3, 2005.

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

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

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A.1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0183, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

V. Statutory and Executive Order Reviews

In this final rule, EPA is revoking specific tolerances established under section 408 of FFDCA. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant

economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticides named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 25, 2005.

James Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.153 [Amended]

■ 2. In § 180.153 is amended by removing the entries for coffee bean and dandelion, leaves from the table under paragraph (a)(1).

§ 180.169 [Amended]

■ 3. In § 180.169 is amended by removing the entries for bean, forage; bean, hay; and flax, straw from the table under paragraph (a)(1) and the entry for pineapple bran from the table under paragraph (a)(4).

§ 180.183 [Amended]

■ 4. In § 180.183 is amended by removing the entry for hop, dried cones from the table under paragraph (a).

§ 180.249 [Amended]

■ 5. In § 180.249 is amended by removing the entries for peanut, forage; peanut, hay; soybean, forage; and soybean, hay from the table under the paragraph.

§ 180.380 [Amended]

■ 6. In § 180.380 is amended by removing the entries for onion, dry bulb and raspberry from the table under paragraph (a).

§ 180.409 [Amended]

■ 7. In § 180.409 is amended by removing the entry for kiwifruit from the table under paragraph (a)(1), removing paragraph (a)(2) and redesignating paragraph (a)(1) as (a).

[FR Doc. 05–15335 Filed 8–2–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0068; FRL–7728–5]

Inert Ingredients; Revocation of Pesticide Tolerance Exemptions for Three CFC Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking exemptions from the requirement of a tolerance for three inert ingredients (dichlorodifluoromethane, dichlorotetrafluoroethane, and trichlorofluoromethane) because these substances no longer have active Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pesticide product registrations and/or because their use in pesticide products sold in the United States (U.S.) has been prohibited under the Clean Air Act (CAA) for over a decade due to EPA's ban on the sale or distribution, or offer for sale or distribution in interstate commerce of certain nonessential products that contain or are manufactured with ozone depleting compounds. The regulatory actions in this document contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality

Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. The regulatory actions in this document pertain to the revocation of five tolerance exemptions of which five count as tolerance reassessments toward the August, 2006 review deadline.

DATES: This regulation is effective August 3, 2005. Objections and requests for hearings must be received on or before October 3, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0068. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0404; e-mail address: *angulo.karen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/.*

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of April 27, 2005 (70 FR 21713) (FRL–7709–1), EPA issued a proposed rule to revoke five tolerance exemptions for residues of dichlorodifluoromethane, dichlorotetrafluoroethane, and trichlorofluoromethane because those substances are either no longer contained in pesticide products and/or because their use in pesticide products sold in the U.S. has been prohibited for over a decade due to EPA's ban on the sale or distribution, or offer for sale or distribution in interstate commerce of certain nonessential products that contain or are manufactured with ozone depleting compounds. EPA believes this rationale also extends to ingredients whose use in pesticide products is prohibited as a result of EPA's 1994 ban, under the CAA, on certain non-essential aerosol and pressurized products containing ozone depleting compounds (see 40 CFR part 82, subpart C). Also the proposal of April 27, 2005 (70 FR 21713) provided a 60–day comment period that invited public comment for consideration and for support of tolerance exemption retention under the FFDCA standards.

In this final rule, EPA is revoking five tolerance exemptions for residues of dichlorodifluoromethane, dichlorotetrafluoroethane, and trichlorofluoromethane because these specific tolerance exemptions correspond to uses no longer current or registered under FIFRA in the United States. The tolerance exemptions revoked by this final rule are no longer necessary to cover residues of the relevant pesticide chemicals in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to revoke those tolerances and tolerance exemptions for residues of pesticide chemicals on crop uses for which there are no active registrations under FIFRA, unless any person commenting on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or domestic commodities legally treated.

EPA has historically been concerned that retention of tolerances and tolerance exemptions that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances and tolerance exemptions for residues of pesticide chemicals for which there are no active registrations or uses under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Generally, EPA will proceed with the revocation of these tolerances and tolerance exemptions on the grounds discussed in Unit II.A. if one of the following conditions applies:

1. Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances or tolerance exemptions on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance or tolerance exemption is no longer needed.

3. The tolerance or tolerance exemption is not supported by data that demonstrate that the tolerance or tolerance exemption meets the requirements under FQPA.

EPA received one comment on the proposal to revoke these tolerance exemptions, and the commenter supported this revocation action.

Therefore, for the reasons stated herein and in the proposed rule, EPA is revoking the exemptions from the requirement of a tolerance in 40 CFR 180.910 for residues of dichlorodifluoromethane, dichlorotetrafluoroethane, and trichlorofluoromethane, and in 40 CFR 180.930 for residues of dichlorodifluoromethane and trichlorofluoromethane.

B. What is the Agency's Authority for Taking this Action?

This final rule is issued pursuant to section 408(d) of FFDCA (21 U.S.C. 346a(d)). Section 408 of FFDCA authorizes the establishment of tolerances, exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or tolerance exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA. If food containing pesticide residues is found to be adulterated, the food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342 (a)).

EPA's general practice is to revoke tolerances and tolerance exemptions for residues of pesticide chemicals on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances and tolerance exemptions that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States, Nonetheless, EPA will establish and maintain tolerances and tolerance exemptions even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances and tolerance exemptions for unregistered pesticide chemicals in order to prevent potential misuse.

C. When Do These Actions Become Effective?

These actions become effective on the date of publication of this final rule in the **Federal Register**. Any commodities listed in the regulatory text of this document that are treated with the pesticide chemicals subject to this final rule, and that are in the channels of trade following the tolerance exemption revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residues of these pesticide chemicals in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that: (1) The residue is present as the result of an application or use of the pesticide chemical at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under an exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide chemical was applied to such food.

III. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision Documents (REDs). The EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select "Laws and Regulations," then select "Regulations and Proposed Rules" and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

IV. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0068 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 3, 2005.

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

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

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A.1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your

copies, identified by docket ID number OPP–2005–0068, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

V. Statutory and Executive Order Reviews

In this final rule, EPA revokes specific tolerance exemptions established under FFDCA section 408. EPA establishes tolerances under FFDCA section 408(e), and also modifies and revokes specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks*(62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–13, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of exemptions from tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticide chemicals listed in this rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticide chemicals named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final

rule is not a "major rule "as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: July 27, 2005.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.910 [Amended]

■ 2. Section 180.910 is amended by removing the following exemptions and any associated Limits and Uses from the table: Dichlorodifluoromethane, Dichlorotetrafluoroethane, and Trichlorofluoromethane.

§ 180.930 [Amended]

■ 3. Section 180.930 is amended by removing the following exemptions and any associated Limits and Uses from the table: Dichlorodifluoromethane and Trichlorofluoromethane.

[FR Doc. 05–15334 Filed 8–2–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7946–8]

Hazardous Waste Management System; Final Exclusion for Identification and Listing Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is finalizing its proposed action to grant a petition submitted by the United States Department of Energy, Richland Operations Office (Energy) to exclude (or 'delist') from regulation as listed hazardous waste certain mixed waste ('petitioned waste') following treatment at the 200 Area Effluent Treatment Site (200 Area ETF) on the Hanford Facility, Richland, Washington. This action conditionally grants the exclusion based on an evaluation of waste stream-specific and treatment process information provided by Energy. Wastes meeting the conditions of this exclusion are exempt from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) of 1976 as amended. In finalizing this action, EPA has concluded that Energy's petitioned waste does not meet any of the criteria under which the wastes were originally listed, and that there is no reasonable basis to believe other factors exist which could cause the waste to be hazardous.

DATES: This final rule is effective on September 2, 2005.

ADDRESSES: The RCRA regulatory docket for this final rule is maintained by EPA, Region 10. You may examine docket materials at the EPA Region 10 library, 1200 6th Avenue, Seattle, WA 98101, (206) 553–1289, during the hours from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Copies of key docket documents are available for review at the following Hanford Site Public Information Repository locations:

University of Washington, Suzzallo Library, Government Publications Division, Box 352900, Seattle, WA 98195–2900. (206) 543–4664. Contact: Eleanor Chase, *echase@u.washington.edu*, (206) 543–4664.

Gonzaga University, Foley Center, East 502 Boone, Spokane, WA 99258–0001. (509) 323–5806. Contact: Connie Scarppelli, *carter@its.gonzaga.edu*.

Portland State University, Branford Price Millar Library, 934 SW Harrison, Portland, OR 97207–1151. (503) 725–3690. Contact: Michael Bowman, *bowman@lib.pdx.edu*.

U.S. DOE Public Reading Room, Washington State University-TC, CIC Room 101L, 2770 University Drive, Richland, WA 99352. (509) 372–7443. Contact: Janice Parthree, *reading_room@pnl.gov*.

Copies of material in the regulatory docket can be obtained by contacting the Hanford Site Administrative Record via mail, phone, fax, or e-mail:

Address: Hanford Site Administrative Record, PO Box 1000, MSIN H6–08, 2440 Stevens Center Place, Richland, WA 99352. (509) 376–2530. E-mail: *Debra_A_Debbie_Isom@rl.gov*.

The docket contains the petition, and all information used by EPA to evaluate the petition including public comments received by EPA and comment responses.

FOR FURTHER INFORMATION CONTACT: For information concerning this document, contact Dave Bartus, Office of Air, Waste and Toxics (OAWT), EPA, Region 10, 1200 6th Avenue, MS AWT–127, Seattle, WA 98101, telephone (206) 553–2804, or via e-mail at *bartus.dave@epa.gov*.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

A. What Rule Is EPA Finalizing?

After evaluating Energy's petition and supplemental information provided by Energy, EPA proposed on July 15, 2004 (69 FR 42395), to exclude the petitioned mixed [1] wastes managed or generated by the 200 Area ETF on the Hanford Facility in Richland, Washington. The action relates to treated liquid effluents

[1] Mixed waste is defined as waste that contains both hazardous waste subject to the requirements of Resource Conservation and Recovery Act (RCRA) of 1976 as amended, and source, special nuclear, or by-product material subject to the requirements of the Atomic Energy Act (AEA) (*see* 42 United States Code (U.S.C.) 6903 (41), added by the Federal Facility Compliance Act (FFCA) of 1992).

produced by the 200 Area ETF, which were first delisted in June 1995. *See* 60 FR 6054, February 1, 1995. EPA's final exclusion modifies this existing delisting by increasing the annual quantity of waste delisted to conform to the expected full treatment capacity of the 200 Area ETF and by expanding the list of hazardous waste numbers and F039 constituents for which 200 Area ETF treated effluent is delisted. Changes relating to waste numbers for which 200 Area ETF treated effluent is excluded include expanding the list of constituents associated with hazardous waste number F039 (multisource leachate), from the current F001 to F005 constituents to all constituents for which F039 waste is listed,[2] adding certain wastewater forms of U- and P-listed wastes, and certain additional F-listed waste numbers. These additional U-, P- and F-listed waste numbers are those whose chemical constituents are included in the list of hazardous constituents for which F039 was listed (see 40 CFR part 261, appendix VII). This latter addition is intended to accommodate possible management of U-, P- and F-listed wastewaters from spill cleanup or decontamination associated with management of these wastes at the Central Waste Complex (CWC) or other storage facilities. These spill cleanup wastes include exactly the same constituents that will eventually contribute to F039 when the source wastes are land disposed, so today's analysis of expanding the 200 Area ETF treated effluent to include F039 applies equally to the wastewater forms of the same chemical constituents in their U-, P- and F-listed waste forms.

The effect of these changes is to allow the 200 Area ETF to fulfill an expanded role in supporting Hanford Facility cleanup actions beyond those activities considered in the 1995 delisting rulemaking. In particular, these changes will allow the 200 Area ETF to treat mixed wastewaters from a number of additional sources beyond 242–A Evaporator process condensate (PC) upon which the original delisting was based.

B. Why Is EPA Finalizing the Proposed Exclusion?

We believe that the petitioned waste should be conditionally delisted because the waste, when managed in accordance with today's final conditions, do not meet the criteria for which the wastes originally were listed and the waste do not contain other constituents or factors that could cause the waste stream to be a hazardous waste or warrant retaining the waste as a hazardous waste. Our final decision to delist the petitioned waste is based on information submitted by Energy, including the description of the wastewaters managed by the ETF and their original generating sources, the ETF treatment processes, and the analytical data characterizing performance of the 200 Area ETF.

In reviewing this petition, we considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See 42 U.S.C. 6921(f), and 40 CFR 260.22. These factors include: (1) Whether the waste are considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the hazardous constituents to migrate and to bio-accumulate; (5) persistence of the constituents in the environment once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) variability of the waste. We also evaluated the petitioned waste against the listing criteria at 40 CFR 261.11(a)(1), (2) and (3) and factors required by 40 CFR 260.22(a)(2). EPA finds the petitioned wastes do not meet the listing criteria and determined that none of the factors listed above warrant retaining the petitioned wastes as hazardous.

C. What Are the Limits of This Exclusion?

This exclusion applies to certain 200 Area ETF treated effluents identified in today's final rule, provided the conditions contained herein are satisfied.

D. When Is the Final Rule Effective?

The effective date of today's action is September 2, 2005. RCRA Section 3010(b)(1), 42 U.S.C. 6930(b)(1), allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance with the new regulatory requirements. In the proposed rule preamble, EPA noted that the rule, if finalized, would reduce existing regulatory requirements, so that a six-month period was not necessary for Energy to come into compliance. EPA further noted that, if finalized, the proposal would be effective immediately upon final publication, and that a later date would impose unnecessary hardship and expense on the petitioner.

After further reflection and consideration of Energy's comments, EPA continues to believe that a full six month period is not necessary to achieve full compliance with this rule. EPA recognizes, however, that the revised exclusion will contain somewhat different conditions than the original exclusion rule. Even though today's final rule provides relief from RCRA regulatory requirements for significantly more wastes than was previously the case, Energy must still demonstrate compliance with the new conditions of the new exclusion, even for wastes currently being processed in compliance with the existing exclusion. One example of such a condition is preparation of a waste processing strategy. To ensure Energy has adequate opportunity to update its internal procedures and produce documentation required by the new exclusion conditions, EPA is delaying the effective date of the final rule to 30 days after publication.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to EPA or another agency with jurisdiction to exclude, or delist, from the RCRA list of hazardous waste, waste the generator believes should not be considered hazardous under RCRA.

B. What Regulations Allow Wastes To Be Delisted?

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations. 40 CFR 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

C. What Information Must the Generator Supply for a Delisting Petition?

Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe

[2] As noted in the proposed rule, this final rule is not modifying the list of constituents for which F039 multiscource leachate is listed. At the time of the original delisting, DOE–RLS did not expect to manage F039 wastes at the 200 Area ETF from sources other than F001–F005 wastes. Therefore, the original 200 Area ETF delisting excluded only F039 wastes from F001–F005 sources.

that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

D. How Will This Action Affect States?

This final rule is issued under the federal (RCRA) delisting authority found at 40 CFR 260.22. Some states are authorized to administer a delisting program in lieu of the federal program, *i.e.*, to make their own delisting decision. Therefore, this rule does not apply under RCRA in those authorized states. For states not authorized to administer a delisting program in lieu of the federal program (as is the case with the State of Washington as of the date of today's final rule), today's rule will become effective with respect to the federal (RCRA) program. Energy will, however, have to comply with any additional applicable state requirements.

States are allowed to impose regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally-issued exclusion from taking effect in a state. Because a petitioner's waste may be regulated under a dual system, (*i.e.*, both federal and state programs), petitioners are urged to contact state regulatory authorities to determine the current status of their wastes under the state laws.

III. EPA's Evaluation of the Waste Information for 200 Area ETF Treated Effluent

What Waste Did Energy Petition EPA To Delist?

The original delisting action considered treatment of only one waste stream, process condensate from the 242–A Evaporator (242–A Evaporator PC). Since promulgation of the original delisting, the operating mission of the 200 Area ETF has expanded considerably. Currently, the operating capacity of the 200 Area ETF provides treatment of 242–A Evaporator PC, treatment of Hanford Site contaminated groundwater from various pump-and-treat systems, and a variety of other wastewaters generated from waste management and cleanup activities at Hanford.

As discussed in section 3.0 of Energy's November 2001 petition, the mission of the 200 Area ETF is to treat wastewater generated on the Hanford Facility from cleanup activities including multisource leachate from operation of hazardous/mixed waste landfills, and other hazardous wastewaters from a variety of sources including analytical laboratory operations, research and development studies, waste treatment processes, environmental restoration and deactivation projects, and other waste management activities. Based on this change in the 200 Area ETF mission, Energy petitioned EPA to modify the existing delisting applicable to treated liquid effluent from the 200 Area ETF by increasing the effluent volume limit to 210 million liters per year, and to conditionally exclude treated effluents from treatment by the 200 Area ETF of certain liquid Hanford wastes with hazardous waste numbers identified at 40 CFR 261.31 and 261.33 as F001–F005, F039, and all U- and P-listed substances and selected additional F-listed waste numbers whose associated compounds appear in the listing definition of F039. Under the current delisting, the liquid effluent volume is limited to approximately 86 million liters per year, and delisted only for F001–F005 waste numbers and F039 waste constituents from F001 through F005 waste numbers.

The November 2001 delisting petition explains that wastes bearing numbers P029, P030, P098, P106, P120, and U123, as well as other U- and P-listed numbers corresponding to F039 constituents, are currently managed, or may be managed in the future, as part of Hanford cleanup operations. Wastes bearing these waste numbers are intended for future disposal in the mixed waste landfill (Low-Level Burial Grounds (LLBG)). These wastes, therefore, eventually will contribute to generation of F039 multisource leachate from this unit, and are specifically considered in the analysis of F039 constituents in Energy's delisting petition (refer to Appendix B of the November 2001 delisting petition). Energy believes that wastewaters bearing these waste numbers could be generated from activities such as spill cleanup or equipment decontamination, and such wastewaters could be managed best at the 200 Area ETF. Energy's petition did not propose to manage the discarded commercial chemical products in the 200 Area ETF, but only wastewaters from spill cleanup or equipment decontamination.

To ensure that the commercial chemical compounds themselves are not inappropriately managed at the 200 Area ETF, EPA's proposal limited the wastes that could be managed by the 200 Area ETF to only those influent wastewaters bearing less than 1.0 weight percent of any hazardous constituent. These wastewaters would also bear the same U- and P-listed numbers by virtue of the 'derived from' rule discussed in Section I.A of the proposed rule. Because the hazardous constituents from these U- and P-listed wastes are already included in the analysis of 200 Area ETF performance for treatment of F039, EPA is not proposing any separate analysis specific to U- and P-listed numbers. EPA's proposal to include these U- and P-listed waste numbers is intended to include influent wastewaters that might be generated from management of wastes currently stored in CWC, as well as such wastewaters managed elsewhere at Hanford or which may be generated in the future.

As discussed below in section IV, comments from Energy clarified Energy's intent in the November 29, 2001 petition to include a number of other F-listed waste numbers among those considered in the requested exclusion.

IV. Public Comments Received on the Proposed Rule

EPA received comments on the proposed rule from the applicant and from an individual commenter. Individual comments and EPA's response may be found in the response to comments document, which has been included in the docket for this final rulemaking. A summary of key comments and changes, if any, to the proposed rule, appear below.

In addition to changes made in response to public comments, EPA is also making changes to the proposed rule necessary to conform to the Methods Innovation Rule, 70 FR 34538, June 14, 2005. Details of these changes and EPA's rationale for them can also be found in the response to comments document.

A. Department of Energy Comments

Comments from the Department of Energy focused on the proposed regulatory language and explanatory preamble text. One of Energy's comments questioned the addition of a number of conditions in the proposed exclusion which do not appear in the current exclusion, stating that EPA had not provided an explanation for the additional conditions. Energy presented as a basis for its comment statements in the proposed rule generally noting EPA's perspective that the 200 Area ETF is a robust, well-designed and well-operated wastewater treatment unit. While EPA affirms its statements regarding the robust nature of the facility, EPA fundamentally disagrees with Energy's comment. As noted in the

proposal preamble and in EPA's response to comments, a key objective of the revised 200 Area ETF "upfront" delisting is to accommodate treatment of a wide range of waste streams not considered in the original exclusion, many of which have not yet been generated or characterized. Since Energy could not reasonably provide detailed characterization of wastes streams that have yet to be generated, EPA proposed a waste acceptance framework based on an engineering evaluation of waste streams. This model provides a degree of confidence that treatment in the 200 Area ETF will meet delisting exclusion limits to the same degree of confidence as if detailed waste stream characterization were available, while avoiding the need to frequently revise the delisting rule itself. As a result, EPA finds that the additional conditions noted in Energy's comments are not only fully justified, but absolutely essential to achieving the degree of flexibility requested by Energy in their delisting petition, given the lack of complete waste characterization information.

Another of Energy's comments provided clarification of Energy's intent to expand the suite of waste numbers covered by the proposed exclusion. Essentially, Energy provided a defensible argument that a number of additional F-listed waste numbers should be addressed by the exclusion. EPA agrees with this comment in part, but is limiting the additional F-listed waste numbers to those with a reasonable nexus to wastes expected to be managed by the 200 Area ETF. See the first paragraph of the regulatory exclusion language finalized today, appearing below in Table 2 in Appendix IX of 40 CFR part 261.

Energy requested relief from the proposed exclusion condition relating to recording of treated effluent conductivity, contending that doing so would be without basis and a burden. EPA disagrees, since both measuring and recording of treated effluent provides important documentation confirming performance of the 200 Area ETF. This measurement also provides a basis, in part, for EPA's decision to relax the verification sampling frequency for treated effluent from every 10th verification tank, as in the original exclusion, to every 15th verification tank. Given the extended interval between full verification sampling, measuring and recording of treated effluent conductivity provide a simple but effective indicator or 200 Area ETF performance with regard to inorganic treatment efficiency. Therefore, EPA is retaining the recording condition as proposed.

Energy requested relief from the condition generally limiting disposal of treated effluent at the State Authorized Land Disposal Site, or SALDS. Energy's comment is based on jurisdictional grounds, and Energy's belief that treated effluent "is essentially demineralized water." As described in Section III.C of the proposed rule preamble, the condition in question is established on the grounds that EPA evaluated the risk of treated effluent only with respect to a groundwater ingestion pathway, consistent with the approach taken by EPA in the original exclusion. The requirement to generally dispose of treated effluent at SALDS is intended to ensure exposure pathways other than groundwater do not occur without EPA analysis of potential risks from such pathways. EPA is retaining this condition as proposed, noting that the proposed and final rules do provide flexibility with respect to disposal practices through Condition 7 of the exclusion rule. Energy also requested deletion of Condition 7, on the basis that no non-radiological considerations warrant the condition, and that Energy is already engaged in various reuse activities using treated effluent. EPA is retaining Condition 7, since it relates directly to the scope of EPA's analysis of treated effluent risks, and since it provides flexibility for exactly the reuse practices noted in the comment.

Energy raised issues concerning reporting of environmental data, including groundwater data, to EPA in Condition (4)(a) of the proposed rule. Energy requested deletion of this condition on the grounds of being vague, and if retained, reconsideration of the requirement to report certain data within a ten-day period. EPA does not agree that the proposed condition is vague—in fact, EPA specifically crafted the condition to be specific in its scope. Although EPA did not propose explicit environmental or groundwater monitoring requirements as a condition of the proposed exclusion, EPA continues to believe that information that may otherwise become available to Energy relating to performance deficiencies of the 200 Area ETF (or any treatment facility subject to a delisting exclusion, for that matter) should be timely made available to EPA for consideration. EPA needs to ensure its ability to timely obtain and consider data that may indicate adverse environmental impacts of activities subject to the exclusion. Therefore, EPA is retaining the environmental data submission condition as defensible and implementable.

Finally, Energy requested modification to condition 4(b) relating to notification to EPA of changes to the 200 Area ETF. EPA accepted this comment in part, and has added clarifying language to more clearly define facility changes subject to this reporting requirement. See condition (4)(b).

Energy also provided a number of comments on preamble language in the proposed rule. In general, EPA notes these comments, and where appropriate, provides a clarifying analysis in the response to comments document to assist in implementing the regulatory exclusion conditions themselves. EPA has also provided an expanded discussion in the response to comments document of the relationship between exclusion conditions and Land Disposal Restriction treatment standards to assist Energy and the public in understanding this nexus, noting that the delisting exclusion rule does not impose nor demonstrate compliance with LDR treatment standards.

B. Individual Commenter

One individual provided a number of detailed comments. A number of these comments applied to Energy's November 29, 2001 petition document, rather than EPA's proposed rule. EPA has noted these comments, but finds that they were appropriately addressed in the proposal itself. One comment, however raised a valid point about a technical issue relating to how inorganic treatment/removal efficiencies were presented in Energy's petition. Energy's petition presented historical data in terms of maximum removal efficiencies. In some cases, data exists for some waste streams indicating removal efficiencies less than the maximum. While EPA does not believe that these differences would require significant change in the exclusion from what EPA proposed, EPA is never the less updating exclusion conditions to better relate removal efficiencies referenced by Condition (1)(a)(i) for purposes of establishing waste treatment strategies to actual or measured performance of the 200 Area ETF. More specifically, EPA is requiring Energy to adopt a more conservative approach to use of existing removal efficiency data that are applied to influent waste streams other than from which they were generated. In addition, EPA is defining more explicit methodology for Energy to update these removal efficiency data as it gains additional processing experience with new influent waste streams. See exclusion conditions 1(a)(ii) and 1(b). EPA expects that this change will not alter actual operations of the 200 Area

ETF, but it will provide a more defensible basis for the engineering demonstrations that Energy must make under terms of the final exclusion.

V. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant", and therefore subject to 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. It has been determined that today's final rule is not a "significant regulatory action" under the terms of Executive Order 12866, since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as non-hazardous. Therefore, EPA has determined that this final rule is not subject to OMB review.

B. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OMB. Although this final rule establishes information and record-keeping requirements for Energy, it does not impose those requirements on any other facility or respondents, and therefore is not subject to the provisions of the Paperwork Reduction Act.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business, as codified in the Small Business Administration Regulations at 13 CFR part 121; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The final exclusion will only have the effect of impacting the waste management of waste proposed for conditional delisting at the Hanford facility in the State of Washington. After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Public Law 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this 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 various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. This final rule addresses the conditional delisting of waste at the federal Hanford Facility. Thus, Executive Order 13132 does not apply to this rule. Although Section 6 of the Executive Order 13132 does not apply

to this proposed rule, EPA did consult with representatives of State and local governments in developing this rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. The final rule conditionally delists certain wastes at the federal Hanford Facility and does not establish any regulatory policy with tribal implications. Thus, Executive Order 13175 does not apply to this final rule.

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

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

This final 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 proposed action present a disproportionate risk to children. The final rule concerns the proposed conditional delisting of certain wastes at the Hanford facility.

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

This final rule is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a "significant regulatory action" as defined under Executive Order 12866.

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) 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 (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides to use "government-unique" standards in lieu of available and applicable voluntary consensus standards.

This final rule involves environmental monitoring and measurement, but is not establishing new technical standards for verifying compliance with concentration limits, data quality or test methodology. EPA is not requiring the use of specific, prescribed analytic methods. Therefore, EPA did not explicitly consider the use of any voluntary consensus standards. Rather, the Agency has specifically accommodated use of an alternative method that meets the prescribed performance criteria. Examples of performance criteria are discussed in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication-846, Third Edition, as amended by updates I, II, IIA, IIB and III.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands. Because this final rule addresses the conditional delisting of certain waste streams at the Hanford Facility, with no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: July 25, 2005.

Julie M. Hagensen,

Acting Regional Administrator, Region 10.

■ For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(4), and 6938.

■ 2. In Table 2, of Appendix IX of Part 261, the existing entry for "DOE RL, Richland, WA" is removed and a new entry for "Department of Energy (Energy)" is added in alphabetical order to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
United States Department of Energy (Energy).	Richland, Washington	Treated effluents bearing the waste numbers identified below, from the 200 Area Effluent Treatment Facility (ETF) located at the Hanford Facility, at a maximum generation rate of 210 million liters per year, subject to Conditions 1–7: This conditional exclusion applies to Environmental Protection Agency (EPA) Hazardous Waste Nos. F001, F002, F003, F004, F005, and F039. This exclusion also applies to EPA Hazardous Waste Nos. F006–F012, F019 and F027 provided that the as-generated waste streams bearing these waste numbers prior to treatment in the 200 Area ETF is in the form of dilute wastewater containing a maximum of 1.0 weight percent of any hazardous constituent. In addition, this conditional exclusion applies to all other U- and P-listed waste numbers that meet the following criteria: The U/P listed substance has a treatment standard established for wastewater forms of F039 multi-source leachate under 40 CFR 268.40,"Treatment Standards for Hazardous Wastes"; and the as-generated waste stream prior to treatment in the 200 Area ETF is in the form of dilute wastewater containing a maximum of 1.0 weight percent of any hazardous constituent. This exclusion shall apply at the point of discharge from the 200 Area ETF verification tanks after satisfaction of Conditions 1–7. Conditions: (1) Waste Influent Characterization and Processing Strategy Preparation (a) Prior to treatment of any waste stream in the 200 Area ETF, Energy must: (i) Complete sufficient characterization of the waste stream to demonstrate that the waste stream is within the treatability envelope of 200 Area ETF as specified in Tables C–1 and C–2 of the delisting petition dated November 29, 2001. Results of the waste stream characterization and the treatability evaluation must be in writing and placed in the facility operating record, along with a copy of the November 29, 2001 petition. Waste stream characterization may be carried out in whole or in part using the waste analysis procedures in the Hanford Facility RCRA Permit, WA7 89000 8967; (ii) Prepare a written waste processing strategy specific to the waste stream, based on the ETF process model documented in the November 29, 2001 petition. For waste processing strategies applicable to waste streams for which inorganic envelope data is provided in Table C–2 of the November 29, 2001 petition, Energy shall use envelope data specific to that waste stream, if available. Otherwise, Energy shall use the minimum envelope in Table C–2. (b) Energy may modify the 200 Area ETF treatability envelope specified in Tables C–1 and C–2 of the November 29, 2001 delisting petition to reflect changes in treatment technology or operating practices upon written approval of the Regional Administrator. Requests for modification shall be accompanied by an engineering report detailing the basis for a modified treatment envelope. Data supporting modified envelopes must be based on at least four influent waste stream characterization data points and corresponding treated effluent verification sample data points for wastes managed under a particular waste processing strategy. Treatment efficiencies must be calculated based on a comparison of upper 95 percent confidence level constituent concentrations. Upon written EPA approval of the engineering report, the associated inorganic treatment efficiency data may be used in lieu of those in Tables C–1 and C–2 for purposes of condition (1)(a)(i). (c) Energy shall conduct all 200 Area ETF treatment operations for a particular waste stream according to the written waste processing strategy, as may be modified by Condition 3(b)(i). (d) The following definitions apply: (i) A waste stream is defined as all wastewater received by the 200 Area ETF that meet the 200 Area ETF waste acceptance criteria as defined by the Hanford Facility RCRA Permit, WA7 89000 8967 and are managed under the same 200 Area ETF waste processing strategy. (ii) A waste processing strategy is defined as a specific 200 Area ETF unit operation configuration, primary operating parameters and expected maximum influent total dissolved solids (TDS) and total organic carbon (TOC). Each waste processing strategy shall require monitoring and recording of treated effluent conductivity for purposes of Condition (2)(b)(i)(E), and for monitoring and recording of primary operating parameters as necessary to demonstrate that 200 Area ETF operations are in accordance with the associated waste processing strategy. (iii) Primary operating parameters are defined as ultraviolet oxidation (UV/OX) peroxide addition rate, reverse osmosis reject ratio, and processing flow rate as measured at the 200 Area ETF surge tank outlet. (iv) Key unit operations are defined as filtration, UV/OX, reverse osmosis, ion exchange, and secondary waste treatment. (2) Testing. Energy shall perform verification testing of treated effluents according to Conditions (a), (b), and (c) below.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(a) No later than 45 days after the effective date of this rule, or such other time as may be approved of in advance and in writing by EPA, Energy shall submit to EPA a report proposing required data quality parameters and data acceptance criteria (parameter values) for sampling and analysis which may be conducted pursuant to the requirements of this rule. This report shall explicitly consider verification sampling and analysis for purposes of demonstrating compliance with exclusion limits in Condition 5, as well as any sampling and analysis which may be required pursuant to Conditions (1)(a)(i) and (1)(d)(ii). This report shall contain a detailed justification for the proposed data quality parameters and data acceptance criteria. Following review and approval of this report, the proposed data quality parameters and data acceptance criteria shall become enforceable conditions of this exclusion. Pending EPA approval of this report, Energy may demonstrate compliance with sampling and analysis requirements of this rule through application of methods appearing in EPA Publication SW–846 or equivalent methods. Energy shall maintain a written sampling and analysis plan, including QA/QC requirements and procedures, based upon these enforceable data quality parameters and data acceptance criteria in the facility operating record, and shall conduct all sampling and analysis conducted pursuant to this rule according to this written plan. Records of all sampling and analysis, including quality assurance QA/QC information, shall be placed in the facility operating record. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. (b) Initial verification testing. (i) Verification sampling shall consist of a representative sample of one filled effluent discharge tank, analyzed for all constituents in Condition (5), and for conductivity for purposes of establishing a conductivity baseline with respect to Condition (2)(b)(i)(E). Verification sampling shall be required under each of the following conditions: (A) Any new or modified waste strategy; (B) Influent wastewater total dissolved solids or total organic carbon concentration increases by an order of magnitude or more above values established in the waste processing strategy; (C) Changes in primary operating parameters; (D) Changes in influent flow rate outside a range of 150 to 570 liters per minute; (E) Increase greater than a factor of ten (10) in treated effluent conductivity (conductivity changes indicate changes in dissolved ionic constituents, which in turn are a good indicator of 200 Area ETF treatment efficiency). (F) Any failure of initial verification required by this condition, or subsequent verification required by Condition (2)(c). (ii) Treated effluents shall be managed according to Condition 3. Once Condition (3)(a) is satisfied, subsequent verification testing shall be performed according to Condition (2)(c). (c) Subsequent Verification: Following successful initial verification associated with a specific waste processing strategy, Energy must continue to monitor primary operating parameters, and collect and analyze representative samples from every fifteenth (15th) verification tank filled with 200 Area ETF effluents processed according to the associated waste processing strategy. These representative samples must be analyzed prior to disposal of 200 Area ETF effluents for all constituents in Condition (5). Treated effluent from tanks sampled according to this condition must be managed according to Condition (3). (3) Waste Holding and Handling: Energy must store as hazardous waste all 200 Area ETF effluents subject to verification testing in Condition (2)(b) and (2)(c), that is, until valid analyses demonstrate Condition (5) is satisfied. (a) If the levels of hazardous constituents in the samples of 200 Area ETF effluent are equal to or below the levels set forth in Condition (5), the 200 Area ETF effluents are not listed as hazardous wastes provided they are disposed of in the State Authorized Land Disposal Site (SALDS) (except as provided pursuant to Condition (7)) according to applicable requirements and permits. Subsequent treated effluent batches shall be subject to verification requirements of Condition (2)(c). (b) If hazardous constituent levels in any representative sample collected from a verification tank exceed any of the delisting levels set in Condition (5), Energy must: (i) Review waste characterization data, and review and change accordingly the waste processing strategy as necessary to ensure subsequent batches of treated effluent do not exceed delisting criteria; (ii) Retreat the contents of the failing verification tank; (iii) Perform verification testing on the retreated effluent. If constituent concentrations are at or below delisting levels in Condition (5), the treated effluent are not listed hazardous waste provided they are disposed at SALDS according to applicable requirements and permits (except as provided pursuant to Condition (7)), otherwise repeat the requirements of Condition (3)(b).

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(iv) Perform initial verification sampling according to Condition (2)(b) on the next treated effluent tank once testing required by Condition (3)(b)(iii) demonstrates compliance with delisting requirements. (4) Re-opener Language (a) If, anytime before, during, or after treatment of waste in the 200 Area ETF, Energy possesses or is otherwise made aware of any data (including but not limited to groundwater monitoring data, as well as data concerning the accuracy of site conditions or the validity of assumptions upon which the November 29, 2001 petition was based) relevant to the delisted waste indicating that the treated effluent no longer meets delisting criteria (excluding record keeping and data submissions required by Condition (6)), or that groundwater affected by discharge of the treated effluent exhibits hazardous constituent concentrations above health-based limits, Energy must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Energy shall provide written notification to the Regional Administrator no less than 180 days prior to any planned or proposed substantial modifications to the 200 Area ETF, exclusive of routine maintenance activities, that could affect waste processing strategies or primary operating parameters. This condition shall specifically include, but not be limited to, changes that do or would require Class II or III modification to the Hanford Facility RCRA Permit WA7 89000 8967 (in the case of permittee-initiated modifications) or equivalent modifications in the case of agency-initiated permit modifications operations. Energy may request a modification to the 180-day notification requirement of this condition in the instance of agency-initiated permit modifications for purposes of ensuring coordination with permitting activities. (c) Based on the information described in paragraph (4)(a) or (4)(b) or any other relevant information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action could include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (5) Delisting Levels: All total constituent concentrations in treated effluents managed under this exclusion must be equal to or less than the following levels, expressed as mg/L: Inorganic Constituents Ammonia—6.0 Barium—1.6 Beryllium—4.5×10^{-2} Nickel—4.5×10^{-1} Silver—1.1×10^{-1} Vanadium—1.6×10^{-1} Zinc—6.8 Arsenic—1.5×10^{-2} Cadmium—1.1×10^{-2} Chromium—6.8×10^{-2} Lead—9.0×10^{-2} Mercury—6.8×10^{-3} Selenium—1.1×10^{-1} Fluoride—1.2 Cyanides—4.8×10^{-1} Organic Constituents: Cresol—1.2 2,4,6 Trichlorophenol—3.6×10^{-1} Benzene—6.0×10^{-2} Chrysene—5.6×10^{-1} Hexachlorobenzne—2.0×10^{-3} Hexachlorocyclopentadiene—1.8×10^{-1} Dichloroisopropyl ether [Bis(2-Chloroisopropyl) either]—6.0×10^{-2} Di-n-octylphthalate—4.8×10^{-1} 1-Butanol—2.4 Isophorone—4.2 Diphenylamine—5.6×10^{-1} p-Chloroaniline—1.2×10^{-1} Acetonitrile—1.2 Carbazole—1.8×10^{-1} N-Nitrosodimethylamine—2.0×10^{-2} Pyridine—2.4×10^{-2} Lindane [gamma-BHC]—3.0×10^{-3} Arochlor [total of Arochlors 1016, 1221, 1232, 1242, 1248, 1254, 1260]—5.0×10^{-4} Carbon tetrachloride—1.8×10^{-2} Tetrahydrofuran—5.6×10^{-1} Acetone—2.4

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		Carbon disulfide—2.3 Tributyl phosphate—1.2 × 10 ⁻¹ (6) Recordkeeping and Data Submittals. (a) Energy shall maintain records of all waste characterization, and waste processing strategies required by Condition (1), and verification sampling data, including QA/QC results, in the facility operating record for a period of no less than three (3) years. However, this period is automatically extended during the course of any unresolved enforcement action regarding the 200 Area ETF or as requested by EPA. (b) No less than thirty (30) days after receipt of verification data indicating a failure to meet delisting criteria of Condition (5), Energy shall notify the Regional Administrator. This notification shall include a summary of waste characterization data for the associated influent, verification data, and any corrective actions taken according to Condition (3)(b)(i). (c) Records required by Condition (6)(a) must be furnished on request by EPA or the State of Washington and made available for inspection. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928). I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the (those) identified section(s) of the document for which I cannot personally verify its (their) truth and accuracy, I certify as the official having supervisory responsibility of the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to Energy, I recognize and agree that this exclusion of waste will be void as if it never had effect to the extent directed by EPA and that the Energy will be liable for Energy's reliance on the void exclusion." (7) Treated Effluent Disposal Requirements. Energy may at any time propose alternate reuse practices for treated effluent managed under terms of this exclusion in lieu of disposal at the SALDS. Such proposals must be in writing to the Regional Administrator, and demonstrate that the risks and potential human health or environmental exposures from alternate treated effluent disposal or reuse practices do not warrant retaining the waste as a hazardous waste. Upon written approval by EPA of such a proposal, nonhazardous treated effluents may be managed according to the proposed alternate practices in lieu of the SALDS disposal requirement in paragraph (3)(a). The effect of such approved proposals shall be explicitly limited to approving alternate disposal practices in lieu of the requirements in paragraph (3)(a) to dispose of treated effluent in SALDS.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[RCRA–2004–0009; FRL–7947–8]

Land Disposal Restrictions: Site-Specific Treatment Variances for Heritage Environmental Services LLC and Chemical Waste Management, Chemical Services, Inc

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is today granting two site-specific treatment standard variances from the Land Disposal Restrictions (LDR) treatment standards to Chemical Waste Management, Chemical Services LLC (CWM), and to Heritage Environmental Services LLC (Heritage), to treat a selenium-bearing hazardous waste from the glass manufacturing industry. This final rule follows a proposed rule and a subsequent request for comment. These facilities intend to treat and dispose of selenium-bearing hazardous waste from Guardian Industries Corp. (Guardian) at their RCRA permitted facilities in Model City, New York and Indianapolis, Indiana, respectively. Based on treatment data on a new proprietary chemical stabilization technology provided by Heritage, EPA is issuing variances so that both facilities may treat the Guardian waste to an alternate treatment standard of 11 mg/L selenium, as measured by the TCLP.

Upon promulgation of this final rule, CWM and Heritage may dispose of the treated waste in permitted RCRA Subtitle C landfills, provided they meet the applicable LDR treatment standards for any other hazardous constituents in the waste. EPA is granting these variances because the chemical properties of the wastes differ significantly from the waste used to establish the current LDR standard for selenium (5.7 mg/L, as measured by the Toxicity Characteristic Leaching Procedure (TCLP)), and the petitions have adequately demonstrated that the waste cannot be treated to meet this treatment standard.

DATES: This final rule is effective August 3, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. RCRA–2004–0009. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available. *i.e.*, CBI or other information whose

disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center (EPA/DC), EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m.–4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0271.

This **Federal Register** notice and related materials on Land Disposal Restrictions may also be viewed on the EPA Web site at *http://www.epa.gov/fedrgstr/EPA–WASTE/*, and at *http://www.epa.gov/epaoswer/hazwaste/ldr.*

FOR FURTHER INFORMATION CONTACT: For more detailed information on specific aspects of this rulemaking, contact Juan Parra at (703) 308–0478 or *parra.juan@epa.gov*, Office of Solid Waste (MC 5302 W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Table of Contents

I. Background

A. What Is the Basis for LDR Treatment Variances?

Under section 3004(m) of the Resource Conservation and Recovery Act (RCRA), EPA is required to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." EPA interprets this language to authorize treatment standards based on the performance of best demonstrated available technology (BDAT). This interpretation was upheld by the D.C. Circuit in *Hazardous Waste Treatment Council* vs. *EPA*, 886 F. 2d 355 (D.C. Cir. 1989).

The Agency recognizes that there may be wastes that cannot be treated to levels specified in the regulations (*see* 40 CFR 268.40) because an individual waste matrix or concentration can be substantially more difficult to treat than those wastes the Agency evaluated in establishing the treatment standard (51 FR 40576, November 7, 1986). For such wastes, EPA has a process by which a generator or treater may seek a treatment variance (*see* 40 CFR 268.44). If granted, the terms of the variance establish an alternative treatment standard for the particular waste at issue.

B. What Is the Basis of the Current Selenium Treatment Standard?

In the Third Third rule (55 FR 22521, June 1, 1990), the Agency developed performance standards for selenium based on stabilization as BDAT. At that time, EPA had information indicating that wastes containing high concentrations of selenium were rarely generated and land disposed. The Agency also stated that it believed that, for most waste containing high concentrations of selenium, recovery of the selenium was feasible using recovery technologies currently employed by copper smelters and copper refining operations. The Agency further stated that it did not have any performance data for selenium recovery, but available information indicated that recovery of elemental selenium from certain types of scrap material and other types of waste was practiced in the United States. No comments or data were received on this issue in the Third Third rulemaking docket.

The Agency set the national treatment standard for selenium nonwastewaters using performance data from the stabilization of a characteristically hazardous mineral processing waste (waste code D010), which we determined at that time to be the most difficult-to-treat selenium waste. This untreated waste contained up to 700 ppm total selenium and 3.74 mg/L selenium in the TCLP leachate. The resulting post-treatment levels of selenium in the TCLP leachate were between 0.154 mg/L and 1.80 mg/L, which led to our establishment of a national treatment standard of 5.7 mg/L for D010 selenium non-wastewaters. This D010 mineral processing waste also contained toxic metals (*i.e.*, arsenic, cadmium, and lead) above characteristic levels. The treatment technology used to establish the selenium levels also resulted in meeting the LDR treatment standards for these non-selenium metals. The reagent to waste ratios varied from 1.3 to 2.7.

In the Phase IV final rule, the Agency determined that a treatment standard of 5.7 mg/L, as measured by the TCLP, continued to be appropriate for D010 non-wastewaters (63 FR 28556, May 26, 1998). The Agency also changed the universal treatment standard (UTS) for selenium nonwastewaters from 0.16 mg/L to 5.7 mg/L.

II. What Is the Basis for Today's Determination?

A. Background for Today's Determination

On April 9, 2004, EPA received a treatment standard variance petition from CWM [1] to stabilize a glass manufacturing waste from Guardian Industries in Jefferson Hills, Pennsylvania (Guardian).[2] On November 19, 2004, EPA promulgated a direct final rule to grant a site-specific treatment standard of 28 mg/L selenium, as measured by the TCLP, to CWM in Model City, New York because we believed this action to be non-controversial. EPA also published a parallel proposed rule seeking comments on this site-specific treatment standard. In the parallel proposed rule, EPA proposed to allow CWM to treat the Guardian waste to an alternative

[1] All information and data in CWM's site-specific treatment standard variance petition can be found in the RCRA docket (RCRA–2004–0009) for this rulemaking.

[2] The Agency previously granted a site-specific treatment standard variance for selenium (39.4 mg/L., as measured by the TCLP) for this same waste to Heritage on February 11, 2004 (see 69 FR 6567).

treatment standard of 28 mg/L selenium, as measured by the TCLP (November 19, 2004, 69 FR 67695). EPA received comments from Heritage and Niagara Health Science Report Inc. (Niagara) that we deemed adverse. Heritage also provided performance data on treatability studies conducted on the Guardian waste in their comments to the CWM rule. As a result, EPA subsequently withdrew the direct final rule to evaluate these comments and to make a decision on a future action (December 23, 2004, FR 76863).

On February 28, 2005, EPA sought additional comments from the stakeholders of this rule on an option to use the new performance data provided by Heritage. Under this approach, Heritage's proprietary stabilization technology would be the basis for an alternative treatment standard for the Guardian waste. EPA received additional comments from Heritage and Niagara on this approach.

B. Waste Characteristics

Guardian Industries Corp. is a specialty glass manufacturing facility. Emissions from its glass furnace are first subject to lime injection, and subsequently captured in an electrostatic precipitator. Lime is added to remove sulphur compounds and selenium from the glass furnace gases.

The Guardian waste is a dry powder with a bulk density of about 0.4 g/cm^3, and contains no free liquids or organic constituents. The calcium content is high, approximately 30%, since the waste contains lime injected to the furnace exhaust. Concentrations of total selenium in the untreated waste vary between 10,000 ppm and 85,000 ppm (1%–8.5%). The dust is a D010 characteristic waste because the selenium concentration exceeds 1.0 mg/L, as measured by the TCLP. The rate of variation in the amount of waste is related to demand, and ranges from 20–50 tons/month.

The land disposal restrictions found in 40 CFR 268.40(e) require characteristic wastes to meet the universal treatment standards (UTS) in 40 CFR 286.48 for all underlying hazardous constituents (UHCs) before the waste is land disposed. Analytical data on the raw Guardian waste indicate that the only underlying hazardous constituent present is chromium. The UTS level for chromium is 0.6 mg/L, as measured by the TCLP. The untreated waste contains, in some samples, chromium at levels sufficient such that the waste exceeds the toxicity characteristic level of 5 mg/L, and is a D007 waste.

C. What Criteria Govern a Treatment Variance?

Under 40 CFR 268.44(h), facilities can apply for a site-specific variance in cases where a waste that is generated under conditions specific to only one site cannot be treated to the specified levels. In such cases, the generator or treatment facility may apply to the Administrator, or EPA's delegated representative, for a site-specific variance from a treatment standard. The applicant for a site-specific variance must demonstrate that, because the physical or chemical properties of the waste differ significantly from the waste analyzed in developing the treatment standard, the waste cannot be treated by the best demonstrated available technology (BDAT) to specified levels or by the specified methods. (Note that there are other grounds for obtaining treatment variances, but this is the only provision relevant to the present petition.)

All information and data used in the development of these proposed treatment standard variances can be found in the OSWER Docket (RCRA–2004–0009) for this rulemaking.

D. New Treatment Technology for Selenium-Bearing Wastes

Heritage states that shortly after receiving the treatability variance for selenium (39.4 mg/L, as measured by the TCLP) on February 11, 2004 (60 FR 6567), they developed a new, proprietary, stabilization technology that they used to treat the Guardian waste. Based on data from the application of this new technology, Heritage submitted comments to EPA in response to the CWM rule suggesting a new TCLP selenium criterion of 10 mg/L, as measured by the TCLP, for the Guardian waste, in contrast to CWM's proposed treatment standard variance of 28 mg/L, as measured by the TCLP.

The performance data were obtained from stabilization optimization testing conducted by Heritage on the waste generated by Guardian. Heritage used two stabilization technologies to verify the performance of treatment recipes against the new stabilization method. The first two treatment recipes tested were Heritage's previously approved treatment recipe (0.35 parts ferrous sulfate, 1 part cement, 1 part cement kiln dust) and CWM's treatment recipe from the proposed variance (0.20 parts ferrous sulfate, 1.0 part cement kiln dust). Five samples were treated using all three stabilization technologies. In addition to lab-scale testing, Heritage verified the effectiveness of the new stabilization recipe on the Guardian waste via several rounds of full-scale demonstrations. All information and data provided by Heritage can be found in the RCRA docket (RCRA–2004–0009). Collectively, the TCLP tests on all treated Guardian waste samples indicate a significant reduction in leachability. The new chemical stabilization treatment recipe obtained results that were one order of magnitude lower than the other two treatment recipes tested. The reduction in all cases, however, was not enough to meet the LDR treatment standard of 5.7 mg/L for selenium, as measured by the TCLP.

EPA believes from its analysis of the data submitted by Heritage that the most effective stabilization recipe for this waste consists of 1 part cement, 0.5 parts lime, 0.28 parts aluminum sulfate, and 0.017 parts calcium polysulfide (CaSx), resulting in a reagent to waste ratio of 1.8. Water is also added to make a thick paste that upon curing solidifies into a hard cemented material.

E. Determination of the New Alternative Treatment Standard for the Guardian Waste

When the Agency developed the national treatment standard of 5.7 mg/L for D010 selenium non-wastewaters, as measured by the TCLP, it used data with reagent to waste ratios that varied from 1.3 to 2.7 to calculate the treatment standard. The Heritage selenium variance that was previously granted for the Guardian waste reflected a reagent to waste ratio of 2.35 (69 FR 6567, February 11, 2004). Heritage, treating the same Guardian waste with their proprietary chemical stabilization technology, achieved a reagent to waste ratio of 1.8. The Agency notes that, by keeping the reagent to waste ratio to minimal levels, treatment facilities minimize the amount of treated waste to be disposed in hazardous waste landfills. The Agency recommends that CWM and Heritage use a reagent to waste ratio of 1.8 as an upper limit.

Using the BDAT methodology,[3] the Agency has calculated an alternative treatment standard of 11 mg/L, as measured by the TCLP, based on eight data points that were the result of stabilization treatment using a reagent to waste ratio of 1.8 for the Guardian

[3] BDAT Background Document for Quality Assurance/Quality Control Procedures and Methodology, October 23, 1991.

waste. Treated selenium concentrations for the eight samples ranged from 4.8 mg/L to 8.0 mg/L selenium, as measured by the TCLP. Table 1 shows the results of leaching, as measured by the TCLP, of the Guardian waste treated using the new stabilization recipe.

TABLE 1.—SUMMARY OF GUARDIAN WASTE

Heritage verification testing		
Guardian sample ID/ test ID	Total selenium content-estimate (percent)	Selenium concentration in treated waste TCLP (mg/L)
1183982/280	6.7% (67,000 ppm)	7.0
1183983/281	5.8% (58,000 ppm)	7.6
1184104/283	7.2% (60,000 ppm)	6.9
1184304/284	6.3% (72,000 ppm)	6.8
1183982/280	6.7% (67,000 ppm)	7.0
Sample 1: full scale field test	Not available	8.0
Sample 1: full scale field test	Not available	4.8
Sample 1: full scale field test	Not available	6.3

F. Availability of the Heritage Treatment Technology

The new chemical stabilization technology developed by Heritage has a patent application pending for approval by mid 2006. EPA considers this technology to be the "best available treatment technology" (BDAT) for treating the Guardian waste and is using the performance data provided by Heritage as the basis for a site-specific treatment standard variance for the Guardian waste. EPA addressed the issue of the use of proprietary or patented technologies for establishing BDAT in the Solvents & Dioxin rule (November 7, 1986, 51 FR 40572). In that rule, EPA stated that it considers a technology that is proprietary or patented to be available, "if the Agency determines that the treatment method can be purchased from the proprietor or is a commercially available treatment." (*See* 51 FR 40588, November 7, 1986.)

EPA is aware that the level achieved by Heritage's proprietary stabilization technology as the best available technology treatment standard for the Guardian waste may necessitate actual use of the Heritage technology. Heritage has indicated that it will offer its use through a licensing arrangement. EPA has examined the Heritage licensing agreement and believes that it allows for the technology to be reasonably available for use by other entities. A boilerplate of the licensing agreement can be found in EDOCKET under Docket ID RCRA–2004–0009.

III. Same Site-Specific Treatment Standard Variance for Heritage

In the November 19, 2004 notice, we proposed to modify the existing selenium alternative treatment standard of 39.4 mg/L, as measured by the TCLP (69 FR 67647), that EPA had previously granted to Heritage (69 FR 6567, February 11, 2004) for the same waste based on a variance petition submitted by CWM in which they demonstrated that a more stringent treatment standard—28 mg/L, as measured by the TCLP—was achievable. Based on comments received on that proposal, on February 28, 2005, EPA sought additional comments from stakeholders on using the new performance data provided by Heritage as BDAT for both CWM and Heritage, so that both treaters could treat the Guardian waste to the same treatment standard. EPA did not receive any comments against using this approach to set the alternative treatment standard to 11 mg/L selenium, as measured by the TCLP, for the Guardian waste.

IV. What Is the Basis for EPA's Approval of CWM's and Heritage's Request for an Alternative D010 Treatment Standard?

After careful review of the petition submitted by CWM, and of the comments received on EPA's proposals to modify the site-specific treatment standards for the Guardian waste at both the CWM and Heritage facilities, EPA concludes that the requirements for a treatment standard variance under 40 CFR 268.44(h)(1) are satisfied. CWM and Heritage have demonstrated that Guardian's glass manufacturing waste differs significantly in chemical composition from the waste used to establish the original selenium treatment standard. Selenium TCLP concentrations in the untreated waste are one or two orders of magnitude higher than TCLP concentrations in the waste used to develop the treatment standard for D010 hazardous wastes. Data from CWM and Heritage demonstrate that wastes containing high concentrations of selenium are not easily treated. Furthermore, both facilities are using stabilization as the treatment technology, which is consistent with EPA's determination that stabilization is the best available treatment technology for this waste.

An added benefit of stabilizing the Guardian waste is that the hazardous components of the electrostatic precipitator dust are put into a solid matrix. The solid matrix substantially lowers the surface area potentially exposed to leaching from that of very fine untreated dust. The TCLP results show that, even when the solid is ground to less 9.5 mm, the solidified waste should reduce leaching potential after the waste is disposed of in a hazardous waste landfill.

Therefore, EPA is today granting these two site-specific variances from the D010 treatment standards for the Guardian waste stream in question since the waste cannot be treated to the level specified in the regulations with a reasonable waste to reagent ratio. Today's alternative treatment standard will provide sufficient latitude for CWM and Heritage to treat the other metal (chromium) present in the waste to LDR treatment standards and, by raising the selenium treatment standard, will avoid the difficulty posed by the different solubility curves of selenium and chromium. EPA is amending 40 CFR 268.44 to note that Chemical Waste Management, Chemical Services LLC and Heritage Environmental Services, LLC would be subject to a selenium treatment standard of 11 mg/L, as measured by the TCLP.

V. What Are the Terms and Conditions of the Variances?

In establishing an alternative treatment standard of 11 mg/L for selenium in the Guardian waste, as measured by the TCLP, EPA is not specifying that a specific recipe or methodology be used to reach the alternative treatment standard. The Agency notes that, to avoid questions of impermissible dilution, Heritage and CWM will need to keep the reagent to waste ratios within acceptable bounds. No specific ratios are being established in today's rule because the Agency does not desire to prevent further optimization of the treatment process. However, the Agency recommends that both facilities use a reagent to waste ratio of 1.8 to 1 as an upper limit, where the reagents are measured on a dry weight basis. This is the ratio used in the treatability study that forms the basis for establishing today's alternative treatment standard.

In addition, the Agency is requiring that Heritage and CWM not place the stabilized waste from Guardian directly on the operation layer on the floor of the landfill, nor in the area of a stand pipe or leachate sump pump. This restriction of the placement of the waste in the cell would minimize potential leaching in the landfill.

Upon promulgation of this final rule, CWM and Heritage may treat the Guardian waste to an alternate treatment standard of 11mg/L selenium, as measured by the TCLP. CWM and Heritage may dispose of the treated wastes [4] in a RCRA Subtitle C landfill provided they meet all the applicable LDR treatment standards for any other hazardous constituents in the wastes.

It is a technically necessary compromise that the alternative selenium standard for the Guardian waste is higher that the LDR treatment standard of 5.7 mg/L for selenium. As noted above and in the May 12, 1997, **Federal Register** (62 FR 26045), treatment cannot be optimized for both acid and base-soluble metals due to their different solubility curves. Because another toxic metal (chromium) is being immobilized to meet its respective universal treatment standard, we consider, under the circumstances, that threats are being minimized if the alternative selenium treatment standards are met, as required by 3004(m).

[4] Note that disposal in a Subtitle C landfill is required because the treated wastes are still characteristic for selenium (*i.e.*, the waste has TCLP values above the toxicity characteristic level for selenium of 1.0 mg/L).

VI. Response to Comments

The Agency received comments from two parties on the November 19, 2004, proposed rule. This **Federal Register** notice discusses the major issues raised by the commenters. Detailed responses to all comments raised can be found in the Response to Comments Document which is in the OSWER Docket (RCRA–2004–0009) for this rulemaking.

The first commenter was the waste treatment company, Heritage Environmental Services LLC, which had previously received a variance for the Guardian waste (*see* 69 FR 6567; February 11, 2004). Heritage submitted performance data showing that its new stabilization technology was successful in achieving additional stabilization of selenium and chromium in the Guardian waste. Heritage proposed that EPA establish a new selenium variance level of 10 mg/L for CWM, as measured by the TCLP, based upon their performance data. EPA agrees with the comment submitted by Heritage, but the Agency has calculated an alternative treatment standard of 11 mg/L, as measured by the TCLP, and is requiring the same standard for both facilities (CWM and Heritage).

The second commenter was Niagara Health Science Report Inc. (Niagara). Niagara commented that the proposed standard would not provide any incentive for the waste industry to develop alternative recovery technologies for selenium-bearing hazardous wastes. The Agency's preference would be to recover the selenium in an environmentally sound manner over stabilization and land disposal. However, there has been no recorded domestic production of secondary selenium in 2002, 2003, and 2004. [5] In addition, our discussions with the glass manufacturing industry, our research on commodity reports regarding selenium production and demand, and conference calls with commercial vendors indicate that all potential selenium recovery technologies being considered remain pilot projects and have been shown not to be economically viable for treatment of wastes containing low concentration of selenium. Consequently, EPA believes that the development of an environmentally protective secondary selenium recovery system in the U.S. is not reasonably expected in the near future.

On February 28, 2005, EPA sought additional comments from the stakeholders on using the new performance data provided by Heritage as BDAT for the Guardian waste. Heritage submitted a response that expressed their support for the Agency to establish an alternative treatment standard of 11 mg/L, as measured by the TCLP.

Niagara commented that there is no critical need to grant a variance for the Guardian waste to CWM since Heritage had demonstrated their ability to achieve a TCLP selenium criterion of 10 mg/L. The Agency agrees that Heritage has developed a treatment methodology that performs better than the stabilization technologies that were used to develop the proposed alternative treatment standard for the Guardian waste. The Agency is, therefore, establishing a site-specific treatment standard based upon the performance of the Heritage technology. As a result, Guardian will have the option of sending their waste to either treater/disposal facility to be treated to the same level of performance.

[5] "Selenium"; U.S. Geological Survey—Minerals Yearbooks.

VII. Administrative Requirements

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 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.

Because this rule does not create any new regulatory requirements, it is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. These variances only change the treatment standard applicable to a D010 waste stream that is treated at the CWM Chemical Services LLC facility in Model City, New York, and the Heritage Environmental Services LLC facility in Indianapolis, Indiana.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* These site-specific treatment standard variances do not impose information collection burden on CWM (Model City) and Heritage given their petitions contains the information needed to determine effectiveness of treatment. All information and data used in the development of these treatment standard variances can be found in the RCRA docket (RCRA–2004–0009) for this rulemaking. These actions also do not change in any way the paperwork requirements already applicable to this waste. It, therefore, does not affect the requirements under the Paperwork Reduction Act.

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.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

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

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. None of the entities involved in this final rule are small entities as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201.

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 the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures 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 the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopts the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector, and it does not impose any Federal mandate on State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. This rule also does not create new regulatory requirements; rather, it merely establishes alternative treatment standards for a specific waste that replace standards already in effect. EPA has determined that this 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. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

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 final rule does not have federalism implications. It will not have 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, as specified in Executive Order 13132. Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA

to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175.

Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule issues two site-specific treatment standard variances from the LDR treatment standards for a specific characteristic selenium waste that will be disposed in existing, permitted hazardous waste landfills. Accordingly, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

"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.

Today's final rule is not subject to Executive Order 13045 because it does not meet either of these criteria. The waste described in these site-specific treatment standard variances will be treated by Heritage Environmental Services, LLC or Chemical Waste Management, Chemical Services LLC, and then disposed of in existing, permitted RCRA Subtitle C landfills, ensuring that there will be no risks that may disproportionately affect children.

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. 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 (*e.g.*, 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 action does not involve technical standards based on new methodologies. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in clean and sustainable communities. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

Today's variances apply to a D010 waste stream at the Heritage Environmental Services, LLC facility in Indianapolis, Indiana and at the Chemical Waste Management, Chemical Services LLC. facility in Model City, New York. These selenium wastes will be disposed of in existing, permitted RCRA Subtitle C landfills, ensuring protection to human health and the environment. Therefore, the Agency does not believe that today's rule will result in any disproportionately negative impacts on minority or low-income communities.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability, applying only to a specific waste type at two facilities under particular circumstances.

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). This rule will be effective August 3, 2005.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Variance, Selenium.

Dated; July 26, 2005.

Thomas P. Dunne,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response (OSWER).

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

PART 268—LAND DISPOSAL RESTRICTIONS

■ 1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

■ 2. Section 268.44, the table in paragraph (o) is amended by:

■ a. Revising the entry for "Guardian Industries Corp."

■ b. Revising footnote number 11.

The revisions and additions read as follows:

§ 268.44 Variance from a treatment standard.

* * * * *

(o) * * *

WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40.

Facility name [1] and address	Waste code	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
			Concentration (mg/L)	Notes	Concentration (mg/kg)	Notes
* *	*	*	*		*	*
Guardian Industries Jefferson Hills, PA (6), (11), and (12).	D010 Standards under 268.40	Selenium	NA	NA	11 mg/L TCLP.	NA
* *	*	*	*		*	*

Note: NA means Not Applicable.

[1] A facility may certify compliance with these treatment standards according to provisions in 40 CFR 268.7.

* * * * *

[6] Alternative D010 selenium standard only applies to electrostatic precipitator dust generated during glass manufacturing operations.

* * * * *

[11] D010 wastes generated by this facility may be treated by Heritage Environmental Services, LLC at their RCRA permitted treatment facility in Indianapolis, Indiana or by Chemical Waste Management, Chemical Services Inc. at their RCRA permitted treatment facility in Model City, New York.

* * * * *

[FR Doc. 05–15325 Filed 8–2–05; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 39

[1090–AA93]

Administrative Wage Garnishment

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule and request for comments.

SUMMARY: The Department of the Interior (the Department) adopts the authority established under the Debt Collection Improvement Act (DCIA) to use administrative wage garnishment to collect delinquent non-tax debts. The DCIA allows a Federal agency collecting delinquent non-tax debt from an employee of a non-Federal entity to issue a wage garnishment order without first obtaining a court order. In order to establish procedures enabling the Department to use this authority, the Department adopts, without change, the administrative wage garnishment regulations issued by the Department of the Treasury, and designates the Office of Hearings and Appeals to conduct hearings under this authority.

DATES: This rule is effective September 2, 2005. Comments must be received by October 3, 2005.

ADDRESSES: You may submit comments, identified by the number 1090–AA93 by any of the following methods:

—Federal rulemaking portal: *http://www.regulations.gov* Follow the instruction for submitting comments.

—E-mail: *William_Webber@ios.doi.gov* Include the number 1084–AA00 in the subject line of the message.

—Fax: (202) 208–6940.

—Mail: William Webber, Focus Leader, Asset and Debt Management, Office of Financial Management, U.S. Department of the Interior, 1849 C Street, NW., Mail Stop 5412 MIB, Washington, DC 20240.

—Hand delivery: Office of Financial Management, U.S. Department of the Interior, 1849 C Street, NW., Room 5412, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Webber, Focus Leader, Asset and Debt Management, Office of Financial Management, U.S. Department of the Interior, 1849 C Street, NW., Mail Stop 5412 MIB, Washington, DC 20240; (202) 208–5684.

SUPPLEMENTARY INFORMATION: The Department is adding a new part 39 to 43 CFR to implement administrative wage garnishment provisions under section 31001(o) of the Debt Collection Improvement Act of 1966 (DCIA), Public Law 104–134, 110 Stat. 1321–358 (April 25, 1996), codified at 31 U.S.C. 3720D. Under this statute, the Department is adopting the administrative wage garnishment regulation issued by the Department of the Treasury at 31 CFR 285.11. Under the DCIA, a Federal agency that is collecting delinquent non-tax debt may administratively garnish the debtor's wages using a hearing process under the agency's own regulations or in accordance with regulations promulgated by the Secretary of the Treasury, if the agency adopts those regulations by reference. The DCIA allows a Federal agency collecting delinquent non-tax debt from a non-Federal employee to issue a wage garnishment order without first obtaining a court order. Should a debtor submit a written request for a hearing concerning the existence or amount of a debt, the administrative wage garnishment hearing procedures established in Treasury's regulations will be utilized by the Department to provide the debtor an opportunity to contest the garnishment. The Office of Hearings and Appeals will conduct the necessary hearings.

The Department's debt collection program does not require procedures different from those established by the Department of the Treasury, and therefore the Department hereby adopts the Treasury regulation without modifications, except to designate the Offices of Hearing and Appeals to conduct the hearings.

Procedural Matters

Need To Issue a Direct Final Rule

The Department has determined that the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), do not apply because of the exception under 5 U.S.C. 553(b)(3)(B), which allows the agency to suspend the notice and public procedure when the agency finds for good cause that those requirements are impractical, unnecessary, and contrary to the public interest. Because this rule commits the Department to follow without change an existing regulation of the Department of the Treasury, which has already been the subject of a proposed rule and public comment when promulgated by Treasury, we have determined that publication of a proposed rule and solicitation of comments is not necessary. While we are not required to solicit comments under the Administrative Procedure Act, the Department is soliciting comments to allow further public input regarding these procedures and will

consider revising this rule if comments warrant.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354, as amended by Pub. L. 104–121), the Department has reviewed this regulation, and by approving it, certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities. The Department's debt collection activities do not affect a substantial number of small entities. Moreover, as found by the Department of the Treasury, wage garnishment requirements do not have a significant economic impact on small entities. Employers of delinquent debtors must certify certain information about the debtor, such as the debtor's employment status and earnings. This information is contained in the employer's payroll records. Therefore, it will not take a significant amount of time or result in a significant cost for an employer to complete the certification form. Even if an employer is served withholding orders on several employees over the course of a year, the cost imposed on the employer to complete the certification would not have a significant economic impact on that entity. Employers are not required to vary their normal pay cycles in order to comply with a withholding order issued under this rule. For these reasons, a regulatory flexibility analysis is not required.

Executive Order 12866

This rule is not a significant regulatory action as defined in Executive Order 12866 and is therefore not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This regulation contains no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

List of Subjects in 43 CFR Part 39

Garnishment of wages, Debt collection.

Dated: June 28, 2005.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management and Budget.

■ For the reasons given in the preamble, Title 43 of the Code of Federal Regulations is amended by adding a new part 39 to read as follows:

PART 39—COLLECTION OF DEBTS BY ADMINISTRATIVE WAGE GARNISHMENT

Sec.

Authority: 31 U.S.C. 3720D.

§ 39.1 Procedures for collection of debts by administrative wage garnishment.

The Department hereby adopts the administrative wage garnishment rules issued by the Department of the Treasury at 31 CFR 285.11.

§ 39.2 Requests for Hearings.

Any request for a hearing under 31 CFR 285.11 must be filed with the Director, Office of Hearings and Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203.

[FR Doc. 05–15258 Filed 8–2–05; 8:45 am]

BILLING CODE 4310–RK–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2051, MB Docket No. 04–289, RM–10802]

Digital Television Broadcast Service and Television Broadcast Service; Columbia and Edenton, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of the University of North Carolina, license of non-commercial television station WUND–TV, channel *2, and paired DTV channel *20, Columbia, North Carolina, re-allots channel *2 and DTV channel *20 from Columbia to Edenton, North Carolina, at WUND's current site location. *See* 69 FR 50146, August 13, 2004. With this action, this proceeding is terminated.

DATES: Effective September 6, 2005.

FOR FURTHER INFORMATION CONTACT: Clay Pendarvis, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 04–289, adopted July 21, 2005, and released July 22, 2005. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 301–816–2820, facsimile 301–816–0169, or via e-mail *joshir@erols.com*.

This document does not contain [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Commission will send a copy of this Report & Order etc. in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

■ 2. Section 73.606(b), the Table of Television Allotments under North Carolina, is amended by removing TV channel *2 at Columbia and adding Edenton, TV channel *2.

§ 73.622 [Amended]

■ 3. Section 73.622(b), the Table of Digital Television Allotments under North Carolina, is amended by removing DTV channel *20 at Columbia and adding Edenton, DTV channel *20.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 05–14955 Filed 8–2–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1986; MB Docket No. 05–128, RM–11210]

Radio Broadcasting Service; Tipton, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Charles Crawford allots Channel 233C3 at Tipton, Oklahoma, as the community's first local aural transmission service. *See* 70 FR 19407, published April 13, 2005. Channel 233C3 can be allotted to Tipton in compliance with the Commission's minimum distance separation requirements at the center of the community. The reference coordinates for Channel 233C3 at Tipton are 34–32–30 North Latitude and 99–14–10 West Longitude with a site restriction of 9.8 kilometers (6.1 miles) northwest of Tipton. A filing window for Channel 233C3 at Tipton, Oklahoma will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective August 29, 2005.

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

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05–128, adopted July 13, 2005, and released July 15, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Tipton, Channel 233C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–14961 Filed 8–2–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1985; MB Docket No. 05–107; RM–11199]

Radio Broadcasting Services; Islamorada, Marathon, and Sugarloaf Key, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of LSM Radio Partners LLC, licensee of Station WWWK(FM), Channel 288C2, Marathon, Florida, allots Channel 289A to Sugarloaf Key, Florida, as its first local service. *See* 70 FR 17382, published April 6, 2005. To accommodate this allotment, this document also reallots Channel 288C2 from Marathon to Islamorada, Florida, as its second local service and modify the Station WWWK license accordingly. Channel 289A can be allotted to Sugarloaf Key in conformity with the Commission's rules, provided there is a site restriction of 3.6 kilometers (2.2 miles) southwest at coordinates 24–37–30 NL and 81–32–30 WL. Channel 288C2 can be reallotted to Islamorada, consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's rules, provided there is a site restriction of 15.5 kilometers (9.6 miles) northeast at coordinates 25–01–23 NL and 80–30–06 WL.

DATES: Effective August 29, 2005.

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

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MB Docket No. 05–107, adopted July 13, 2005, and released July 15, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of the *Report and Order* in this proceeding in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Channel 288C2 at Islamorada, removing Channel 288C2 at Marathon, and by adding Sugarloaf Key, Channel 289A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–14958 Filed 8–2–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1999; MB Docket No. 05–135, RM–11215]

Radio Broadcasting Services; Jackson and Madison, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of New South Communications, Inc., licensee of Station WUSJ(FM), Jackson, Mississippi, the Audio Division reallots Channel 242C0 from Jackson to Madison, Mississippi as the community's first

local transmission service, and modifies the license for Station WUSJ (FM) to reflect the new community. *See* 70 FR 19396, April 13, 2005. Channel 242C0 is reallotted at Madison at petitioner's site 24.0 kilometers (14.9 miles) southwest of the community at coordinates 32–11–29 NL and 90–24–22 WL.

DATES: Effective August 29, 2005.

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

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 05–135, adopted July 13, 2005 and released July 15, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ 47 CFR Part 73 is amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 242C0 at Jackson and by adding Madison, Channel 242C0.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–14954 Filed 8–2–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1984; MM Docket No. 01–199, RM–10213; MB Docket No. 02–171, RM–10483; MB Docket No. 02–174, RM–10486; MB Docket No. 02–288, RM–10525; and MB Docket No. 04–170, RM–10766]

Radio Broadcasting Services; Gunnison, TX; Knox City, TX; Red Oak, OK; Rosebud, SD; and Tignall, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Jeraldine Anderson, allots Channel 291A at Knox City, Texas, as the community's second local FM transmission service. *See* 66 FR 46427, September 5, 2002. Channel 291A can be allotted to Knox City in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.2 kilometers (7 miles) northwest to avoid a short-spacing to the license of Station KMOZ–FM, Channel 264C1, Grand Junction, Colorado. The coordinates for Channel 291A at Knox City are 33–25–55 North Latitude and 99–47–43 West Longitude. *See* **SUPPLEMENTARY INFORMATION** *infra*.

DATES: Effective August 29, 2005. A filing window for these allotments will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No, 01–199, MB Docket Nos. 02–171, 02–174; 02–288; and 04–170, adopted July 13, 2005, and released July 15, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

The Audio Division, at the request of Sierra Grande Broadcasting, allots Channel 265C2 at Gunnison, Colorado, as the community's four local FM transmission service. *See* 67 FR 47502, July 19, 2002. Channel 265C2 can be allotted to Gunnison in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.2 kilometers (7 miles) northwest to avoid a short-spacing to the license of Station KMOZ–FM, Channel 264C1, Grand Junction, Colorado. The coordinates for Channel 265C2 at Gunnison are 38–37–00 North Latitude and 107–01–00 West Longitude.

The Audio Division, at the request of Maurice Salsa, allots Channel 227A at Red Oak, Oklahoma, as the community's first local aural transmission service. *See* 67 FR 47502, July 19, 2002. Channel 227AA can be allotted to Red Oak in compliance with the Commission's minimum distance separation requirements with a site restriction of. The coordinates for Channel 227A at Red Oak are 34–50–34 North Latitude and 95–07–42 West Longitude.

The Audio Division, at the request of Georgia-Carolina Radiocasting, Co., LLC, allots Channel 244A at Tignall, Georgia, as the community's first local aural transmission service. *See* 67 FR 63874, October 16, 2002. Channel 244A can be allotted to Tignall in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.8 kilometers (6.1 miles) northwest to avoid a short-spacing to the licensed site of Station WAKB(FM), Channel 245C3, Wrens, Georgia. The coordinates for Channel 244A at Tignall are 33–55–40 North Latitude and 82–48–58 West Longitude.

The Audio Division, at the request of the Rosebud Sioux Tribe, allots Channel 257C at Rosebud, South Dakota, as the community's first local aural transmission service. *See* 69 FR 29253, May 21, 2004. Channel 257C can be allotted to Rosebud in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.2 kilometers (3.2 miles) east of the community. The coordinates for Channel 257C at Rosebud are 43–13–01 North Latitude and 100–47–33 West Longitude.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Channel 265C2 at Gunnison.

■ 3. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Tignall, Channel 244A.

■ 4. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Red Oak, Channel 227A.

■ 5. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by adding Rosebud, Channel 257C.

■ 6. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 291A at Knox City.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–14964 Filed 8–2–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2021; MB Docket No. 04–403, RM–11097; MB Docket No. 04–349, RM–10827; MB Docket No. 04–351, RM–10828; MB Docket No. 04–342, RM–10732]

Radio Broadcasting Services; Baudette, MN; Fernley, NV; Paducah, TX and Pittsburg, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants four new allotments in Baudette, Minnesota, Fernley, Nevada, Paducah, Texas and Pittsburg, Oklahoma. The Audio Division, at the request of R.P. Broadcasting, Inc., allots Channel 233C1 at Baudette, Minnesota, as the community's first local aural transmission service. The reference coordinates for Channel 233C1 at Baudette are 48–42–52 North Latitude and 94–35–32 West Longitude. The allotment requires a site restriction of 0.6 kilometers (0.4 miles) east to avoid a short-spacing to Canadian Station CHIQ–FM, Channel 232C, Winnipeg, Manitoba, Canada. **SUPPLEMENTARY INFORMATION**, *infra*.

DATES: Effective August 29, 2005. The window period for filing applications for these allotments will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

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

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket Nos. 04–403, 04–349, 04–351, 04–342, adopted July 13, 2005, and released July 15, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

The Audio Division, at the request of Linda A. Davidson, allots Channel 231C3 at Lockney, Texas, as the community's first local aural transmission service. The reference coordinates for Channel 231C3 at Fernley are 39–37–00 North Latitude and 119–08–51 West Longitude. The allotment requires a site restriction of 9 kilometers (5.6 miles) east to avoid a short-spacing to the license site of FM Station KHXR, Channel 233C2, Sun Valley, Nevada.

The Audio Division, at the request of Charles Crawford, allots Channel 232A at Pittsburg, Oklahoma, as the community's first local aural transmission service. The reference coordinates for Channel 232A at Pittsburg are 34–41–15 North Latitude and 95–42–19 West Longitude. This allotment requires a site restriction of 13.5 kilometers (8.4 miles) east to avoid short-spacing to the license site of FM Station KTSO, Channel 231C1, Glenpool, Oklahoma. To accommodate the Pittsburg allotment, we are also relocating the reference coordinates for vacant Channel 232A at Cove, Arkansas. The reference coordinates are 34–21–00 North Latitude and 94–30–00 West Longitude. This new site is 12.5 kilometers (7.8 miles) southwest of Cove.

The Audio Division, at the request of Charles Crawford, allots Channel 234C3 at Paducah, Texas, as the community's first local aural transmission service. The reference coordinates for Channel 234C3 at Paducah are 34–00–48 North Latitude and 100–18–24 West Longitude. This allotment requires no site restriction because the location is at city reference coordinates.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2.Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding Baudette, Channel 233C1.

■ 3. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Fernley, Channel 231C3.

■ 4. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Pittsburg, Channel 232A.

■ 5. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Paducah, Channel 234C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–14962 Filed 8–2–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2017; MB Docket No. 04–252, RM–11155]

Radio Broadcasting Services; Ajo, Mayer, Miami, Parker and Prescott Valley, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Farmworker Educational Radio Network, Inc., licensee of Station KRIT(FM), Channel 230C3, Parker, Arizona, and 3 Point Media-Prescott Valley, LLC, licensee of Station

KKLD(FM), Channel 252C2, Prescott Valley, Arizona, deletes Channel 230C3 at Parker, Arizona, Channel 252C2 at Prescott Valley, Arizona, Channel 252A at Miami, Arizona, and Channel 252A at Ajo, Arizona, from the FM Table of Allotments, allots Channel 224B1 at Parker, Arizona, Channel 252C at Mayer, Arizona, as the community's first local FM service, Channel 270A at Miami, Arizona, and Channel 295A at Ajo, Arizona, modifies the license of FM Station KRIT to specify operation on Channel 224B1 at Parker, Arizona, modifies the License of FM Station KKLD to specify operation on Channel 252C at Mayer, Arizona, and modifies the License of FM Station KQSS to specify operation on Channel 270A at Miami, Arizona. Channel 224B1 can be allotted to Parker, Arizona, in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.5 km (9.6 miles) northeast of Parker. The coordinates for Channel 224B1 at Parker, Arizona, are 34–16–00 North Latitude and 114–12–00 West Longitude. Channel 252C can be allotted to Mayer, Arizona, with a site restriction of 18.1 km (11.2 miles) southwest of Mayer. The coordinates for Channel 252C at Mayer, Arizona, are 34–15–03 North Latitude and 112–19–11 West Longitude. Channel 270A can be allotted to Miami, Arizona, with a site restriction of 9.8 km (6.1 miles) northeast of Miami. The coordinates for Channel 270A at Miami, Arizona, are 33–28–31 North Latitude and 110–48–51 West Longitude. Channel 295A can be allotted to Ajo, Arizona, with a site restriction of 0.3 km (0.2 miles) northeast of Ajo. The coordinates for Channel 295A at Ajo, Arizona, are 32–22–27 North Latitude and 112–51–49 West Longitude. Parker, Mayer, Miami, and Ajo, Arizona, all are located within 320 kilometers (199 miles) of the Mexican border, and therefore Mexican concurrence in the allotment changes will be required. Although concurrence has been requested for these allotment changes, notification has not been received. If a construction permit is granted for any of these allotments prior to the receipt of formal concurrence in the corresponding channel allotment by the Mexican government, the construction permit for that channel will include the following condition. "Operation with the facilities specified for [name of community] herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the USA-Mexico FM Broadcast Agreement, or if specifically objected to by the Government of Mexico."

DATES: Effective August 29, 2005.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 04–252, adopted July 13, 2005, and released July 15, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 252A at Ajo and adding Channel 295A at Ajo, by adding Mayer, Channel 252C, by deleting Channel 252A at Miami and adding Channel 270A at Miami, by deleting Channel 230C3 at Parker and adding Channel 224B1 at Parker, and by deleting Channel 252C2 at Prescott Valley.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–14956 Filed 8–2–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1989; MB Docket No. 05–66, RM–11146]

Radio Broadcasting Service; Anson and Roby, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Jeraldine Anderson allots Channel 249A at Roby, Texas, as the community's first local aural transmission service. To accommodate the allotment, Channel 251C2 is substituted for Channel 251C1 at Anson, Texas to reflect the current licensed authorization of Station KTLT(FM) whose construction permit for Channel 251C1 expired. *See* 70 FR 12833, published March 16, 2005. Channel 249A can be allotted to Roby in compliance with the Commission's minimum distance separation requirements at reference coordinates 32–43–00 North Latitude and 100–27–00 West Longitude with a site restriction of 7.5 kilometers (4.7 miles) southwest of the community. A filing window for Channel 249A at Roby, Texas will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective August 29, 2005.

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

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No.05–66, adopted July 13, 2005, and released July 15, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 251C1 and by adding Channel 251C2 at Anson.

■ 3. Section 73.202(b), the Table of FM Allotments under Texas, is further amended by adding Roby, Channel 249A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–14959 Filed 8–2–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1988]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989), and *Amendment of the Commission's Rules to permit FM Channel and Class Modifications by Applications*, 8 FCC Rcd 4735 (1993).

DATES: Effective August 3, 2005.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, adopted July 13, 2005, and released July 15, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will not send a copy of the *Report & Order* in this proceeding pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of particular applicability.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCASTING SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 231A and adding Channel 230C3 at Union Springs.

■ 3. Section 73.202(b), the Table of FM Allotments under Alaska, is amended by removing Channel 231C2 and adding Channel 231C1 at Sterling.

■ 4. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 257A and adding Channel 257C3 at Payson.

■ 5. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 222C1 and adding Channel 222A at Holyoke; and by removing Channel 285A and adding Channel 285C3 at Rye.

■ 6. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 268C and adding Channel 268C0 at Marietta.

■ 7. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by removing Channel 275C2 and adding Channel 275C at Honokaa; and by removing Channel 230C and adding Channel 230C0 at Kailua Kona.

■ 8. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 243A and adding Channel 243C2 at Ashton; by removing Channel 253A and adding Channel 253C2 at Orofino; by removing Channel 261A and adding Channel 261C2 at Soda Springs; by removing Channel 262A and adding Channel 263C2 at Troy.

■ 9. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 259A and adding Channel 259C3 at Manson.

■ 10. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 222A and adding Channel 225C1 at Cimarron.

■ 11. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 253C1 and adding Channel 253C0 at New Orleans.

■ 12. Section 73.202(b), the Table of FM Allotments under Maine, is amended by removing Channel 229B and adding Channel 229A at Milbridge; and by removing Channel 237A and adding Channel 237C2 at Winslow.

■ 13. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 262C3 and adding Channel 262C1 at Gwinn.

■ 14. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 223C and adding Channel 223C0 at Forest.

■ 15. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 241C and adding Channel 241C0 at Clinton; and by removing Channel 240A and adding Channel 240C3 at Mansfield.

■ 16. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 228C3 and adding Channel 228C2 at Eureka; by removing Channel 279C2 and adding Channel 279C1 at Fairfield; by removing Channel 289A and adding Channel 289C2 at Manhattan; by removing Channel 290A and adding Channel 290C2 at Missoula; and by removing Channel 283A and adding Channel 283C0 at Stevensville.

■ 17. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by removing Channel 233C3 and adding Channel 233C at Elko; and removing Channel 225C and adding Channel 225C2 at Reno.

■ 18. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 288A and adding Channel 285A at Brockport.

■ 19. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 223C and adding Channel 223C0 at Henderson.

■ 20. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by removing Channel 264C3 and adding Channel 264C2 at Harwood.

■ 21. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 263A and adding

Channel 263C3 at Cottage Grove and by removing Channel 241C1 and adding Channel 241C at Ontario.

■ 22. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Channel 251C and adding Channel 251C0 at Seneca.

■ 23. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 265C1 and adding Channel 265C0 at Amarillo.

■ 24. Section 73.202(b), the Table of FM Allotments under Utah, is amended by removing Channel 275C3 and adding Channel 275C2 at Hurricane.

■ 25. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by removing Channel 288A and adding Channel 288B1 at Richwood.

■ 26. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 281A and adding Channel 281C2 at Guernsey; by removing Channel 297C1 and adding Channel 297C2 at Kemmerer; by removing Channel 288A and adding Channel 288C2 at Mills.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–15135 Filed 8–2–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2008; MB Docket No. 04–330; RM–11051]

Radio Broadcasting Services; Palacios, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 69 FR 54614 (September 9, 2004), this *Report and Order* grants the proposal to allot Channel 264A to Palacios, Texas.

The coordinates for Channel 264A at Palacios, Texas are 28–36–26 North Latitude and 96–10–00 West Longitude, with a site restriction of 12.2 kilometers (7.6 miles) southeast of Palacios.

DATES: Effective August 29, 2005.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 04–328, adopted July 13, 2005, and released July 15, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202 863–2893. facsimile 202 863–2898, or via e-mail *qualexint@aol.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A). Channel 259A is listed at 47 CFR 202(b), FM Table of Allotments under Palacios, Texas.

We have no record that Channel 259A is currently licensed or allotted to Palacios.

Accordingly, the *Report and Order* deletes Channel 259A from 47 CFR 73.202(b) under Palacios.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—[AMENDED]

■ 1. The authority citation for part 73 reads as follows:

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 259A and by adding Channel 264A at Palacios.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–15130 Filed 8–2–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2005; MB Docket No. 05–88; RM–11173, RM–11177]

Radio Broadcasting Services; Lost Hills, Maricopa, and San Luis Obispo, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a petition filed by GTM San Luis Obispo, licensee of Station KLRM(FM), San Luis Obispo, California, by substituting Channel 245B1 for Channel 246B1 at San Luis Obispo, California, reallotting Channel 245B1 from San Luis Obispo to Lost Hills, California, as its second local service, and modifying the Station KLRM(FM) license accordingly. *See* 69 FR 34115, published June 18, 2004. This document also dismisses a petition filed by 105 Mountain Air, Inc. requests the allotment of Channel 245A at Maricopa, California, as its second local service because no continued expression of interest was filed. It is the Commission's policy to refrain from making a new allotment to a community absent a *bona fide* expression of interest. Channel 245B1 can be reallotted to Lost Hills, California in conformity with the Commission's rules, provided there is a site restriction of 16.6 kilometers (10.3 miles) south at coordinates 35–28–00 NL and 119–41–00 WL.

DATES: Effective August 29, 2005.

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

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MB Docket No. 05–88, adopted July 13, 2005, and released July 15, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 245B1 at Lost Hills, and by removing Channel 246B1 at San Luis Obispo.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–15129 Filed 8–2–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2007; MB Docket No. 05–129; RM–11201]

Radio Broadcasting Services; Jacksonville, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 70 FR 19403 (April 13, 2005) this *Report and Order* grants the proposal to allot Channel 236A to Jacksonville, Texas and also grants requests to relocate the transmitter sites of vacant Channels 237C3, Teague, Texas and 237A, Meridian, Texas, to accommodate the allotment of Channel 236A to Jacksonville. The coordinates for Channel 236A at Jacksonville, Texas are 31–54–15 North Latitude and 95–17–42 West Longitude, with a site restriction of 7.0 kilometers (4.3 miles) east of Jacksonville. The new allotment coordinates of vacant Channel 237C3 at Teague, Texas, are 31–48–30 North Latitude and 96–14–00 West Longitude, with a site restriction of 20.7 kilometers (12.8 miles) north of Teague, Texas. The new allotment coordinates of vacant Channel 237A, Meridian, Texas, are 32–00–00 North Latitude and 97–43–00 West Longitude, with a site restriction of 10.3 kilometers (6.4 miles) northwest of Meridian, Texas.

DATES: Effective August 29, 2005.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05–129, adopted July 13, 2005, and released July 15, 2005.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—[AMENDED]

■ 1. The authority citation for part 73 reads as follows:

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 236A to Jacksonville.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–15128 Filed 8–2–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 05–22010]

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: On June 24, 2003, the agency published a final rule mandating, in part, the use of the Hybrid III 6-year-old test dummy in compliance testing under Federal Motor Vehicle Safety Standard (FMVSS) No. 213, Child restraint systems, beginning August 1, 2005. That same rule permitted optional use of the Hybrid III 6-year-old test dummy for compliance testing prior to August 1, 2005. A child restraint manufacturer filed a petition for rulemaking requesting that the date for mandatory use of the Hybrid III 6-year-old test dummy be delayed. The manufacturer stated that such a delay was necessary because of technical issues that have arisen through the use of this new test dummy.

In response to this petition, we are permitting use of the Hybrid III 6-year-old test dummy or the Hybrid II 6-year-old test dummy for compliance testing under FMVSS No. 213 until August 1, 2008.

DATES: *Effective Date:* The amendment made in this rule is effective August 1, 2005.

Comments: Comments must be received by NHTSA not later than October 3, 2005, and should refer to the docket and notice number of this document.

ADDRESSES: You may submit comments [identified by the DOT DMS Docket Number above] by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Request for Comments heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under Regulatory Analyses and Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Dr. George Mouchahoir, Office of Crashworthiness Standards, at (202) 366–4919, facsimile (202) 493–2739.

For legal issues, you may call Mr. Chris Calamita, Office of the Chief Counsel, at (202) 366–2992, facsimile (202) 366–3820.

You may send mail to any of these officials at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On June 24, 2003, the agency published a final rule making a number of revisions to FMVSS No. 213, *Child Restraint Systems* (49 CFR 571.213) (68 FR 37620). The revisions incorporated four elements into the standard: (a) An updated bench seat used to dynamically test add-on child restraint systems; (b) a sled pulse that provides a wider test corridor; (c) expanded applicability to child restraint systems recommended for use by children weighing up to 65 pounds; and (d) improved child test dummies. The newly incorporated test dummies included the Hybrid III 6-year-old test dummy, conforming to 49 CFR part 572 subpart N. Under the June 2003 final rule, use of the Hybrid III 6-year-old test dummy in compliance testing under FMVSS No. 213 is required beginning August 1, 2005.

The agency incorporated the Hybrid III 6-year-old test dummy because we believe that the performance of child restraint systems will be more thoroughly and precisely assessed by use of this test dummy's enhanced biofidelity and extensive instrumentation. Since the Hybrid III is more biomechanically based, we believe that it provides a more humanlike response than the Hybrid II version of the dummy.

On June 14, 2005, the agency received a petition from Dorel Juvenile Group (Dorel), a child restraint manufacturer, seeking to delay the compliance date for the mandatory use of the Hybrid III 6-year-old test dummy. Although the final rule incorporating the Hybrid III 6-year-old test dummy was finalized in June 2003, Dorel stated that it had anticipated continued compliance of its belt positioning booster seats when tested with the new test dummy. However, Dorel submitted data in support of its petition demonstrating that testing of its belt positioning boosters with the Hybrid III 6-year-old test dummy yielded Head Injury Criterion (HIC) measurements approximately double that when the same seats were tested with the Hybrid II 6-year-old test dummy. As such, Dorel stated that some of its belt positioning booster seats would fail to comply with the requirements of FMVSS No. 213 as of August 1, 2005. Dorel stated that the high HIC values were a result of chin to chest contact experienced by the Hybrid III 6-year-old test dummy, which was the result of elongation of the Hybrid III neck.[1]

In a June 20, 2005 meeting with the agency, Dorel stated that it would be able to redesign its child restraint systems so that they would comply with testing using the Hybrid III 6-year-old dummy, but that they would be unable to do so by August 1, 2005.

In response to this petition, we are making a change to the June 2003 final rule. We are delaying the date for mandatory use of the Hybrid III 6-year-old dummy until August 1, 2008. Prior to August 1, 2008, a manufacturer may comply with testing using the Hybrid II 6-year-old test dummy. Although manufacturers were originally provided two years of lead time for the use of the Hybrid III 6-year-old test dummy, it was an insufficient period for manufacturers to optimize their product designs to the requirements of the standard when tested with this new test dummy.

The agency continues to believe that the Hybrid III 6-year-old test dummy provides a better assessment of a child restraint system's performance. However, the agency is aware of the need to allow manufacturers to obtain and gain experience with using the Hybrid III 6-year-old test dummy for child restraint system compliance purposes. We previously determined that two years should be allowed for manufacturers to gain this experience, but this now appears to have been insufficient.

As previously stated, we incorporated the Hybrid III 6-year-old test dummy because it is considerably more biofidelic than its predecessor, the Hybrid II 6-year-old dummy conforming to 49 CFR part 572 subpart I, and has considerably more extensive instrumentation to measure impact responses such as forces, accelerations, moments, and deflections in conducting tests to evaluate vehicle occupant protection system. Under today's final rule, if a manufacturer does not certify to the testing requirements using the Hybrid III 6-year-old test dummy, it must still certify to testing requirements using the Hybrid II 6-year-old test dummy. Given that restraints currently certified using the Hybrid II 6-year-old test dummy have performed well in the real world, we believe that temporarily delaying the compliance date for mandatory use of the Hybrid III 6-year-old will not impact safety.

Because the August 1, 2005 compliance date is fast approaching, NHTSA finds good cause to issue this interim final rule effectively delaying the compliance date for the mandatory use of the Hybrid III 6-year-old test dummy until August 1, 2008. Further we find good cause to make it effective on August 1, 2005, in order to prevent a reduction in the number of belt positioning booster seats available to consumers. We are accepting comments on this interim final rule. See, Request for Comments section below.

Regulatory Analyses and Notices

A. Executive Order, 12866 Regulatory Planning and Review

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "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.

This rulemaking document was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. It does not impose any burden on manufacturers, and only extends the compliance date for certification to testing with the Hybrid III 6-year-old test dummy.

The agency believes that this impact is so minimal as to not warrant the preparation of a full regulatory evaluation.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, we have considered the impacts of

[1] Dorel's petition and the accompanying data have been placed in the docket for this rulemaking.

this rulemaking action will have on small entities (5 U.S.C. Sec. 601 *et seq.*). I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities within the context of the Regulatory Flexibility Act.

The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)). This final rule affects child restraint manufacturers. According to the size standards of the Small Business Association (at 13 CFR 121.601), the small business size standard for manufacturers of "Motor Vehicle Seating and Interior Trim Manufacturing" (NAICS Code 336360) is 500 employees or fewer. A majority of child restraint manufacturers would be classified as a small business under this standard. However, the final rule does not impose any new requirements on manufacturers that produce child restraint systems. This final extends a compliance date in response to a petition from Dorel, a child restraint manufacturer. Accordingly, we have not prepared a Final Regulatory Flexibility Analysis.

C. Executive Order 13132, Federalism

E.O. 13132 requires NHTSA 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." E.O. 13132 defines the term "Policies that have federalism implications" 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." Under E.O. 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This action will not result in additional expenditures by State, local or tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule does not impose any new collection of information requirements for which a 5 CFR part 1320 clearance must be obtained.

F. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a State or political subdivision may prescribe or continue in effect a standard applicable to the same aspect of performance of a Federal motor vehicle safety standard only if the standard is identical to the Federal standard. However, the United States Government, a State, or political subdivision of a State, may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings are not required before parties file suit in court.

F. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

G. Environmental Impacts

We have considered the impacts of this final rule under the National Environmental Policy Act. This rulemaking action only extends the compliance date for certification of child restraint systems using the Hybrid III 6-year-old test dummy. This rulemaking does not require any change that would have any environmental impacts. Accordingly, no environmental assessment is required.

Request for Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.** Comments may also be submitted to the docket electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically. If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.[2] Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://*

[2] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

dmses.dot.gov/submit/DataQualityGuidelines.pdf.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on "Simple Search."

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "Search."

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, reporting and recordkeeping requirements, and tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.213 is amended by revising S7.1.2 introductory text and S7.1.3 to read as follows:

§ 571.213 Standard No. 213, Child restraint systems.

* * * * *

S7.1.2 Child restraints that are manufactured on or after August 1, 2005, are subject to the following provisions and S7.1.3.

* * * * *

S7.1.3 *Voluntary use of alternative dummies.* At the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the restraint), child restraint systems manufactured before August 1, 2005 may be tested to the requirements of S5 while using the test dummies specified in S7.1.2 according to the criteria for selecting test dummies specified in that paragraph. At the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the restraint), child restraints manufactured on or after August 1, 2005, and before August 1, 2008, that are recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 18 kg, or by children in a specified height range that includes any children whose height is greater than 1100 mm may be tested to the requirements of S5 while using the test dummy specified in S7.1.1(d). Child restraints manufactured on or after August 1, 2008, must be tested using the test dummies specified in S7.1.2.

* * * * *

Issued: July 28, 2005.

Jacqueline Glassman,

Chief Counsel.

[FR Doc. 05–15268 Filed 7–29–05; 10:39 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333–5040–02; I.D. 072905A]

Fisheries of the Exclusive Economic Zone Off Alaska; "Other Rockfish" in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; prohibition of retention.

SUMMARY: NMFS is prohibiting retention of "other rockfish" in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of "other rockfish" in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the "other rockfish" 2005 total allowable catch (TAC) in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 29, 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 GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North

Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The 2005 TAC of "other rockfish" in the Central Regulatory Area of the GOA is 300 metric tons as established by the 2005 and 2006 harvest specifications for groundfish of the GOA (70 FR 8958, February 24, 2005).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the "other rockfish" TAC in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of "other rockfish" in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

"Other rockfish" consists of all slope and demersal shelf rockfish.

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 prohibition of retention of "other rockfish" in the Central Regulatory Area of the GOA.

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: July 29, 2005.

Alan D. Risenhoover

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

[FR Doc. 05–15341 Filed 7–29–05; 2:29 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 148
Wednesday, August 3, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 82

[Docket No. FV05–82–01 PR]

RIN 0581–AC45

Regulations Governing the California Clingstone Peach (Tree Removal) Diversion Program; Notice of Request for Approval of a New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule invites comments on procedures for a California Clingstone Peach Diversion Program. The program would be voluntary and consist entirely of tree removal. The program would be implemented under clause (3) of section 32 of the Act of August 24, 1935, as amended. Based on 2003 and prior season acreage, production, supply, and marketing information for California clingstone peaches, the proposed program is expected to bring the domestic canned peach supply more in line with the market and provide relief to growers faced with excess acreage and supplies, and with low prices. The program would ensure that removal is not part of the normal process of tree replacement. This rule also announces the Agricultural Marketing Service's intention to request approval by the Office of Management and Budget (OMB) of the new information collection requirements necessary to implement the proposed California Clingstone Peach (Tree Removal) Diversion Program.

DATES: Comments received by September 2, 2005, will be considered prior to issuance of a final rule. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by October 3, 2005.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; e-mail: *moab.docketclerk@usda.gov*; or Internet: *http://www.regulations.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; Fax: (202) 720–8938; or e-mail: *George.Kelhart@usda.gov*; or Kurt Kimmel, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax: (559) 487–5906; or e-mail: *Kurt.Kimmel@usda.gov*.

Small businesses may request information on the proposed diversion program by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; Fax: (202) 720–8938; or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget (OMB). In accordance with Executive Order 12866, the Department of Agriculture (USDA) has prepared a detailed regulatory impact cost-benefit assessment, which can be obtained by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule. USDA also prepared a civil rights impact analysis. This document also can be obtained by following the same procedure.

Public Law 104–4

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 and local governments and the private sector. Under section 202 of the UMRA, the Agricultural Marketing Service (AMS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State and local governments, in the aggregate, or by the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires federal agencies 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.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State and local governments or the private sector of $100 million or more in any one year. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions, or which would otherwise impede its full implementation. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V published at 48 FR 29115 (June 24, 1983).

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism

implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule would not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Authority for a Diversion Program

The proposed program is intended to reestablish the purchasing power of California clingstone peach growers who suffered from excess acreage, supplies, and low prices in 2003. Programs to reestablish the purchasing power of U.S. farmers are authorized by clause (3) of Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), hereinafter referred to as "Section 32." Clause (3) authorizes USDA to "* * * reestablish farmers' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption." Section 32 also authorizes USDA to use Section 32 funds "at such times, and in such manner, and in such amounts, as USDA finds will effectuate substantial accomplishments of any one or more of the purposes of this section." Furthermore, "Determinations by USDA as to what constitutes * * * normal production for domestic consumption shall be final."

This proposal also invites comments on the reporting and recordkeeping provisions that would be generated by this proposed rule. The information collection and recordkeeping requirements associated with this proposed rule are explained in more detail in the Paperwork Reduction Act section of this rule.

Need for a Diversion Program

Domestic production of clingstone peaches is concentrated in California. Although there are more than 200 peach varieties, there are two basic types: clingstone and freestone. Clingstone peaches—so named because their flesh "clings" to the stone, or pit—are almost exclusively canned due to their ability to retain flavor and textural consistency. Other relatively minor uses include frozen peaches, baby food, and fruit concentrate for juice. Freestone peaches—so named because their flesh is readily removed from the stone—are primarily produced for the fresh market, with secondary outlets including the frozen and dried fruit market.

Although peaches are grown commercially in more than 30 states, the National Agricultural Statistics Service (NASS) reported that, in 2003, California produced about 74 percent of all peaches grown in the U.S. Other significant peach producing states, including South Carolina, Georgia, New Jersey, Pennsylvania, and Washington, had a combined production of a little less than 17 percent of the U.S. total. As noted earlier, clingstone peach production is concentrated in California, which claims over 95 percent of the domestic production.

NASS reports that U.S. production of all peaches in 2004 totaled a little over 1.279 million tons, of which 949 thousand tons were produced in California. In comparison, California clingstone peach production in 2004 totaled 539 thousand tons.

The U.S. is the largest producer of canned peaches in the world. However, foreign imports of canned clingstone peaches are providing an increasingly important volume of competition for the U.S. industry. Greece, the world's second largest producer of canned peaches, has been the largest exporter to the U.S., followed by Spain, South Africa, China, and Thailand (re-manufactured product). According to a February 2001 report by the Foreign Agricultural Service, the U.S. has become a net importer of canned peaches, with exports averaging around 20 thousand tons and imports averaging approximately 21 thousand tons.

The California Canning Peach Association (CCPA) requested the proposed diversion program on behalf of the clingstone peach industry. Established in 1922, the CCPA is a nonprofit cooperative bargaining association, owned and directed by its member growers. The CCPA negotiates an annual grower price and otherwise operates on behalf of its nearly 600 members, who produce approximately 80 percent of the clingstone peaches grown in California.

Specifically, the industry requested that USDA provide funding for a tree removal program during 2004. Implementation was not possible at that time. Implementation of the proposed diversion program would begin at the end of calendar year 2005 and tree removal would have to be completed by May 1, 2006. CCPA believes that the program would provide relief to the peach growers who have been displaced from domestic and international markets. CCPA cited continuing market disruption and deteriorating economic conditions during 2003 for peach growers as reasons for the diversion program. The CCPA stated that the steadily increasing supply of low-priced foreign canned peaches, as well as high production costs and high levels of domestic production have resulted in record amounts of unsold fruit.

The industry's difficulty is due in part to the high cost of domestic production coupled with high levels of plantings between 1998 and 2002, and in part to the increased supply of low-priced canned peaches from other nations. Labor costs (more than ⅔ of growers' direct production costs), as well as the costs of energy, chemicals, fertilizer, and equipment have climbed dramatically over the last few years. Producer prices have not kept pace with these increases. Moreover, as processing costs have increased, canners have been forced to raise their selling prices, thus providing a more attractive domestic market for low-priced imports and a more attractive market for clingstone peaches in countries traditionally supplied by the U.S. industry (Mexico, Canada, and Japan, for example).

As previously noted, the U.S. has become a net importer of canned peaches due to several factors, including unfavorable exchange rates, subsidized Greek over-production, and low-cost Chinese production. The large increase in imports has resulted in a diminished need for domestic production with the consequence of record volumes of fruit not being sold. Imports are expected to continue to increase while the export of canned clingstone peaches, as well as clingstone peaches for canning, is anticipated to stay steady or decline. Exports to Mexico and other Central American countries—both canned peaches and peaches for canning—are being priced out by Greece, while exports to Asian markets are facing strong price competition from both Greece and China. Increasing levels of both domestic and foreign production coupled with diminished export demand (world demand for canned fruit is flat outside of the European Union) will lead to continued surplus situations for a number of years.

Young, recently planted clingstone peach trees are more productive than older trees. This results in actual production volume increasing rapidly in proportion to the increase in acreage. Due to an industry-wide belief that the canned peach market would be taking a turn for the better, farmers planted an average of 3,526 acres of clingstone peach trees per year between 1998 and 2002. Although much of this acreage has been offset with concurrent acreage reduction, the net result over the last ten years is an increase of about 4,000 acres. This extra peach acreage is not needed, however, because of the slow demand growth in the canned fruit sector and the increasing pressure from imports. The recent bankruptcy of Tri-Valley Growers (one of the major peach processors in California) has also greatly

impacted the industry's ability to process the extra peach production.

Once planted, it takes clingstone peach trees 3 years to produce fruit in commercial quantities. Once a peach grower has committed funds to the planting and maintenance of an orchard, it is difficult to reverse those decisions and recoup cost. Because supply is slow to adjust to changing market conditions, without some remedial action the industry anticipates many years of production outpacing demand, resulting in a continuation, if not a worsening, of disruptive market conditions.

Industry Self-Help Initiatives

The California clingstone peach industry has taken a number of steps on its own to deal with oversupply issues. Since 1993, the industry has spent over $17 million to remove more than 10,000 acres of trees. In fact, the industry sponsored a tree pull in the spring of 2005 resulting in the removal of 2,000 additional acres. Although the CCPA administered some industry initiated acreage removal programs that compensated growers, many growers carried the costs of tree removal themselves. As noted earlier, even with aggressive tree removal, net acreage is currently up by about 4,000 acres over what it was a decade ago. The CCPA has also initiated and helped fund research projects aimed at reducing labor costs in the orchards, funded export incentive programs, and, as of 2004, its growers have limited new plantings to the lowest level in more than 50 years (only 580 acres planted in 2004, and an estimated 890 acres will be planted in 2005). To further improve its long-term market position, the California peach industry plans on developing new processing technology as well as new and innovative uses for clingstone peaches other than canning.

Despite these recent self-help efforts at mitigating the supply and demand imbalance, production of clingstone peaches has continued to be significantly greater than normal market needs. In fact, during both 2001 and 2002, 50 million pounds of clingstone peaches were harvested but could not be sold, and in 2003 the unutilized quantity was 61 million pounds. The unsold portions represented 5.3, 4.5, and 5.9 percent, respectively, of the total crops in each of those years.

The magnitude of the current oversupply problem is too great to deal with through industry funds alone. The California clingstone peach industry is in need of the immediate relief USDA can provide. A diversion program wholly consisting of a reduction in acreage through the removal of bearing trees would assist the industry in restoring a more balanced supply-demand situation for the clingstone peach industry in the short- and long-term.

Tree Removal Diversion Program

The industry is requesting $5 million in federal funds to fund a voluntary tree removal program, including administrative costs. In addition, a total of $2 million from CCPA assessments on its grower-members (to be collected and remitted by processors based on 2005 season deliveries) would be used to augment the federal funds.

The industry would like to remove 4,000 bearing acres of clingstone peach trees, or a little over 13 percent of the 30,200 acres currently in production. A healthy peach tree lives for about 20 years and reaches peak production when between 8 and 12 years old. Many of the current bearing trees are reaching the age where the normal cycle of removing old trees followed by replanting would be considered. The proposed diversion program would provide an incentive to growers to remove healthy, fruit bearing trees rather than those near the end of their productive life, while ensuring that those orchards are not replanted with clingstone peach trees.

To be eligible for the proposed tree removal program, growers must have made deliveries to processors during 2005. Orchards that have been abandoned would not be eligible for participation. Growers would be paid $100/ton based on their actual 2005 peach deliveries to processors from the same acreage that is being removed, provided that payments would not exceed $1,700 per acre nor be less than $500 per acre. Trees would have to be removed prior to May 1, 2006, and to be eligible, must be bearing and have been planted after 1988 and before 2002. Thus, trees removed under this proposed program would be 17 or fewer years old.

Growers who participate in the diversion program and subsequently replant a clingstone peach tree in the same location, and within the 10-year period following removal of the trees, would be required to refund to USDA all payments received, plus interest, on replanted acreage. Because it takes new trees at least 3 years to be commercially productive, this provision would effectively remove the acreage participating in the diversion program from commercial production of clingstone peaches for at least 13 years.

As previously stated, the tree removal program would reduce California clingstone peach acreage by up to 4,000 acres, which, based on the most recent 10-year average annual yield of 17.5 tons per acre, could reduce annual production by approximately 70,000 tons. This one-time decrease in production would help align supply with demand, while also ensuring an adequate supply. In addition, this program would provide the clingstone peach industry with the economic opportunity to concentrate its efforts on rebuilding demand for the future.

The diversion program would be administered by AMS and CCPA. Any California clingstone peach grower wishing to participate in the program would file an application with the CCPA on a form approved by OMB. The application period would begin after publication of the final rule announcing the terms and conditions of the program. Applications would have to be submitted by October 31, 2005.

Each applicant would provide information needed by the CCPA to operate the program. This would include, for example, the location of the orchard from which trees would be removed, the acreage to be removed, and the tonnage harvested off the applicable acreage in 2005. Applicants would also certify that all equity holders in the participating acreage consent to the filing of the application, and would agree not to replant clingstone peach trees on the same acreage for 10 years after the trees were removed. The CCPA would review each application for completeness, and would make every reasonable effort to contact growers to obtain any missing information.

Each approved applicant would be notified by the CCPA on another form approved by OMB. The approved grower would be required to fill out a portion of this "notification" form, certifying to the CCPA that he/she had removed the clingstone peach trees, and the date of removal. The remainder of this form would be filled out by a CCPA staff member. The staff member would verify that the approved block of clingstone peach trees had been removed, list the equivalent 2005 delivery tons removed, and indicate the total amount of money due to the grower.

As noted earlier, the USDA would provide $5 million to fund the tree removal program, including administrative costs. Applications would be approved until the available USDA funds have been committed. Each participating grower would have until May 1, 2006, to remove trees from their land.

Growers would be paid $100 per ton based on their actual peach deliveries to processors of peaches that were

harvested in 2005 from the acreage involved in the tree removal program. Based on the conditions of program participation, payments to growers would range from $500 to $1,700 per acre, which should cover most of the costs of removing the trees as well as preparing the land for other uses. Thus, even if a grower had a yield greater than 17 tons per acre on the acreage selected for removal, payment would not exceed the maximum of $1,700 per acre established by this rule.

Conversely, if a selected block of land had a 2005 yield of 5 tons per acre or less, the grower would receive the minimum of $500 per acre. The $100 per ton payment, as well as the upper and lower limits to the amount paid per acre, are considered necessary to help ensure that enough growers participate in the tree removal program. The costs of participating in the program would vary depending on the number of acres removed. Some cost savings may accrue when larger blocks of acreage are removed.

Estimated costs for tree removal, including the removal of roots and associated debris, range from $325–$525 per acre. In addition, costs associated with preparing the ground for other crops, including leveling, fumigation, and weed control could cost between $1,050 and $1,875. Based on these estimates, grower costs associated with tree removal could total as much as $2,400 per acre. The $500–$1,500 per acre payment proposed under the program would offset a significant portion of each grower's costs associated with tree removal.

Further offsetting the costs of tree removal would be the economic opportunities afforded the grower associated with being positioned to plant alternative crops on the cleared acreage. Additionally, the current economic conditions within the industry, specifically weak demand, reduced per capita consumption, stagnant domestic shipments and exports, increasing low-priced imports, and declining grower prices and revenues would appear to limit the incentives for replanting acreage to clingstone peach trees.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to actions in order that small businesses will not be unduly or disproportionately burdened.

There are about 700 growers of clingstone peaches in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000. Based on 2003 data from the California Agricultural Statistics Service, all of the growers would be considered small growers with annual incomes under $750,000. Thus, the majority of the growers would be considered small entities under SBA's definition.

This proposed rule would establish a tree removal diversion program for California cling peaches. Authority for this program is provided in clause (3) of Section 32 of the Act of August 24, 1935, as amended.

Participation in the diversion program is voluntary, so individual producers, both large and small, can weigh the benefits and costs for their own operations before deciding whether to participate in the program.

Economic Assessment of the Diversion Program

To assess the impact a tree removal program would have on prices growers receive for their product, impacts on grower prices and inventories with a tree removal program and without a tree removal program were estimated. This economic assessment compares the benefits and costs of a tree removal program to the alternative of not having a tree removal program. An econometric model was also developed for the purpose of estimating nominal season average grower prices under both scenarios.

Although a tree removal program would directly reduce the number of bearing acres, the impact of the program would not be apparent until after the 2006 crop harvest. In 2004, bearing acres are estimated at 31,740 acres. The industry has indicated that no additional net plantings of clingstone peach trees are occurring at this time. However, trees planted in 2002 through 2004 will enter production in 2005 through 2007.

The tree removal analysis assumes that 4,000 acres of clingstone peach orchards would be removed through this program. This results in the reduction in bearing acreage from 31,740 to 30,480. This number is estimated by taking the bearing acreage of 31,740, subtracting the proposed tree removal acreage (4,000) and adding the acreage planted in 2002 (2,740 acres), which will start producing in 2005. Subsequent years' bearing acreage is estimated using the same process; *i.e.*, adding estimated acres planted three years earlier to existing bearing acreage.

Under the proposed program, acreage in 2010 is estimated to total 28,256. It is assumed that the industry would only replant trees that were removed due to old age. However, it is not likely that all trees removed due to age would be replaced, and further, that trees removed due to age would not be involved in the tree removal program.

Production for 2004 is reported by NASS at 539,000 tons. Carryin inventory for 2004 was reported by CCPA to be 3.44 million cases (24 No. 2½ size cans—No. 2½ cans have a net weight of 27–29 ounces).

Based on historical pack-out and per capita consumption, CCPA has estimated that demand for the 2005 clingstone peach crop could approximate 460,000 tons. Subsequent demand for canned peaches is estimated to increase by about one percent a year for 2006 through 2010. This assumes that per capita consumption remains constant while demand increases with the level of population.

The 2005 clingstone peach production, however, is estimated at 564,685 tons based on the reduced acreage projection of 30,480 acres and an estimated yield of 18.53 tons per acre. For this analysis, the estimated carryin is 3 million cases (24 No. 2½ basis) for 2005 and 2 million cases (24 No. 2½ basis) for 2006 through 2010, which is the desirable level favored by the industry.

Acreage removed after 2006 is estimated based on an econometric model. Despite the removal of 4,000 acres in the diversion program, the industry would conceivably continue to remove acreage on its own due to normally aging orchards.

The analysis also estimates yields based on an autoregressive model of order two that allows for some fluctuations up and down. Yields under the proposed tree removal program are adjusted upwards by 0.2 tons per acre due to the removal of lower yielding trees which would result in higher average yields than would happen without a program. Estimated production, computed by multiplying acreage times yield, fluctuates accordingly.

As carryin inventories are reduced, the total available supply would moderate for 2006 through 2010, relative to the situation without a tree removal program. This results in estimated season average grower prices ranging from $224 to $245 per ton during that same time span. This estimated price is slightly more than the

total estimated cost of production. It should be noted that the margin of error for these estimates becomes very large for future years.

Even though season-average grower prices per ton increase under the tree removal program, all product produced is not necessarily of marketable quantity. Costs are incurred on all of the production, but revenue is received only on product actually marketed. Thus, the economic effect of the tree removal program on a per acre basis is to dramatically reduce losses and bring producer returns closer to a break-even level. With the level of imports anticipated to continue to increase and with the level of exports anticipated to continue to decrease, there should be only a limited incentive to further expand production as a result of the tree removal program. It would remain for growers to control costs and to expand demand to ensure their longer-term economic stability.

Grower prices are a small component of the marketable canned peach product and are not closely associated with movements in retail prices. However, the increases in grower prices estimated for 2006 through 2010 may have an impact on retail prices. The extent of any retail price increases would depend on processor and retailer margins, as well as the pricing and availability of substitute canned fruit products. It should be noted that clingstone peach prices are estimated to increase with or without a tree removal program, but the magnitude of the grower price increase is greater with the program. This increase in retail price may have a slight negative impact on the quantity demanded. Such a decrease in the quantity demanded is not taken into account in this analysis.

Without a tree removal program in place, the number of bearing acres is also estimated to decrease, although at a rate slower than with a tree removal program. This decrease in bearing acreage is estimated by taking the number of producing acres during the prior year, subtracting the number of acres removed from production and then adding the number of acres planted three seasons previously. For the 2006 through 2010, production is estimated to decrease due to the decline in the number of bearing acres. However, marketable production would continue to be above the estimated 460,000 tons desired by the industry and carryin inventories are estimated as high as 3.5 million cases (24 No. 2½ basis). In addition, abandonment of some product is estimated to occur for 2005 through 2010. Under this scenario, 2005 grower prices are estimated at $220 per ton. With high inventories and low grower prices, market forces are assumed to induce growers to remove less productive acres and the number of bearing acres is estimated to decline from to 31,740 to 29,068. Even with the decline in bearing acres, production and inventories remain excessive from 2006 through 2010. Under this scenario, grower prices are estimated to remain below or equal to the cost of production until 2010 when prices are estimated to be just above the cost of production.

Under both scenarios, grower prices increase. However, adjustments to inventories and prices occur more rapidly under a tree removal program. This would accelerate benefits to growers until market forces could bring about a slow correction.

In addition to the direct impact a tree removal program would have on grower price and revenue, there are indirect impacts. A tree removal program assists in decreasing the volume of fruit that is harvested but subsequently not utilized or simply not harvested. Without a tree removal program, large quantities of clingstone peaches could be produced and harvested but not utilized by packers. Growers would have to cover the total cost of production, harvest, and transportation but only receive payments on fruit actually canned. Further, in an attempt to sell the excessive inventories, packers might reduce f.o.b. prices, which in turn leads to market share battles and lower prices being passed back to producers. A more balanced supply and demand situation allows growers and packers to jointly continue developing markets in ways that benefit the entire industry.

Benefits of the Program

The economic assessment of the tree removal program indicates that it is expected to benefit growers (particularly small, under-capitalized growers), canners, and others associated with the clingstone peach industry. The per ton sales price is projected to increase over the next six years, thus reducing losses and moving grower returns closer to break-even levels. The benefit to growers from reduced losses is projected to total approximately $50 million over the six-year period. The benefits over the six-year period would average nearly $8 million annually.

Costs of the Program

The major direct cost of the program would be the payment to growers for removing their clingstone peach trees. A total of $5 million, less the costs associated with local administration of the program, would be made available by USDA for the tree removal program. Administrative costs for reviewing applications and verifying tree removals are expected to be about $125,000. Major expense categories for administration include costs for salaries and benefits, vehicle rental and maintenance, and insurance, overhead, and supplies.

Total grower costs associated with the completion of diversion program applications, payment requests, and record maintenance for the period specified after tree removal are expected to be about $530.

Overall Assessment of the Program

Payments made through this program could help California clingstone peach growers by addressing the oversupply problem that is adversely affecting their industry. The implementation of a tree removal program could reduce available supply more quickly than if the industry relied on market forces alone. While market forces could also result in supplies being reduced, such an adjustment may occur more slowly, with resultant economic hardships for growers and processors. In addition, a tree removal program could be beneficial in reducing the risk of loan default for lenders that financed clingstone peach growers. This program could also help small, under-capitalized growers stay in business. Such small growers are often efficient, but do not have adequate resources to continue to operate given the current depressed conditions within their industry.

Increasing the level of profitability also should provide opportunities for the industry to engage in additional demand-enhancing activities, especially directed at the domestic market. Even a moderate increase in domestic per capita consumption would have a significant, positive impact on grower returns.

Costs for the program would include the $7 million ($5 million provided by USDA and $2 million by the industry) to be paid to growers and to the CCPA for administrative costs. Additionally, growers would incur costs totaling $500 to comply with the application and record-keeping requirements of the program.

Benefits to growers under the tree removal program could total approximately $50 million. This is calculated by multiplying total marketable production for each of the next six years times the difference between grower price and variable cost, and then adding those figures. This calculation was done for each of the two scenarios (with and without a tree removal program). The $50 million difference between those figures

represents an estimate of program benefits resulting from reduced grower losses.

Growers who participate in the tree pull program will likely remove older, less productive trees from production. Because younger trees are more productive, older trees typically have higher variable costs of production than younger trees, where the variable costs are spread over a higher yield. Accordingly, the $50 million benefit under the tree pull scenario is the result of both higher prices resulting from the tree pull combined with lower variable costs per ton of production.

This cost calculation assumes that the acreage on which trees are removed remains idle, and that growers would therefore absorb all fixed costs on that acreage. To the extent that the land is put to other productive uses, growers would not be absorbing all fixed costs of producing clingstone peaches, and grower benefits would be higher.

If growers are earning more income, it follows that processors would pay more to obtain the peaches from the growers. These higher costs could be passed on to consumers through higher retail prices or could be absorbed as reduced operating margins for processors, wholesalers, or retailers. An estimate of these costs is obtained by multiplying the estimated grower price over each of the next six years times annual shipments with the diversion program in place and without it in place. That figure, summed over the six years, is approximately $25 million. Processors, wholesalers, and retailers are anticipated to absorb the additional costs. Adjustments in retail prices, as well as retailer and processor margins, are anticipated to change with or without the program.

Another cost of the tree removal program is the reduced economic activity due to the growers purchasing fewer inputs (labor, chemicals, etc.) because of the reduction in the number of clingstone peach acres managed and harvested. Farm laborers and agricultural supply firms such as chemical manufacturers and distributors would realize less revenue because of the reduced need for their services and goods. To the extent that acreage removed is replanted in other crops, those costs could be somewhat offset by purchases of labor and supplies to produce the alternative crops. This cost of the tree removal program is difficult to quantify and is not included in this analysis.

Conclusion

Based on all of the information available, USDA has determined that there is a surplus of clingstone peaches, and that reestablishment of growers' purchasing power would be encouraged by using Section 32 funds to reduce supplies under a tree removal program for California clingstone peaches. USDA has further determined that this program would be a long-term solution to the oversupply situation that exists in the California clingstone peach industry, and that it would provide relief to growers.

Each grower participating in the program would agree not to replant clingstone peaches on the land from which the trees were removed for 10 years from the date the trees are removed. The non-planting promise is a guarantee by the participant that no one (not just the participant) would plant the land to clingstone peaches. Only those persons who are current owners of the land, and have not contracted to sell the land or destroy the trees, would be eligible to participate. Also, growers would guarantee that they have not made prior arrangements to sell the land or remove the trees for commercial purposes, like shopping centers, housing developments, or similar such purposes. Including such non-agricultural land in the program would not serve the purposes of the tree removal program.

A 30-day comment period is provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impacts of this proposed action on small businesses. This comment period is deemed appropriate so that a final determination can be made during late summer in 2005 so those clingstone peach growers choosing to participate in the program have adequate time to prepare and to implement individual tree removal plans. All written comments received within the comment period will be considered before a final determination is made on this matter.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the AMS announces its intention to request approval by OMB of a new information collection, California Clingstone Peach (Tree Removal) Diversion Program, under OMB No. 0581–NEW.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

As mentioned earlier, two forms would be needed for the administration of the tree removal program. Growers who wish to participate in the program would have to submit form FV–302, "Application for Clingstone Peach Tree Removal Program," along with documentation, to the CCPA, which would administer the program. Upon receipt of FV–302, the CCPA would send the grower form FV–303, "Notification of Clingstone Peach Tree Removal." The grower would fill out a portion of this form certifying that his/her approved block of clingstone peach trees was removed, and the date of removal. The remainder of this form would be filled out by a CCPA staff member, notifying the grower of his/her eligibility to receive a diversion payment. The form would also be used to notify USDA that the CCPA verified the grower's compliance with program regulations and recommend disbursement of Section 32 funds to the grower. Finally, participants would be required to retain records pertaining to the tree removal program for 10 years after the date the trees were removed.

We estimate that 100 growers may submit applications, and that it would take each grower about 30 minutes to complete, for a total burden of 50 hours. We also estimate that it would take the growers about 2 minutes to complete their portion of the notification form, for a total burden of 3 hours. The estimated one-time cost for all growers in completing the participation application and payment request statement (notification form), and maintaining records, is $530. This total cost was calculated by multiplying the estimated 53 burden hours by $10 per hour (a sum deemed reasonable, should the applicants be compensated for this time).

Title: California Clingstone Peach (Tree Removal) Diversion Program.

OMB Number: 0581–NEW.

Type of Request: New Collection.

Abstract: The information collection requirements in this request are applied only to those growers who voluntarily participate in the tree removal program. The information is essential to carry out the program, and to administer release of payments to participating growers.

The program is expected to bring domestic canned peach supplies more in line with market demands and provide relief to California growers faced with excess acreage and supplies, and with low prices for their clingstone peaches. The program would ensure that those trees removed are not part of a normal tree replacement process.

The forms covered under this information collection require the

minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of clause (3) of Section 32 and the rules and regulations issued thereunder. This program would not be maintained by any other agency, therefore, the requested information will not be available from any other existing records.

The information collected would be used only by authorized CCPA staff, and authorized representatives of the USDA, including AMS' Fruit and Vegetable Programs' regional and headquarters staff. Authorized employees of the CCPA are the primary users of the information, and AMS is the secondary user. All information collected would be treated as confidential (as indicated on the forms), and would be in conformance with the Privacy Act and the Freedom of Information Act.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .26 hours per response.

AMS estimates that the total annual burden is 53 hours. The proposed request for approval of the information collection under the program is as follows:

FV–302, Application for Clingstone Peach Tree Removal Program

Estimate of Burden per Response: .5 hours.

Respondents: California clingstone peach growers.

Estimated Number of Respondents: 100.

Estimated Annual Number of Responses per Respondent: 1:

Estimated Total Annual Burden on Respondents: 50 hours.

FV–303, Notification of Clingstone Peach Tree Removal

Estimate of Burden per Response: .03 hours.

Respondents: California clingstone peach growers.

Estimated Number of Respondents: 100.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3 hours.

Estimate of Burden per recordkeeper: 1.2 minutes.

Respondents: California clingstone peach growers.

Estimated Number of Respondents: 100.

Estimated Total Annual Burden on Respondents: 2 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of AMS, including whether the information will have practical utility; (2) the accuracy of AMS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–NEW and the California Clingstone Peach Tree Removal Diversion Program, and be mailed to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Fax (202) 720–8938; or e-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be available for public inspection in the Office of the Docket Clerk during regular business hours at Room 2525–S, 1400 Independence Avenue, SW., Stop 0237; or telephone: (202) 720–2491, or can be viewed at: *http//www.ams.usda.gov/fv/moab*.

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

A 60-day comment period is provided to allow interested persons to respond to this proposed information collection.

List of Subjects in 7 CFR Part 82

Administrative practice and procedures, Agriculture, Peaches, Reporting and recordkeeping requirements, Surplus agricultural commodities.

For the reasons set forth in the preamble, it is proposed that title 7, subtitle B, chapter I, subchapter D, be amended as follows by adding part 82 to read as follows:

PART 82—CLINGSTONE PEACH DIVERSION PROGRAM

Sec.

Authority: 7 U.S.C. 612c.

§ 82.1 Applicability.

Pursuant to the authority conferred by Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c) (Section 32), the Agricultural Marketing Service (AMS) will make payment to California growers who divert clingstone peaches by removing trees on which the fruit is produced in accordance with the terms and conditions set forth herein.

§ 82.2 Administration.

The program will be administered under the general direction and supervision of the Deputy Administrator, Fruit and Vegetable Programs, AMS, United States Department of Agriculture (USDA), and will be implemented by the California Canning Peach Association (CCPA). The CCPA, or its authorized representatives, does not have authority to modify or waive any of the provisions of this subpart. The Administrator or delegatee, in the Administrator's or delegatee's sole discretion can modify deadlines to serve the goals of the program. In all cases, payments under this part are subject to the availability of funds.

§ 82.3 Definitions.

(a) *Administrator* means the Administator of AMS.

(b) *AMS* means the Agricultural Marketing Service of the U. S. Department of Agriculture.

(c) *Application* means "Application for Clingstone Peach Tree Removal Program."

(d) *Calendar year* means the 12-month period beginning January 1 and ending the following December 31.

(e) *CCPA* means the California Canning Peach Association, a grower-owned marketing and bargaining cooperative representing the clingstone peach industry in California.

(f) *Diversion* means the removal of clingstone peach trees after approval of applications by the CCPA.

(g) *Grower* means an individual, partnership, association, or corporation in the State of California who grows clingstone peaches for canning.

(h) *Removal or removed* means that the clingstone peach trees are no longer

standing and capable of producing a crop, and the roots of the trees have been removed. The grower can accomplish removal by any means the grower desires. Grafting another type of tree to the rootstock remaining after removing the clingstone peach tree would not qualify as removal under this program.

§ 82.4 Length of program.

This program is effective [*Insert date 1 day after publication of the final rule in* **Federal Register**], through [*Insert date 10 years after the effective date of the program*]. Growers diverting clingstone peaches by removing clingstone peach trees must complete the diversion no later than May 1, 2006.

§ 82.5 General requirements.

(a) To be eligible for this program, the trees to be removed must be fruit-bearing and have been planted after the 1988 and before the 2002 calendar years. Abandoned orchards and dead trees will not qualify. The block of trees for removal must be easily definable by separations from other blocks of eligible trees and contain at least 1,000 eligible trees or an entire orchard.

(b) Any grower participating in this program must agree not to replant clingstone peach trees on the land cleared under this program through May 1, 2016. Participants bear responsibility for ensuring that trees are not replanted, whether by themselves, by successors to the land, or by any other person, until after May 1, 2016. If trees are replanted before May 1, 2006, by any persons, participants must refund all USDA payments, with interest, made in connection with this tree removal program.

§ 82.6 Rate of payment; total payments.

(a) Applications will be processed on a first-come, first-served basis. Growers will be paid $100 per ton based on their actual 2005 deliveries of clingstone peaches to processors from those acres of clingstone peach trees removed under this program, except that, regardless of actual 2005 deliveries, growers will receive a minimum of $500 per acre and a maximum of $1,700 per acre.

(b) Payment under paragraph (a) of this section will only be made after tree removal has been verified by the staff of the CCPA.

(c) The $100 per ton payment is intended to cover the costs of tree removal. USDA will not make any other payment with respect to such removals. The grower will be responsible for arranging, requesting, and paying for the tree removal in the specified acreage.

(d) Total payments under this program are limited to not more than $5,000,000 of section 32 funds. No additional expenditures shall be made unless the Administrator or delegatee in their sole and exclusive discretion shall, in writing, declare otherwise.

§ 82.7 Eligibility for payment.

(a) If total applications for payment do not exceed $5,000,000, less administration costs, payments, as set forth in § 82.6, payment will be made under this program to any grower of clingstone peaches who complies with the requirements in § 82.8 and all other terms and conditions in this part.

(b) If applications for participation in the program authorized by this part exceed $5,000,000, less administration costs, the CCPA will approve the applications (subject to the requirements in § 82.8) in the order in which the completed applications are received in the CCPA office to the extent that funds are available. Applications received after total outlays exceed the amount of money available will be denied.

§ 82.8 Application and approval for participation.

(a) Applications will be reviewed for program compliance and approved or disapproved by CCPA office personnel.

(b) Applications for participation in the Clingstone Peach Diversion Program can be obtained from the CCPA office at 2300 River Plaza Drive, Suite 110, Sacramento, CA 95833; Telephone: (916) 925–9131; Fax: (916) 925–9030.

(c) Any grower desiring to participate in the Clingstone Peach Diversion Program must file an application with the CCPA prior to October 31, 2005. The application shall be accompanied by a copy of any two of the following four documents: Plot Map from the County Hall of Records; Irrigation Tax Bill; County Property Tax Bill; or any other documents containing an Assessor's Parcel Number. Such application shall include at least the following information:

(1) The name, address, telephone number, and tax identification number or social security number of the grower;

(2) The location and amount of acreage to be diverted;

(3) The 2005 clingstone peach production from the acreage to be diverted;

(4) If the land with respect to which the clingstone peach trees will be destroyed is subject to a mortgage, statutory lien, or other equity interest, the grower must obtain from the holder of such interest a written statement that such party agrees to the enrollment of such land in this program to the extent determined necessary by AMS. Obtaining such assent shall be the responsibility of the applicant who shall alone bear any responsibilities which may extend to such third parties;

(5) A statement that the applicant agrees to comply with all of the regulations established for the clingstone peach diversion program;

(6) The applicant shall sign the application certifying that the information contained in the application is true and correct;

(7) The year that the clingstone peach acreage to be diverted was planted;

(8) The names of the processors who received the clingstone peaches from the grower in 2005.

(d) After the CCPA receives the applications, it shall review them to determine whether all the required information has been provided and that the information is correct.

(e) If the deliveries off the acreage to be removed in such applications, multiplied by $100 per ton (for actual 2005 deliveries on these acres, but within the constraints of a minimum payment of $500 per acre and a maximum payment of $1,700 per acre), exceed the amount of funds available for the diversion program, each grower's application will be considered in the order in which they are received at the CCPA office.

(f) After the application reviews and confirmation of eligible trees are completed, the CCPA shall notify the applicant, in writing, as to whether or not the application has been approved and the tonnage approved for payment after removal. If an application is not approved, the notification shall specify the reason(s) for disapproval.

§ 82.9 Inspection and certification of diversion.

When the removal of the clingstone peach trees is complete, the grower will notify the CCPA on a form provided by the CCPA. The CCPA will certify that the trees approved for removal from the acreage have been removed, and notify AMS.

§ 82.10 Claim for payment.

To obtain payment for the trees removed, the grower must submit to the CCPA by June 30, 2006, a completed form provided by the CCPA. Such form shall include the CCPA's certification that the qualifying trees from the acreage have been removed. AMS will then issue a check to the grower in the amount of $100 per eligible ton removed consistent with the minimum and maximum payments per acre earlier specified in this part.

§ 82.11 Compliance with program provisions.

If USDA or the CCPA determines that any provision of this part have not been complied with by the grower, the grower will not be entitled to diversion payments in connection with tree removal. If a grower does not comply with all the terms of this part, including the requirement specified in § 82.5(b), the grower must refund any payment made in connection with this program, and will also be liable for any other damages incurred as a result of such failure. The USDA may deny any grower the right to participate in this program or the right to receive payments in connection with any diversion previously made under this program, or both, if the USDA determines that:

(a) The grower has failed to properly remove the clingstone peach trees from the applicable acreage, regardless of whether such failure was caused directly by the grower or by any other person or persons;

(b) The grower has not acted in good faith, or has engaged in a scheme, fraud, or device, in connection with any activity under this program; or

(c) The grower has failed to discharge fully any obligation assumed by him or her under this program.

§ 82.12 Inspection of premises.

The grower must permit authorized representatives of USDA or the CCPA, at any reasonable time, to have access to their premises to inspect and examine the acreage where the trees were removed as well as any records pertaining to that acreage to determine compliance with the provisions of this part.

§ 82.13 Records and accounts.

(a) The growers participating in this program must keep accurate records and accounts showing the details relative to the clingstone peach tree removal, including the contract entered into with any firm removing the trees, as well as the invoices.

(b) The growers must permit authorized representatives of USDA, the CCPA, and the Government Accountability Office at any reasonable time to inspect, examine, and make copies of such records and accounts to determine compliance with provisions of this part. Such records and accounts must be retained for ten years after the date of payment to the grower under the program, or for ten years after the date of any audit of records by USDA, whichever is later. Any destruction of records by the grower at any time will be at the risk of the grower when there is reason to know, believe, or suspect that matters may be or could be in dispute or remain in dispute.

§ 82.14 Offset, assignment, and prompt payment.

(a) Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the crop proceeds thereof in favor of the grower or any other creditors except agencies of the U.S. Government.

(b) Payments which are earned by a grower under this program may be assigned in the same manner as allowed under the provisions of 7 CFR part 1404.

§ 82.15 Appeals.

Any grower who is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination. The Deputy Administrator of Fruit and Vegetable Programs shall establish the procedure for such appeals.

§ 82.16 Refunds; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application of this part, and if any refund of a payment to AMS shall otherwise become due in connection with the application of this part, all payments made under this part to any grower shall be refunded to AMS together with interest.

(b) All growers signing an application for payment as having an interest in such payment shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application of this part.

(c) Interest shall be applicable to refunds required of any grower under this part if AMS determines that payments or other assistance were provided to a grower who was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges the Commodity Credit Corporation (CCC) for funds, as of the date AMS made benefits available to such grower. Such interest shall accrue from the date of repayment or the date interest increases as determined in accordance with applicable regulations. AMS may waive the accrual of interest if AMS determines that the cause of the erroneous determination was not due to any action of the grower.

(d) Interest determined in accordance with paragraph (c) of this section may be waived on refunds required of the grower when there was no intentional noncompliance on the part of the grower, as determined by AMS. Such decision to waive or not waive the interest shall be at the discretion of the Administrator or delegatee.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed for, those claims which are addressed in 14 CFR part 1403.

(f) Growers must refund to AMS any excess payments, as determined by AMS, with respect to such application. Such determinations shall be made by the Administrator or delegatee.

(g) In the event that a benefit under this part was provided as the result of erroneous information provided by the grower, or was erroneously or improperly paid for any other reason, the benefit must be repaid with any applicable interest, subject to paragraphs (c) and (d) of § 82.6.

§ 82.17 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance, or dissolution of a clingstone pech grower that is eligible to receive benefits in accordance with this part, any person or persons who would, under 7 CFR part 707 of this title, be eligible for payments and benefits covered by this part, may receive such benefits otherwise due the actual producer, as determined appropriate by AMS.

Dated: July 28, 2005.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–15231 Filed 8–2–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21166; Airspace Docket No. 05–AWP–4]

Proposed Establishment of Class E Airspace; Hana, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area at Hana, HI. The establishment of an Area Navigation (RNAV) Global Positioning System (GPS) Instrument Approach Procedure (IAP) RNAV (GPS) to Runway (RWY) 26 IAP and a RNAV Departure

Procedure (DP) at Hana Airport, Hana, HI has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the RNAV (GPS) RWY 26 and RNAV DP at Hana Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Hana Airport, Hana, HI.

DATES: Comments must be received on or before September 19, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, S.W., Washington, DC 20590–0001. You must identify the docket number FAA–2005–21166/ Airspace Docket No. 05–AWP–4, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Regional Western Terminal Operations, Federal Aviation Administration, at 15000 Aviation Boulevard, Lawndale, California 90261, telephone number (310) 725–6613.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, 310–725–6613.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2005–21166; Airspace Docket No. 05–AWP–4." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additional, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by establishing a Class E airspace area at Hana, HI. The establishment of a RNAV (GPS) RWY 26 IAP and a RNAV DP at Hana Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the RNAV (GPS) RWY 26 IAP and a RNAV DP at Hana Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the RNAV (GPS) RWY 26 IAP and a RNAV DP at Hana Airport, Hana, HI. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant role" 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would 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 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and Effective, September 16, 2004, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP HI E5, Hana, HI [NEW]

Hana Airport
(Lat. 20°47′44″ N, long. 156°00′52″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Hana Airport.

* * * * *

John Clancy,

Area Director, Western Terminal Operations.

[FR Doc. 05–15314 Filed 8–2–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–121584–05]

RIN 1545–BE57

Guidance Regarding the Simplified Service Cost Method and the Simplified Production Method

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the capitalization of costs under the simplified service cost method of the Income Tax Regulations and the simplified production method. The regulations affect taxpayers that use the simplified service cost method or the simplified production method for self-constructed assets that are constructed on a routine and repetitive basis in the ordinary course of their businesses. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by November 1, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–121584–05), 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–121584–05), 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 the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS and REG–121584–05 or RIN–1545–BE57).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Scott Rabinowitz, (202) 622–4970; concerning submission of comments and/or requests for a public hearing, LaNita VanDyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 263A of the Internal Revenue Code (Code). The temporary regulations provide that self-constructed property is considered produced on a routine and repetitive basis for purposes of the simplified service cost method and the simplified production method when numerous units of tangible personal property are mass-produced, *i.e.*, substantially identical assets are manufactured within a taxable year using standardized designs and assembly line techniques, *and* the recovery period of the assets under section 168(c) is not longer than 3 years. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

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. It also 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 the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the 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 business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. The IRS and the Treasury Department also request comments on whether additional simplified methods should be made available to taxpayers in certain industries. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Scott Rabinowitz of the Office of Associate Chief Counsel (Income Tax & Accounting). However other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par 2. Section 1.263A–1 is amended by revising paragraph (h)(2)(i)(D) and adding paragraphs (k) and (l) to read as follows:

§ 1.263A–1 Uniform capitalization of costs.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(D) [The text of this proposed paragraph (h)(2)(i)(D) is the same as the text of § 1.263A–1T(h)(2)(i)(D) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(k) [The text of this proposed paragraph (k) is the same as the text of § 1.263A–1T(k) published elsewhere in this issue of the **Federal Register**.]

(l) [The text of this proposed paragraph (l) is the same as the text of § 1.263A–1T(l) published elsewhere in this issue of the **Federal Register**.]

Par 3. Section 1.263A–2 is amended by revising paragraph (b)(2)(i)(D) and adding paragraphs (e) and (f) to read as follows:

§ 1.263A–2 Rules relating to property produced by the taxpayer.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(D) [The text of this proposed paragraph (b)(2)(i)(D) is the same as the text of § 1.263A–2T(b)(2)(i)(D) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(e) The text of this proposed paragraph (e) is the same as the text of § 1.263A–2T(e) published elsewhere in this issue of the **Federal Register**.]

(f) The text of this proposed paragraph (f) is the same as the text of § 1.263A–2T(f) published elsewhere in this issue of the **Federal Register**.]

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–15362 Filed 8–2–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 581

RIN 0702–AA51

Personnel Review Board

AGENCY: Department of the Army, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army proposes to amend its regulation on Army Board for Correction of Military Records to be in compliance with the United States District Court for the District of Columbia decision (*Daniel J. Lipsman* v. *Secretary of the Army—Civil Action No. 02–0151 (RMU)*, Document Nos. 18, 20, decided September 7, 2004, 2004 U.S. Dist. LEXIS 17866).

DATES: Comments submitted to the address below on or before September 2, 2005 will be considered.

ADDRESSES: You may submit comments, identified by "32 CFR Part 581 and RIN 0702-AA51 in the subject line, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-Mail: Hubert.Shaw@hqda.army.mil.* Include 32 CFR Part 581 and RIN 0702–AA51 in the subject line of the message.
- *Mail:* The Army Review Boards Agency, ATTN: Hubert S. Shaw, 1901 South Bell Street, 2nd Floor, Arlington, Virginia 22202–4508.

FOR FURTHER INFORMATION CONTACT: Hubert S. Shaw, 703–607–1779.

SUPPLEMENTARY INFORMATION:

A. Background

This rule has previously been published. Section 581.3 contained in 32 CFR part 581 provides Department of the Army policy, criteria and administrative instructions regarding an applicant's request for the correction of a military record. The Administrative Procedure Act, as amended by the Freedom of Information Act, requires that certain policies and procedures and other information concerning the Department of the Army be published in the **Federal Register**. The policies and procedures covered by this part fall into that category.

B. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the proposed rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

C. Unfunded Mandates Reform Act

The Department of the Army has determined that the Unfunded Mandates Reform Act does not apply because the proposed rule does not include a mandate that may result in estimated costs to State, local or tribal governments in the aggregate, or the private sector, of $100 million or more.

D. National Environmental Policy Act

The Department of the Army has determined that the National Environmental Policy Act does not apply because the proposed rule does not have an adverse impact on the environment.

E. Paperwork Reduction Act

The Department of the Army has determined that the Paperwork Reduction Act does not apply because the proposed rule does not involve collection of information from the public.

F. Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Property Rights)

The Department of the Army has determined that Executive Order 12630 does not apply because the proposed rule does not impair private property rights.

G. Executive Order 12866 (Regulatory Planning and Review)

The Department of the Army has determined that according to the criteria defined in Executive Order 12866 this proposed rule is not a significant regulatory action.

H. Executive Order 13045 (Protection of Children From Environmental Health Risk and Safety Risks)

The Department of the Army has determined that according to the criteria defined in Executive Order 13045 this proposed rule does not apply.

I. Executive Order 13132 (Federalism)

The Department of the Army has determined that according to the criteria defined in Executive Order 13132 this proposed rule does not apply because it will not have a substantial 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.

Carl W.S. Chun,

Director, Army Board for Correction of Military Records.

List of Subjects in 32 CFR Part 581

Administrative practice and procedure, Archives and Records, Military Personnel.

For reasons stated in the preamble the Department of the Army proposes to amend § 581.3 of part 581 to read as follows:

PART 581—PERSONNEL REVIEW BOARD

1. The authority citation for part 581 continues to read as follows:

Authority: 10 U.S.C. 1552, 1553, 1554, 3013, 3014, 3016; 38 U.S.C. 3103(a).

2. Amend § 581.3 by revising paragraphs (g)(4)(i) and (ii) to read as follows:

§ 581.3 Army Board for Correction of Military Records.

* * * * *

(g) * * *

(4) * * *

(i) If the ABCMR receives the request for reconsideration within 1 year of the ABCMR's original decision and if the ABCMR has not previously reconsidered the matter, the ABCMR staff will review the request to determine if it contains evidence (including, but not limited to, any facts or arguments as to why relief should be granted) that was not in the record at the time of the ABCMR's prior consideration. If new evidence has been submitted, the request will be submitted to the ABCMR for its determination of whether the new evidence is sufficient to demonstrate material error or injustice. If no new evidence is found, the ABCMR staff will return the application to the applicant without action.

(ii) If the ABCMR receives a request for reconsideration more than 1 year after the ABCMR's original decision or after the ABCMR has already considered one request for reconsideration, then the case will be returned without action and the applicant will be advised that his

next remedy is appeal to a court of appropriate jurisdiction.

* * * * *

[FR Doc. 05–15299 Filed 8–2–05; 8:45 am]

BILLING CODE 3710–08–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R10–OAR–2005–OR–0005; FRL–7944–2]

Approval and Promulgation of Air Quality Implementation Plans; Oregon; Correcting Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing to correct an error in the notice which approved the removal of Oregon's control technology guidelines for perchloroethylene (perc) dry cleaning systems and related definitions and provisions, published on December 1, 2004. Perc is a solvent commonly used in dry cleaning, maskant operations, and degreasing operations. In the notice published on December 1, 2004 (69 FR 69823), EPA inadvertently listed an incorrect State effective date in the incorporation by reference section which listed revised provisions of the Oregon Administrative Rules. This proposed action would correct the erroneous date so that the appropriate version of the Oregon Administrative Rules is incorporated by reference.

DATES: Comments must be received on or before September 2, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. R10–OAR–2005–OR–0005, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Agency Web Site: http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *Mail:* Colleen Huck, Office of Air, Waste and Toxics, AWT–107, EPA, Region 10, 1200 Sixth Ave., Seattle, Washington 98101.
- *Hand Delivery:* Colleen Huck, Office of Air, Waste and Toxics, AWT–107, 9th Floor, EPA, Region 10, 1200 Sixth Ave., Seattle, Washington 98101. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Colleen Huck at telephone number: (206) 553–1770, e-mail address: *Huck.Colleen@epa.gov*, fax number: (206) 553–0110, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: For further information, please see the direct final action, of the same title, which is located in the Rules and Regulations section of this **Federal Register**. EPA is publishing this action without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. A detailed rationale for the correction is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule.

If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. 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, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: July 18, 2005.

Julie M. Hagensen,

Acting Regional Administrator, Region 10.

[FR Doc. 05–15337 Filed 8–2–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

[MB Docket No. 05–210; FCC 05–120]

Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission adopted a Notice of Proposed Rulemaking (NPRM), seeking comment on a number of procedures designed to streamline the process of allocating new FM channels and modifying the communities of license of existing radio stations, and to reduce current backlogs in proceedings to amend the FM Table of Allotments. In the NPRM, the Commission also announced a freeze on all new petitions to amend the FM Table of Allotments, and announced its intention to open a 90-day window during which parties to pending proceedings to amend the FM Table of Allotments, in which Notices of Proposed Rulemaking have been released and comment and reply comment deadlines have passed, may universally settle all conflicts between their proposals and/or counterproposals, without limitation as to reimbursement.

DATES: Comments may be filed no later than October 3, 2005, and reply comments may be filed no later than November 1, 2005. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before October 3, 2005.

ADDRESSES: You may submit comments, identified by MB Docket No. 05–210, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- E-mail: *ecfs@fcc.gov.* Include the docket number in the subject line of the message. See the **SUPPLEMENTARY INFORMATION** section of this document for detailed information on how to submit comments by e-mail.
- Mail: 445 12th Street, SW., Washington, DC 20554.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Peter Doyle, Chief, Media Bureau, Audio Division, (202) 418–2700; Thomas Nessinger, Attorney-Advisor, Media Bureau, Audio Division, (202) 418–2700.

For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or via the Internet at *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), FCC 05–120, adopted June 9, 2005, and released June 14, 2005.

Initial Paperwork Reduction Act of 1995 Analysis

This NPRM contains proposed information collection requirements. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat 163 (1995). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the proposed information collection requirements contained in this NPRM, as required by the PRA. Public and agency comments on the PRA proposed information collection requirements are due October 3, 2005. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 116 Stat 729 (2002), *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees." The following existing information collection requirements would be modified if the proposed rules contained in the NPRM are adopted.

OMB Control Number: 3060–0027.

Title: Application for Construction Permit for Commercial Broadcast Station, FCC Form 301.

Form Number: FCC Form 301.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Estimated Number of Respondents: 3,318.

Estimated Time Per Response: 2 hours to 4 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Estimated Total Annual Burden: 8,593 hours.

Estimated Total Annual Costs: $45,465,547.00.

Privacy Impact Assessment: No impact(s).

Needs and Uses: FCC Form 301 and the applicable exhibits/explanations are required to be filed when applying for consent for a new AM or non-reserved band FM broadcast station construction permit, or for a minor modification to an AM or non-reserved band FM broadcast station permit or license. Also, in the NPRM the Commission proposes to allow AM and non-reserved band FM permittees and licensees to request a change of a station's community of license by minor modification application on FCC Form 301, with the applicant being required to attach an exhibit demonstrating that the proposed community of license change comports with the fair, efficient, and equitable distribution of radio service pursuant to section 307(b) of the Communications Act of 1934, as amended (47 U.S.C. 307(b)). Such community of license change applicants would also be required to provide local public notice. Additionally, the NPRM proposes to require parties filing a petition to amend the FM Table of Allotments (47 CFR 73.202) simultaneously to file FCC Form 301 for the proposed new facility, and proposes to add to FCC Form 301 a certification that the applicant intends to apply to participate in the auction for the new channel if allotted.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *Cathy.Williams@fcc.gov*, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Kristy_L.LaLonde@omb.eop.gov*, or via fax at 202–395–5167. If you would like to obtain or view a copy of this revised information collection, you may do so by visiting the FCC PRA web page at: *http://www.fcc.gov/omd/pra.*

Summary of Notice of Proposed Rule Making

1. In the 42 years since the FM Table of Allotments was established in 1963, the Commission's procedures for adding new allotments and modifying allotments listed in the Table have undergone few changes. It has become apparent that the current procedures can be inefficient and do not effectively limit participation to parties that are likely to seek new station construction permits through the FM auctions process. These difficulties were also noted by radio station licensee First Broadcasting Investment Partners, which filed a Petition for Rulemaking in March 2004. Based in large part on First Broadcasting's petition and comments filed in response to it, the Commission's Media Bureau presented a series of proposals to streamline and strengthen the Commission's procedures, consistent with the Commission's statutory obligation to promote the fair, efficient, and equitable distribution of radio services.

2. In the NPRM, first, the Commission seeks comment on a proposal to allow AM and non-reserved band FM licensees to change their communities of license by first come-first served minor modification applications. Currently FM licensees must file a rulemaking petition proposing a community of license change and then, if successful, must file a long-form (FCC Form 301) application implementing the change. AM licensees may only propose community of license changes during auction filing windows, and may only file long-form applications if they prevail under the Commission's auction procedures. The NPRM tentatively concludes that the Commission can eliminate the first step in these AM and FM procedures, by employing certain procedural safeguards and licensing standards. The NPRM proposes to limit such minor modification applications to proposals that are mutually exclusive with the applicant's existing facilities and that comply with spacing and other technical rules. An applicant would also be required to file an exhibit demonstrating that the proposed community change furthers the goals underlying section 307(b) of the Communications Act. The Commission seeks comment on these tentative proposals, particularly with regard to the effect on the fair, efficient, and equitable distribution of radio service under section 307(b) of the Communications Act. The Commission also seeks comment on other ways to ensure compliance with the goals of section 307(b) of the Communications Act. Is it reasonable for the Commission to shift to first come-first served filing procedures now that licensees have had over forty years to propose new or

modified allotments under the current rulemaking procedures? Both the allotment priorities and numerous policies developed in allocations rulemaking proceedings are designed to limit the clustering of stations in urbanized areas and to ensure adequate levels of remaining aural service when stations seek to change their communities of license. Also, spectrum congestion limits or precludes move-in opportunities in many markets. The Commission seeks comment on whether these well-developed policies are sufficient to limit the relocation of radio stations from rural areas to communities in or adjacent to Urbanized Areas. Should the Commission also limit community of license changes to situations in which the new community has fewer transmission services than the applicant's current community of license? Should additional conditions be placed on such applications to prevent such a shift in radio service, for example, should such changes be limited to communities with fewer transmission services than the applicant's current community of license? Should the proposed minor change filing procedure be limited to situations in which the applicant's current community of license satisfies a specific transmission or reception service floor? Should there be additional public notice requirements for such applicants, for example, should they be required to publish notice of the application in local newspapers and/or make on-air announcements disclosing the application and soliciting public comment? In the case of FM stations, should such applications be limited to those in which only the applicant's allotment would be changed, or should simultaneous applications to modify different stations pursuant to the contingent application rule (47 CFR 73.3517) be allowed? If the latter, should the contingent application rule be modified in order to allow more contingent applications to be filed simultaneously (47 CFR 73.3517(c) and (e))? Are there other procedures that should be implemented to ensure that section 307(b) of the Communications Act or any other concerns pertaining to applications to change a station's community of license will receive full consideration? Additionally, to avoid any issues arising under the Administrative Procedures Act, and because it may be that rulemaking proceedings are no longer necessary to modify FM stations' licensed communities due to the maturity of the FM service, the Commission seeks comment on whether the FM Table of Allotments should be removed from the Commission's rules, and henceforth existing FM stations would be allocated among communities solely through adjudicatory proceedings. Under this approach, the Table would continue to function as the Commission's basic plan for allotting new FM channels, and would be revised to reflect changes to FM station authorizations under the Commission's one-step and proposed new community of license change procedures. It is anticipated that the Commission would publish the FM Table of allotments by some means, for example, as a continually updated list of FM allotments in the Media Bureau's publicly accessible Consolidated Data Base System. Furthermore, under this approach new allotments would be added to the FM Table of Allotments using procedures similar to those currently set forth in § 1.420 of the Commission's rules (47 CFR 1.420), and the Commission would continue to apply the same substantive policies of section 307(b) of the Communications Act when comparing competing allotment proposals. Specifically, the Commission would adopt in part 73 procedures analogous to those contained in § 1.420 of the Commission's rules, to permit the filing of petitions to amend the FM Table of Allotments. In the case of new allotments, these procedures efficiently populate FM auction inventories, in turn enabling more frequent FM auctions (compared to auctions in the non-tabled AM service). Moreover, these procedures are needed to comply with the principles of section 307(b) of the Communications Act, which control notwithstanding that the Table may no longer be contained in the Commission's rules. The Commission seeks comment on this approach and the related rule changes it would require.

3. The next proposal in the NPRM requires a petitioner for a new FM channel allotment simultaneously to file Form 301 for the proposed facility with its petition, and to pay the Form 301 filing fee at that time. Current procedures provide an effective means of adding new FM allotments, which are then offered in broadcast auctions. However, in recent years it has become apparent that a disproportionate number of new FM allotments are being added by a relative handful of petitioners. While these petitioners are currently required to, and do, express their interest in applying for the allotments they propose, we have found that such petitioners rarely participate in broadcast auctions. By requiring Form 301 filing earlier in the process, the Commission intends to provide an incentive for only *bona fide* auction applicants to seek to add new FM allotments. To further ensure the *bona fides* of proponents for new FM allotments, the Commission requests comment on a proposal to add to Form 301 a certification, applicable only to those applicants simultaneously filing a petition or counterproposal for a new FM allotment, that the applicant intends to apply to participate in the auction for the new channel if allotted. The Commission specifically seeks comment on whether this proposal would create undue burdens and delays in processing or awarding new construction permits, and in particular invite comment on the likely effect of the proposal on the conduct of broadcast auctions and processing of auction applications. Comment is also sought on whether this proposal would impact small businesses, which include some owned by minorities and women. The Commission invites commenters to submit other proposals designed to address the problem of non-*bona fide* allotment petitioners, and any other comments on the most effective means to ensure that those seeking to add those allotments are also those willing to bid for and construct facilities at those communities.

4. The Commission also seeks comment on a proposal to limit to five the number of technically related modifications to the FM Table of Allotments proposed by any one party. Often, parties file proposals and counter-proposals that involve numerous changes to the FM Table of Allotments. Such complex proposals consume large amounts of staff resources. The Commission, in 1986, announced a policy whereby "absent special factors involving significant public interest benefits, or an assurance of agreement among affected stations to the proposal in advance of filing the petition, the staff has been instructed not to entertain proposals for changes in the [Table] which involve more than two other substitutions of channels occupied by existing FM or TV stations." *See Columbus, Nebraska, et al.*, 59 R.R.2d 1184 (1986). Implementation of this "Columbus, Nebraska Policy" has dramatically reduced burdens on the staff, yet as discussed above, significant staff resources are still consumed by large proposals and counterproposals even when all or most parties are in agreement as to the changes to the Table that are proposed. Limiting proposals to no more than five changes will expedite

staff processing of requested changes. Thus, in addition to the prohibition on proposals involving more than two involuntary channel substitutions, the Commission tentatively concludes that the total number of allotment proposals that may be set forth by a party in a given petition to amend the Table should be limited to five, unless the proponent(s) or counter-proponent(s) can demonstrate special factors involving significant public interest benefits. Failure to make such a showing would result in the proposal (or offending counterproposal) being returned with instructions to file separate proposals that conform to the numerical limit of five or fewer allotment proposals. While this might lead to greater numbers of petitions or other amendment proposals filed, those filed would be considerably less complex, enabling the staff more efficiently to process them. The Commission seeks comment on this proposal, including comments as to whether the maximum number of channel changes or additions should be greater or smaller than that proposed. Comment is also sought on ways in which to deter coordinated counterproposals designed to circumvent the limit on proposals by a party.

5. The Commission further seeks comment on whether, and under what circumstances, it should allow relocation of a community's sole local transmission service to become another community's first local transmission service. Currently, the Commission strongly disfavors such moves, having found that the public has a legitimate expectation that existing radio service will continue. Accordingly, the Commission only rarely allows removal of a community's sole local transmission service. Some parties have suggested that such station relocations can, in some circumstances, better serve the public interest by, for example, serving larger communities and populations. The Commission seeks comment concerning whether its current policy strongly disfavoring such moves best comports with the requirements of section 307(b) of the Communications Act of 1934, as amended (47 U.S.C. 151, *et seq.*) and, if not, when and under what circumstances the Commission should allow such station relocations. For example, based on the current application of the first local service preference, should the Commission require that the new community have a greater population than the community from which the station is to be relocated before allowing such a station move? If so, should the new community's population exceed the current community's by a certain percentage or (as is now the policy when comparing competing proposals for new first local transmission service) should the move-in community simply have a larger population? Should the service floor at the community losing local service be two stations, or should it be higher? If so, what level of service should remain? Should the level of reception service at the new community of license be taken into account and, if so, how? For example, should such station moves be prohibited when the new community already receives abundant service? Is there a ratio of reception services between the new and old communities that should be employed in making this determination and, if so, what ratio of reception service would prohibit such a proposed move? By what percentage, if any, should the Commission require that the population receiving principal community service at the new community exceed that receiving such service at the station's current community? Alternately, is it sufficient that the station merely serve more people at its new location? Should there be increased local notice or publication requirements for such a proposal in addition to those that might be imposed with regard to all city of license modification proposals? Should the Commission impose a transitional requirement on any licensee seeking such a move to serve the needs of both the old and move-in communities for a certain period of time? What other factors, if any, should be taken into account in making such a determination?

6. The Commission also proposes to eliminate a rule-based prohibition on electronic filing of documents in proceedings to amend the FM Table of Allotments (47 CFR 1.401(b)). Currently over 95 percent of broadcast applications are filed electronically, and these procedures have led to increased efficiency, transparency, and database integrity. As a first step toward extending those benefits to the FM allotment process, the Commission proposes removing the current prohibition against electronic filing of allocations documents. The Commission also seeks comment on whether and how best to enable electronic filing of proceedings to amend the FM Table of Allotments.

7. The Commission also announces a freeze on filing new petitions to amend the FM Table of Allotments. This will preserve the *status quo* and avoid increasing backlogs while the Commission solicits comments and considers the procedural changes proposed in the NPRM. Finally, the Commission announces a one-time settlement window, to commence on a date to be announced in a subsequent Public Notice, in which parties to pending allocations proceedings may universally settle conflicting proposals without limitation as to reimbursement (47 CFR 73.3525(a)(3)). This one-time settlement window is designed to eliminate much of the current allocations backlog.

8. Comments and Reply Comments. Pursuant to §§ 1.415 and 1.419 of the Commission's rules (47 CFR 1.415, 1.419), interested parties must file comments on or before October 3, 2005, and must file reply comments on or before November 1, 2005. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

9. Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cbg/ecfs*, or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web sites for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

10. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's

contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

11. Contact the FCC to request materials in accessible formats (braille, large print, electronic files, audio format, etc.) by e-mail at *FCC504@fcc.gov*, or call the Consumer & Governmental Affairs Bureau at 202–418–0531 (voice), 202–418–7365 (TTY).

12. The full text of the Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW, Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–05–120.pdf*. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

13. *Ex Parte* Rules. This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under § 1.1206(b) of the Commission's rules (47 CFR 1.1206(b)). *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

14. Initial Regulatory Flexibility Analysis. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rule-making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

15. As required by the Regulatory Flexibility Act of 1980, as amended (RFA) (5 U.S.C. 603), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided herein. The Commission will send a copy of this entire NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and the IRFA (or summaries thereof) will be published in the **Federal Register**.

16. Need For, and Objectives of, the Proposed Rules. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposals to streamline the process of allotting and modifying FM broadcast channel allotments, and modifying AM broadcast station communities of license. The Commission believes these proposals will make the process of allotting and modifying such channel allotments and community of license assignments faster and more efficient. Additional proposals will discourage non-*bona fide* proponents of new FM channel allotments from filing petitions for rulemaking, thus providing more opportunity for *bona fide* proponents, including small businesses. Also, the Commission proposes eliminating a rule-based prohibition on filing allotment proposals electronically, the first step toward enabling electronic filing of such proposals, which will be less expensive and more convenient for applicants.

17. Legal Basis. The authority for this proposed rulemaking is contained in sections 1, 2, 4(i), 303, and 307, of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, and 307.

18. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as encompassing the terms "small business," "small organization," and "small governmental entity." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

19. Radio Stations. The proposed rules and policies potentially will apply to all AM and commercial FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has $6 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number. According to Commission staff review of BIA Publications, Inc. Master Access Radio Analyzer Database on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations have revenue of $6 million or less. First Broadcasting, which filed the Petition for Rulemaking in this proceeding, is included in the definition of "small business." We note, however, that many radio stations are affiliated with much larger corporations having much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by any ultimate changes to the allocation rules.

20. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements. The proposed rule and procedural changes may impose some additional reporting requirements on existing and potential

radio licensees and permittees, insofar as some of the proposed changes would require the filing of application forms rather than rulemaking petitions. However, the forms to be filed would be existing FCC application forms with which broadcasters are already familiar, so any additional burdens would be minimal. Additionally, we propose imposing an additional rulemaking fee upon parties seeking to add new allotments to the FM Table of Allotments. We seek comment on the possible cost burden these requirements would place on small entities. Also, we seek comment on whether a special approach toward any possible compliance burdens on small entities might be appropriate.

21. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The Commission seeks comment on procedures to accomplish AM and FM community of license changes that will, in most instances, reduce the burdens on all broadcasters, including small entities, compared to current procedures. The Commission also seeks comment on whether certain aspects of its proposals would change or undermine current policies to limit the relocation of radio stations from small and/or rural communities to communities in or adjacent to urbanized areas. Proposed changes to Commission procedures for adding FM channel allotments to the FM Table of Allotments are designed to make the process faster and more efficient, reducing delays to broadcasters in implementing new radio service. The Commission also proposes requiring that petitioners for new FM channel allotments simultaneously file Form 301, and pay the prescribed filing fee for Form 301. While this requires payment of the filing fee earlier than is the case in current practice, to the extent that petitioners ultimately obtain construction permits for these allotments, it is a fee they would be required to pay in any event, therefore this requirement should impose a minimal burden on petitioners. To the extent that a rule change proposed herein enables electronic filing of petitions to amend the FM Table of Allotments and comments on such proposals, the Commission believes that such change will reduce burdens on all broadcasters, including small entities, by reducing the time and effort spent in preparing and submitting such documents in hard copy, as is the current practice. The Commission also seeks specific comments on the burden our proposals may have on small broadcasters. There may be unique circumstances these entities may face and we will consider appropriate action for small broadcasters at the time when a Report and Order is considered.

22. Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals. None.

23. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact Brian Millin at (202) 418–7426 (voice), (202) 418–7365 (TTY), or via e-mail at *Brian.Millin@fcc.gov*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–15427 Filed 8–2–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2006; MB Docket No. 05–228, RM–11255]

Radio Broadcasting Services: Kiowa, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division request comments on a petition for rule making filed by Charles Crawford proposing the allotment of Channel 233A at Kiowa, Kansas, as the community's second local FM transmission service. Channel 233A can be allotted to Kiowa in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.2 kilometers (8.9 miles) southeast to avoid short-spacings to the proposed allotment site for Channel 231C2 at Waynoka, Oklahoma, and to the licensed site for Station KCVW(FM), Channel 232C2, Kingman, Kansas. The coordinates for Channel 233A at Kiowa are 36–54–50 North Latitude and 98–23–27 West Longitude.

DATES: Comments must be filed on or before August 29, 2005, reply comments on or before September 13, 2005.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–228, adopted July 6, 2005, and released July 8, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications

Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Channel 233A at Kiowa.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–14965 Filed 8–2–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2018; MB Docket No. 05–229; RM–10780]

Radio Broadcasting Services; Rosebud, Tyler and Madisonville, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a Petition for Rule Making filed by Charles Crawford requesting the allotment of Channel 267A at Rosebud, Texas, as that community's first local aural transmission service. To accommodate this allotment, Petitioner requests a change in reference coordinates for vacant FM Channel 267A at Madisonville, Texas, which requires the reclassification of FM Station KNUE, Channel 268C, Tyler, Texas, to specify operation on Channel 268C0 pursuant to the reclassification procedures adopted by the Commission. *See Second Report and Order* in MM Docket 98–93, *1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules,* 65 FR 79773 (2000). An Order to Show Cause was issued to Capstar Royalty II Coporation, licensee of FM Station KNUE. Channel 267A can be allotted with a site restriction 9.1 kilometers (5.6 miles) southwest at reference coordinates 31–01–44 NL and 97–03–31 WL. To accommodate the proposed Rosebud allotment, we will propose the relocation of the reference coordinates for vacant Channel 267A at Madisonville, TX, with a site restriction of 11.6 kilometers (7.2 miles) northeast of Madisonville at reference coordinates 31–02–22 NL and 95–51–00 WL.

DATES: Comments must be filed on or before September 6, 2005, and reply comments on or before September 20, 2005. Any counterproposal filed in this proceeding need only protect FM Station KNUE, Tyler, Texas, as a Class C0 allotment.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 05–229, adopted July 13, 2005, and released July 15, 2005. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas is amended by adding Rosebud, Channel 267A, by removing Channel 268C and by adding Channel 268C0 at Tyler.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–14963 Filed 8–2–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2019; MB Docket No. 05–230; RM–11032]

Radio Broadcasting Services; Auxvasse and Crestwood, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a Petition for Rule Making filed by Charles Crawford requesting the allotment of Channel 235A at Auxvasse, Missouri, as that community's first local service. The proposal also requires the reclassification of Station KSHE(FM), Crestwood, Missouri, Channel 234C to specify operation on Channel 234C0 pursuant to the reclassification procedures adopted by the Commission. *See Second Report and Order* in MM Docket 98–93, *1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, 65 FR 79773 (2000). An Order to Show Cause was issued to Emmis Radio License, LLC, licensee of Station KSHE(FM). Channel 235A can be allotted at Auxvasse, Missouri, at Petitioner's requested site 10.3 kilometers (6.4 miles) southwest at reference coordinates 38–58–04 NL and 91–59–47 WL.

DATES: Comments must be filed on or before September 6, 2005, and reply comments on or before September 20, 2005. Any counterproposal filed in this proceeding need only protect Station KSHE(FM), Crestwood, Missouri, as a Class C0 allotment.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW.,

Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 05–230, adopted July 13, 2005, and released July 15, 2005. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri is amended by adding Auxvasse, Channel 235A, by removing Channel 234C and by adding Channel 234C0 at Crestwood.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–14960 Filed 8–2–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Delist *Sclerocactus wrightiae* (Wright Fishhook Cactus) and Initiation of a 5-Year Status Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of a 90-day petition finding and initiation of a 5-year status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS), announce a 90-day finding for a petition to remove *Sclerocactus wrightiae* (Wright fishhook cactus), throughout its range, from the Federal list of threatened and endangered species, pursuant to the Endangered Species Act of 1973, as amended (Act). We reviewed the petition and supporting documentation and find that there is not substantial information indicating that delisting of Wright fishhook cactus may be warranted. Therefore, we will not be initiating a further 12-month status review in response to this petition. However, we are initiating a 5-year review of this species under section 4(c)(2)(A) of the ESA that will consider new information that has become available since the listing of the species. This will provide the States, Tribes, other agencies, university researchers, and the public an opportunity to provide information on the status of the species. We are requesting any new information on the Wright fishhook cactus that has become available since its original listing as an endangered species in 1979.

DATES: The finding announced in this document was made on August 3, 2005. To be considered in the 5-year review, comments and information should be submitted to us by October 3, 2005.

ADDRESSES: Data, information, written comments and materials, or questions concerning this petition finding and 5-year review should be submitted to the Field Supervisor, Utah Ecological Services Office, U.S. Fish and Wildlife Service, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119. The complete file for this finding is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Heather Barnes, Botanist, (*see* **ADDRESSES**) (telephone 801–975–3330).

SUPPLEMENTARY INFORMATION:

Background

Sclerocactus wrightiae (Wright fishhook cactus) is a small barrel shaped cactus, with short central spines. Mature adults produce vessel-shaped, cream-colored flowers with magenta filaments. Wright fishhook cactus is known to occur across portions of four counties in Utah. It has been found on soil formations, such as Emery sandstone, Mancos shale, Dakota sandstone, Morrison, Summerville, Curtis, Entrada sandstone, Carmel, Moenkopi, and alluvium (Neese 1987; Clark and Groebner 2003). Vegetation associations include semi-barren sites within desert scrub or open pinyon juniper woodland communities at 1,300 to 2,300 meters (4,200 to 7,600 feet) in elevation. On October 11, 1979, we listed Wright fishhook cactus as an endangered species (44 FR 58866) based on its limited population size and distribution, as well as known and potential threats from collection, mineral resource exploration and extraction activities, and off-road vehicle (ORV) use.

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. "Substantial information" is defined in 50 CFR 424.14(b) as "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted." Petitioners need not prove that the petitioned action is warranted to support a "substantial" finding; instead, the key consideration in evaluating a petition for substantiality involves demonstration of the reliability and adequacy of the information supporting the action advocated by the petition. We do not conduct additional research at this point, nor do we subject the petition to rigorous critical review. If we find substantial information exists to support the petitioned action, we are required to promptly commence a status review of the species (50 CFR 424.14).

On February 3, 1997, we received a petition from the National Wilderness Institute, to remove Wright fishhook cactus from the List of Endangered and Threatened Wildlife and Plants on the

basis of "original data error." To the maximum extent practicable, we are to make the finding within 90 days of our receipt of the petition, and must promptly publish the finding in the **Federal Register**. On June 29, 1998, we provided a written response to the petitioner explaining our inability to act upon the petition due to the low priority assigned to delisting petitions in our Listing Priority Guidance Fiscal Year 1997 (61 FR 64475). That guidance identified delisting activities as the lowest priority (Tier 4). Due to the large number of higher priority listing actions and a limited listing budget, we did not conduct any delisting activities during the Fiscal Year 1997. On May 8, 1998, we published the 1998 and 1999 Listing Priority Guidance in the **Federal Register** (63 FR 25502) and, again, placed delisting activities at the bottom of our priority list. Beginning in 1999, work on delisting (including delisting petition findings) was included in the line item for the recovery program instead of the listing program (64 FR 27596). Since 1999, higher priority work has further precluded our ability to act upon this petition.

Review of the Petition

At the time of listing, in 1979, 5 scattered cactus populations, which included at least 14 occupied sites, were known to occur in Emery and Wayne Counties, Utah, but the plant was not abundant at any 1 location (44 FR 58866: Neese 1986). The petition cited our 1990 Report to Congress: Endangered and Threatened Species Recovery Program (1990 Report to Congress), which said, "Population and habitat inventories have identified a greater abundance, range distribution, and additional populations of this species than originally known (USFWS 1990)." By July 1990, inventories by Neese (1987) and Kass (1990) increased the known distribution within Emery and Wayne Counties by documenting 212 occupied sites, but provided no population estimate. As of April 2005, inventories have documented Wright fishhook cactus in portions of Utah's Emery County, Sevier County, Wayne County, and Garfield County at a total of 264 sites (Neese 1987; Kass 1990; San Juan College 1994; Clark 2001, 2002a, 2002b; Intermountain Ecosystems 2002; Clark and Groebner 2003; Clark *et al.* 2004).

At the time of listing, a population estimate was not available. The 1982 Technical Review Draft for the *Sclerocactus wrightiae* Recovery Plan provided a population estimate of 2,000 individuals (USFWS 1982). This estimate was not included in the final recovery plan because complete inventory and population counts had not been conducted, casting doubt on the figure's accuracy (USFWS 1985). Based on recent actual counts of individual cacti and recent population estimates, the population total may range from 4,500 to 21,000 individuals (Clark 2001, 2002a, 2002b; Intermountain Ecosystems 2002; Clark and Groebner 2003; Clark *et al.* 2004; Clark 2005 unpublished excel data; Kass 1990; Neese 1987). The high end of this range is based on estimates of questionable reliability. For example, at one site 18 cacti were counted, but the estimated population suggested there may be as many as 500 individuals (Heil 1994). At another site, 384 plants were counted, but the population was estimated to potentially include as many as 10,000 to 15,000 cacti (Heil 1994). Thus, the Service considers the high end of this range an overestimate.

From 1999 to 2002, an interagency rare plant team (Clark 2002a) revisited 104 known Wright fishhook cacti sites where at least 10 years had passed since the last survey, as documented by Neese (1987) and Kass (1990). Sixty-five percent of these sites (68 sites) had fewer or no cacti when revisited, while 35 percent (36 sites) had the same or a greater number of individuals present (Clark 2001, 2002a, 2002b; Intermountain Ecosystems 2002; Clark and Groebner 2003; Clark *et al.* 2004; unpublished excel data Clark 2005, Kass 1990, Neese 1987). Based on demographic monitoring information collected from 1993 to 2000, Kass (2001a; Intermountain Ecosystems 2003) found—(1) No sizable populations with adults larger than 9.0 centimeters (3.5 inches) wide, which represent the most reproductive size-class; (2) that populations showed low recruitment with a mortality-to-recruitment ratio of 2.5 to 1; and (3) the species was experiencing a slow decline. Overall, the species appears to be experiencing a population recession (Kass, pers. comm. 1997; Kass, pers. comm. 2004). Documented declines appear to be linked to—(1) Changes in reproductive age-class structure (primarily influenced by cactus borer beetle (*Moneilma semipunctatum*) and collection activities); (2) direct mortality (the documented causes of which include cactus borer beetle predation, cattle trampling, and crushing by ORVs); and (3) habitat disturbance (including cattle use, ORV activities, hiking and horse trails, dirt bikes, non-designated parking, road grading, and group camping) (Clark and Groebner 2003; Clark *et al.* 2004; Kaas 2001a, 2001b).

Conservation Status

In addition to discussing the distribution, status and trends of the species, the petition also asserts that "other new scientific information gathered since the time of listing already in the possession of the USFWS" indicates that the species should be delisted. Because the ESA requires an analysis of the threats faced by the species before delisting can occur, we consider that the petition is referencing information affecting these threats. Therefore, what follows below is a preliminary review of the factors affecting this species.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The 1979 listing included mineral exploration, ORV use, and development for a power generation station as threats to the species' habitat and range (44 FR 58866). Additionally, the best scientific and commercial information currently available suggests that direct mortality has been caused by cattle trampling and crushing by ORVs, and that habitat disturbance has been caused by cattle use, ORV activities, hiking and horseback riding, dirt bike use, non-designated parking, road grading, and group camping when conducted in non-designated areas (Clark and Groebner 2003; Clark *et al.* 2004; Kaas 2001a, 2001b). The petition provided no information addressing these factors.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The original listing stated that "one of the major factors in the decline of this species at present is field collection by amateur and professional cactus fanciers for commercial and hobby purposes. These fanciers could quickly reduce known populations if protective measures are not initiated" (44 FR 58866). Documented illegal collection activities continue to be a significant factor negatively affecting reproduction and population structure (Clark and Groebner 2003; Clark *et al.* 2004; Kaas 2001a, 2001b). The petition provided no information addressing this factor.

C. Disease or Predation

The original listing suggested disease and predation were not factors impacting the extinction probability of Wright fishhook cactus (44 FR 58866). The best scientific and commercial information currently available suggests predation by the cactus borer beetle, which may select for larger adult cacti, is causing direct mortality and affecting population age-class structure (Clark

and Groebner 2003; Clark *et al.* 2004; Kaas 2001a, 2001b). The petition provided no information addressing this factor.

D. The Inadequacy of Existing Regulatory Mechanisms

The original listing suggested that Utah State law provided no protections for the species (44 FR 58866); the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) provided protection against international trade, but "[did] not help regarding internal trade" (44 FR 58866); and "Bureau of Land Management (BLM) regulations offer some protection to vegetative resources, but do not address Wright fishhook cactus directions" (44 FR 58866). The petition did not discuss the adequacy of regulatory measures.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The original listing suggested that the species was "extremely limited in range * * *, extremely vulnerable to any sort of disturbance and could be completely extirpated by even the most trivial mishap" (44 FR 58866). The petition cites our 1990 Recovery Report to Congress, which suggested "a greater abundance, range distribution, and additional populations of this species than originally known" (USFWS 1990). Individual sites remain vulnerable to extirpation through disturbance. Many of the known Wright fishhook cactus sites are small in number (less than 25 plants) and widely separated in distance (Clark 2001, 2002a, 2002b; Intermountain Ecosystems 2002; Clark and Groebner 2003; Clark *et al.* 2004; Kass 1990; Neese 1987). Across a 10-year period, 65 percent of documented populations experienced a decline or extirpation (Clark 2001, 2002a, 2002b; Intermountain Ecosystems 2002; Clark and Groebner 2003; Clark *et al.* 2004; Clark 2005 unpublished excel data; Kass 1990; Neese 1987). Based on the above discussion, we do not believe that the petition has presented substantial scientific information to indicate that other natural or manmade factors no longer threaten the continued existence of Wright fishhook cactus throughout all or a significant portion of the species' range.

Finding

We have reviewed the petition and literature cited in the petition and evaluated that information in relation to other pertinent literature and information available in our files. Although greater population numbers and distribution of Wright fishhook cactus are known to occur today compared to available information at the time of the 1979 listing, recent site-specific population threats and declines also have been documented (Kass 2001a; Kass 2001b; Clark and Groebner 2003; Clark *et al.* 2004). The petitioner stated that "other new scientific information gathered since the time of listing which is in possession of the Service" supports delisting; however, the petition did not identify this new scientific information. In addition, the petitioner did not include any detailed narrative justification for the delisting of Wright fishhook cactus or provide information regarding the status of the species over a significant portion of its range or include any persuasive supporting documentation for the recommended administrative measure to delist the species. After this review and evaluation, we find the petition does not present substantial information to indicate that delisting the Wright fishhook cactus may be warranted at this time.

Five-Year Review

Under the Act, the Service maintains a List of Endangered and Threatened Wildlife and Plant species at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. We are then, under section 4(c)(2)(B), to determine on the basis of such a review, whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our initiation of a 5-year review of Wright fishhook cactus.

Information Solicited

To ensure that the 5-year review is complete, we are soliciting any additional information, comments, or suggestions on Wright fishhook cactus from the public, other concerned governmental agencies, Tribes, the scientific community, industry, environmental entities, or any other interested parties. Information sought includes any data regarding historical and current distribution, biology and ecology, ongoing conservation measures for the species, and threats to the species. We also request information regarding the adequacy of existing regulatory mechanisms.

The 5-year review will consider the best scientific and commercial data regarding the Wright fishhook cactus that has become available since the current listing determination or most recent status review, such as:

(1) Species biology, including but not limited to population trends, distribution, abundance, demographics, genetics, and taxonomy;

(2) Habitat conditions, including but not limited to amount, distribution, and suitability;

(3) Conservation measures that have been implemented that benefit the species;

(4) Threat status and trends; and

(5) Other new information or data.

If you wish to comment on the 5-year review, you may submit information to the Field Supervisor, Utah Ecological Services Office (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

References Cited

A complete list of all references cited herein is available upon request from the Utah Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES**).

Author

The primary author of this document is Heather Barnes, Botanist, Utah Ecological Services Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

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

Dated: July 19, 2005.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 05–15301 Filed 8–2–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU22; 1018–AI48

Endangered and Threatened Wildlife and Plants; Proposed Rule To Remove the Arizona Distinct Population Segment of the Cactus Ferruginous Pygmy-Owl From the Federal List of Endangered and Threatened Wildlife; Proposal To Withdraw the Proposed Rule To Designate Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), under the authority of the Endangered Species Act of 1973 (Act), as amended, propose to remove the Arizona distinct population segment (DPS) of the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) (pygmy-owl) from the Federal List of Endangered and Threatened Wildlife and accordingly to eliminate its designated critical habitat. The Arizona DPS of the pygmy-owl was listed as endangered on March 10, 1997 (62 FR 10730), and critical habitat was designated on July 12, 1999 (64 FR 37419). On January 9, 2001, a coalition of plaintiffs filed a lawsuit with the District Court of Arizona challenging the validity of our listing of the pygmy-owl as a DPS and the designation of its critical habitat. After the District Court of Arizona remanded the designation of critical habitat (*National Association of Home Builders* et al. v. *Norton*, Civ.–00–0903–PHX–SRB), we proposed a new critical habitat designation on November 27, 2002 (67 FR 7102). Ultimately, as a result of this lawsuit, the United States Court of Appeals for the Ninth Circuit issued an opinion on August 19, 2003, stating that "the FWS acted arbitrarily and capriciously in designating the Arizona pygmy-owl population as a DPS under the *DPS Policy*" (*National Association of Home Builders* v. *Norton*, 340 F. 3d 835, 852 (9th Cir. 2003)). In light of the Ninth Circuit's opinion, we have reassessed the application of the DPS significance criteria to the Arizona pygmy-owl. Based on our assessment, we do not believe that the available information and science satisfy the criteria to indicate that pygmy-owls in Arizona are an entity that qualifies for listing under the Act. Accordingly, we propose to remove the Arizona population of pygmy-owls from the list in 50 CFR 17.11, remove the critical habitat designation for this population at 50 CFR 17.95, and withdraw our November 27, 2002, proposed rule to designate new critical habitat.

DATES: We will accept comments until October 3, 2005. Public hearing requests must be received by September 19, 2005.

ADDRESSES: Comments and materials concerning the proposed delisting of the Arizona DPS of the pygmy-owl should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951. Written comments may also be sent by facsimile to 602/242–2513. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor (*see* **ADDRESSES**) (telephone 602/242–0210; facsimile 602/242–2513).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be based on the best available information. We have gathered and evaluated new information related to the pygmy-owl that has become available since the 1997 listing and are seeking any other pygmy-owl information. We will continue to support surveys of pygmy-owls in Mexico to further elucidate the status of the species in Mexico, and to identify threats to the population.

We are soliciting comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We are particularly interested in comments concerning:

(1) Biological, genetic, and/or morphological data related to the taxonomic classification of the pygmy-owl throughout its current range;

(2) The location and characteristics of any additional populations not considered in previous work that might have bearing on the current population status;

(3) Additional information related to current versus historical range, current distribution, genetic diversity, and population sizes of the Arizona pygmy-owl population and its contribution to the taxon as a whole;

(4) Status of the pygmy-owl in Mexico, particularly threats to populations or habitat; and

(5) Information related to discreteness, significance, and conservation status of any potential pygmy-owl DPS.

We will take into consideration the comments and any additional information received, and such communications may lead to a final determination that differs from this proposal.

Background

The cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) (pygmy-owl) is in the order Strigiformes and the family Strigidae. It is a small bird, approximately 17 centimeters (cm) (6.75 inches (in)) long. Males average 62 grams (g) (2.2 ounces (oz)), and females average 75 g (2.6 oz). The pygmy-owl is reddish brown overall, with a cream-colored belly streaked with reddish brown. Color may vary, with some individuals being more grayish brown. The crown is lightly streaked, and a pair of black/dark brown spots outlined in white occur on the nape suggesting "eyes." This species lacks ear tufts, and the eyes are yellow. The tail is relatively long for an owl and is colored reddish brown with darker brown bars (Proudfoot and Johnson 2000). The pygmy-owl is primarily diurnal (active during daylight) with crepuscular (active at dawn and dusk) tendencies. They can be heard making a long, monotonous series of short, repetitive notes, mostly during the breeding season (Proudfoot and Johnson 2000).

The pygmy-owl is one of four subspecies of the ferruginous pygmy-owl. It occurs from lowland central Arizona south through western Mexico to the States of Colima and Michoacan, and from southern Texas south through the Mexican States of Tamaulipas and Nuevo Leon. Only the Arizona population of the pygmy-owl is listed as an endangered species (62 FR 10730; March 10, 1997).

Historically, pygmy-owls were recorded in association with riparian woodlands in central and southern Arizona (Bendire 1892; Gilman 1909; Johnson *et al.* 1987). Plants present in these riparian communities included cottonwood (*Populus fremontii*), willow (*Salix* spp.), ash (*Fraxinus velutina*), and hackberry (*Celtis* spp.). However, recent records have documented that pygmy-

owls are found in a variety of vegetation communities such as riparian woodlands, mesquite (*Prosopis velutina* and *P. glandulosa*) bosques (Spanish for woodlands), Sonoran desertscrub, semidesert grassland, and Sonoran savanna grassland communities (Monson and Phillips 1981; Johnson and Haight 1985; Proudfoot and Johnson 2000) (see Brown 1994 for a description of these vegetation communities). While native and nonnative plant species composition differs among these communities, there are certain unifying characteristics such as (1) the presence of vegetation in fairly dense thickets or woodlands, (2) the presence of trees, saguaros (*Carnegiea giganteus*), or organ pipe cactus (*Stenocereus thurberi*) large enough to support cavities for nesting, and (3) elevations below 1,200 meters (m) (4,000 feet (ft)) (Swarth 1914; Karalus and Eckert 1974; Monson and Phillips 1981; Johnsgard 1988; Enriquez-Rocha *et al.* 1993; Proudfoot and Johnson 2000). Large trees provide canopy cover and cavities used for nesting, while the density of mid- and lower-story vegetation provides foraging habitat and protection from predators and contributes to the occurrence of prey items (Wilcox *et al.* 2000).

Previous Federal Action

On May 26, 1992, a coalition of environmental organizations (Galvin *et al.* 1992) petitioned us to list the entire cactus ferruginous pygmy-owl subspecies as endangered under the Act. We published a finding that the petition presented substantial scientific or commercial information indicating that listing of the pygmy-owl may be warranted and commenced a status review of the subspecies (58 FR 13045; March 9, 1993). As a result of information collected and evaluated during the status review, including information collected during a public comment period, we proposed to list the pygmy-owl as endangered with critical habitat in Arizona and threatened in Texas (59 FR 63975; December 12, 1994). After a review of all comments received in response to the proposed rule, we published a final rule listing the pygmy-owl as endangered in Arizona (62 FR 10730; March 10, 1997). In that final rule, we determined that listing in Texas was not warranted and that critical habitat designation for the Arizona population was not prudent.

On October 31, 1997, the Southwest Center for Biological Diversity filed a lawsuit in Federal District Court in Arizona against the Secretary of the Department of the Interior for failure to designate critical habitat for the pygmy-owl and a plant, *Lilaeopsis schaffneriana var. recurva* (Huachuca water umbel) (*Southwest Center for Biological Diversity* v. *Babbitt*, CIV 97–704 TUC ACM). On October 7, 1998, the District Court issued an order that, along with subsequent clarification from the Court, required proposal of critical habitat by December 25, 1998, followed by a final determination 6 months later.

In September 1998, we appointed the Cactus Ferruginous Pygmy-owl Recovery Team (Recovery Team), comprised of biologists (pygmy-owl experts and raptor ecologists) and representatives from affected and interested parties (*i.e.*, Federal and State agencies, local governments, the Tohono O'odham Nation, and private groups). On January 9, 2003, we published a notice of availability in the **Federal Register** (68 FR 1189) opening the public comment period for the draft pygmy-owl recovery plan until April 9, 2003. On April 30, 2003 (68 FR 23158), we reopened the public comment period on the recovery plan until June 30, 2003.

On December 30, 1998, we proposed to designate critical habitat in Arizona for the pygmy-owl (63 FR 71820). On April 15, 1999, we released the draft economic analysis on proposed critical habitat and reopened the public comment period for 30 days (64 FR 18596). On July 12, 1999, we published our final critical habitat determination (64 FR 37419), essentially designating the same areas as were proposed.

On January 9, 2001, a coalition of plaintiffs filed a lawsuit with the District Court of Arizona challenging the validity of the Service's listing of the Arizona population of the pygmy-owl as an endangered species and the designation of its critical habitat. On September 21, 2001, the Court upheld the listing of the pygmy-owl in Arizona but, at our request, and without otherwise ruling on the critical habitat issues, remanded the designation of critical habitat for preparation of a new analysis of the economic and other effects of the designation (*National Association of Home Builders* et al. v. *Norton*, Civ.–00–0903–PHX–SRB). The Court also vacated the critical habitat designation during the remand. Subsequently, the Court ordered that we submit the critical habitat proposed rule to the **Federal Register** on or before November 15, 2002. On November 27, 2002, we published the proposed rule to designate critical habitat for the pygmy-owl (67 FR 7102) and opened a public comment period on the proposed rule and the draft economic analysis until February 25, 2003. We extended the comment period on February 25, 2003, until April 25, 2003 (68 FR 8730). We then reopened the comment period on April 28, 2003, until June 27, 2003 (68 FR 22353). Due to a lack of funding, work on the final rule designating critical habitat for the pygmy-owl was suspended in April 2003.

The plaintiffs appealed the District Court's ruling on the listing of the pygmy-owl as a distinct population segment. On August 19, 2003, the Ninth Circuit Court of Appeals upheld the Service's determination that the Arizona pygmy-owl population was discrete, but found that the Service did not articulate a rational basis for finding that the Arizona pygmy-owl population was significant to the taxon, as discussed in further detail below (*National Association of Home Builders* v. *Norton*, 340 F. 3d. at 852). The judgment of the District Court was reversed, and the case was remanded to the District Court for further proceedings consistent with the Ninth Circuit's opinion.

The Ninth Circuit's opinion and the Service's lack of funding to complete work on the final critical habitat designation prompted us to file a declaration with the District Court of Arizona requesting to stay or modify the Court-ordered critical habitat completion deadline of September 29, 2003. On September 29, 2003, the Court granted a stay pending further order of the Court.

On October 1, 2003, the interveners-appellees petitioned for a rehearing from the Ninth Circuit. That request was denied. On November 12, 2003, the plaintiffs filed a motion with the District Court seeking removal of the listing based on the Ninth Circuit's ruling. On December 10, 2003, the Service filed a response agreeing that removal of the listing was appropriate. The motion also indicated that the Service was undertaking an internal review of the current status of the pygmy-owl in the United States and Mexico and was engaged in ongoing surveys of the species. The interveners in the case opposed the plaintiffs' motion and disputed the contention that the listing rule should be removed.

On June 25, 2004, the District Court for the District of Arizona (CV 00–0903 PHX–SRB) remanded the listing rule to the Service for reconsideration consistent with the Ninth Circuit's ruling and ordered that the pygmy-owl listing should remain in place for the duration of the Service's deliberations. On January 31, 2005, pursuant to the District Court's order, we filed a status report with the District Court regarding our reconsideration of the listing rule for the pygmy-owl. This proposed rule to delist the Arizona DPS of the pygmy-owl is the result of our evaluation of

whether the DPS is a listable entity under the Act.

Distinct Vertebrate Population Segment

We must consider a species for listing under the Act if available information indicates that such an action might be warranted. "Species" is defined by the Act as including any species or subspecies of fish and wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). We, along with the National Marine Fisheries Service (National Oceanic and Atmospheric Administration—Fisheries), developed the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS Policy) (61 FR 4722) to help us in determining what constitutes a DPS. Under this policy, we use three criteria to assess whether a population under consideration for listing may be recognized as a DPS: (1) Discreteness of the population in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing.

A population segment may be considered discrete if it satisfies either one of the following conditions: (1) Marked separation from other populations of the same taxon (a group of organisms that form a unit of classification, *e.g.*, a family, genus, species, subspecies) resulting from physical, physiological, ecological, or behavioral factors, including genetic discontinuity; or (2) populations delimited by international boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of 4(a)(1)(D) of the Act.

If a population is considered discrete under one or more of the above conditions, its biological and ecological significance is assessed. Measures of significance may include, but are not limited to, the following: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historical range; and (4) evidence the discrete population segment differs markedly from other populations of the taxon in its genetic characteristics.

If a population segment is discrete and significant, its evaluation for endangered or threatened status will be based on the Act's definitions of those terms and a review of the factors enumerated in section 4(a). Endangered means the species is in danger of extinction throughout all or a significant portion of its range. Threatened means the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

Delisting Analysis: Proposed Application of the Significance Criteria to the Pygmy-Owl in Arizona

In the discussion below we provide our preliminary analysis of the significance of the Arizona DPS in light of our DPS policy and the Ninth Circuit's ruling in this case. In doing so we considered information known at the time of the listing of the pygmy-owl, as well as information obtained subsequently. This is consistent with the June 25, 2004, ruling by the District Court remanding the rule back to the Service for reconsideration, which held that once a rule has been declared arbitrary and capricious and it is remanded to the agency for further consideration, the agency may use all information available at the time of reconsideration. Prior to making a final determination we will consider any new information obtained during the public comment period and make any necessary revisions.

(1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon.

Approximately three quarters of the distribution of the pygmy-owl occurs within tropical and subtropical plant communities. This includes pygmy-owls of southern Texas south through the Mexican States of Tamaulipas and Nuevo Leon, which occupy mesquite forest, riparian forest, thorn forest, tropical deciduous forest, heavy riparian forest, and areas more tropical in nature, including cypress groves (Cartron *et al.* 2000b; Proudfoot and Johnson 2000; Leopold 1950). It also includes areas in southern Sonora, Sinaloa, and Nayarit where pygmy-owls occur within the tropical Sinaloan thornscrub and Sinaloan deciduous forest community types and associated riparian communities (Leopold 1950; Brown 1994; Phillips and Comus 2000).

Approximately one quarter of the distribution of pygmy-owls falls within desert plant communities. This includes pygmy-owls in Arizona south through western Mexico into the State of Sonora. In Arizona, the pygmy-owl is found within Sonoran Desert scrub or semidesert grassland biotic communities and associated riparian and xeroriparian (dry washes) communities (Cartron *et al.* 2000b; Proudfoot and Johnson 2000). In northern Sonora, Mexico, the ecological setting in which the pygmy-owl is found exhibits similar ecological conditions to the range of the Arizona pygmy-owl with regard to vegetation, climate, soils, etc. (Leopold 1950; Brown 1994; Phillips and Comus 2000; *http://mexicochannel.net/maps*).

In northern Sonora, Mexico, millions of acres of Sonoran Desert and thornscrub are being converted to buffelgrass (*Pennisetum ciliaris*). This direct loss of habitat from the conversion to buffelgrass also results in an indirect loss of habitat because of invasion of buffelgrass into adjacent areas and increased fire frequency and intensity in buffelgrass savannas (Burquez-Montijo *et al.* 2002). Little is known about the direct effects of fire on pygmy-owl behavior or distribution. We have no research information at our disposal that follows the behavior of and impacts to owls before, during and following natural fire events. Flesch (2003) concluded that the conversion of native vegetation to buffelgrass savannas constitutes a serious threat to pygmy-owls by eliminating or suppressing regeneration of large columnar cacti in northern and central Sonora, especially in areas where saguaros are already uncommon (Flesch 2003). Buffelgrass areas have significantly lower species diversity and reduced structural complexity than the native desert scrub (Van Devender and Dimmit 2000). Pygmy-owls were found in or adjacent to buffelgrass clearings that formed a mosaic of artificial savannah and native vegetation (Flesch 2003). The conversion of native vegetation to buffelgrass and the associated direct and indirect effects on habitat are an ongoing threat to pygmy-owls in Mexico (Flesch 2003). Survey data indicate that pygmy-owls are patchily distributed in Sonora, Mexico (Flesch 2003). This conversion of native vegetation to buffelgrass may be serving to create an ecological setting that is very different than that occupied by Arizona pygmy-owls.

Johnson *et al.* (2003) examined previous population and site locations for owls between 1872 and 1971. They found that, historically, the owl used riparian zones along streams and later transitioned to the more xeric habitat of cacti. They believed a direct correlation exists between the timeframe of the 1920s, when numerous water projects

were constructed resulting in reduced stream flows, and a downward trend in population numbers as compared to 1880–1920. Thus, their work argues against a clear indication that more current events resulted in population reductions, or that there has been a precipitous decline since the changes that occurred just after the turn of the century.

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon.

In the listing rule (March 10, 1997; 62 FR 10730), we found that the gap in the range of the taxon through loss of the Arizona pygmy-owls would be significant because it would: (a) Decrease the genetic variability of the taxon: (b) reduce the current range of the taxon; (c) reduce the historical range of the taxon; and (d) extirpate the western pygmy-owls from the United States.

With regard to genetic variability, factor (a) above, in our listing rule we were able to determine genetic distinctness between western and eastern pygmy-owls; however, we did not have evidence of genetic differences between pygmy-owls in Arizona and northwestern Mexico. Proudfoot and Slack (2001) present the most current and extensive work on the genetics of the pygmy-owl. They found that there were distinct differences between pygmy-owls in Arizona and Texas. Their work also showed genetic differences between pygmy-owls in eastern and western Mexico. However, we have no evidence of a marked genetic difference between the Arizona pygmy-owls and those in the rest of the western range. Glenn Proudfoot, Texas A&M University, will shortly complete some additional pygmy-owl genetic analysis using a different methodology (S. Richardson, pers. comm., 2005). These analyses are expected to be available very soon and may be relevant to our final decision. We will review this information when it becomes available.

Given the genetic and geographic separation between the eastern and western pygmy-owls and the habitat differences within the western population of desert and subtropical/tropical plant communities, Arizona pygmy-owls at the northern periphery of the western range represent a potential source of genetic diversity within the range of the taxon. Recent pygmy-owl genetic work, done by Proudfoot at Texas A&M, presents evidence that genetic divergence occurs in both Arizona and Sonora, Mexico. A distinct genetic clade exists in northwest Tucson and genetic separation exists between Sonora and Sinaloa indicating that separate groups of pygmy-owls, including Arizona, contribute to the overall genetic diversity of this subspecies (Proudfoot and Slack 2001, Proudfoot 2005). Genetic divergence tends to occur at the periphery of a species' range (Lesica and Allendorf 1995). The peripheral nature of the Arizona pygmy-owls may increase the potential for the population to diverge from populations in Sonora and Sinaloa, Mexico. Because peripheral populations may be isolated to some extent from core populations, peripheral populations may become genetically distinct because of genetic drift (random gene frequency changes in a small population due to chance alone) and divergent natural selection (the natural process by which organisms leave differentially more or fewer descendants than other individuals because they possess certain inherited advantages or disadvantages) (Lesica and Allendorf 1995). However, we have no evidence to suggest a marked genetic difference between the Arizona pygmy-owls and the rest of the western pygmy-owls.

With regard to factor (b), a reduction in current range, the Ninth Circuit looked to other DPS rules and findings published by the Service. The Court stated that the Service had previously found two ways in which the loss of a discrete population could reduce the current range of its taxon. First, the Court concluded that a gap could be significant if the loss of the population would amount to a "substantial reduction" of the taxon's range. The Court noted the final listing rule for the pygmy-owl stated that the Arizona population represented only a small percentage of the total current range of western pygmy-owls, and the Service did not find that the loss of this "small percentage" would substantially curtail the current range. Second, "the loss of a discrete population that is numerous and constitutes a large percentage of the total number of taxon members could be considered a significant curtailment of a taxon's current range" (340 F.3d. at 845). The Court noted the Service did not find that the "20 to 40 individuals [in the Arizona population] would significantly curtail the western pygmy-owls' current range, which consists mostly of the more-numerous northwestern Mexico pygmy-owl population" (340 F.3d. at 845). In this case, the range of the taxon (*Glaucidium brasilianum cactorum*), includes both the western pygmy-owl population occurring from lowland central Arizona south through western Mexico to the States of Colima and Michoacan, and the eastern pygmy-owl population from southern Texas south through the Mexican States of Tamaulipas and Nuevo Leon. Taking into account our DPS policy, as well as the analysis of the Ninth Circuit, we conclude that the loss of the Arizona population would not result in a significant gap in the range of the taxon due to a reduction in the current range of the subspecies. Because this Arizona population occupies only a small percentage of the range of the subspecies, its loss would not amount to a substantial reduction of the range of the subspecies.

With regard to factor (c) above, we found in our original listing rule that the gap would be significant because the loss of the Arizona pygmy-owls would reduce the historical range of the taxon. We determined this because the Arizona population is at the periphery of the western pygmy-owl's historical range, and that this peripheral population was always a stable portion of that range. The Ninth Circuit found that alone does not make Arizona a major geographical area in the western pygmy-owl's historic range. The Ninth Circuit found that, while Arizona pygmy-owls might possibly be significant to its taxon's historic range, the Service did not articulate a reasoned basis in the listing rule as to why that is so. The historic ranges of the Arizona population and of the whole subspecies are not precisely known. Based upon the best information available, the historic range in Arizona was considerably larger than the population's current range in Arizona. However, even the historic range in Arizona was only a small percentage of the historic range of the entire subspecies. We have no other information suggesting that the historic range of the Arizona population represents "a major geographical area" such that, given the ruling of the Ninth Circuit, the loss of the Arizona population would result in a significant gap in the range of the taxon.

We do believe that protection and management of some peripheral populations may be important to the survival and evolution of certain species. Population members most distant from the species' core regularly demonstrate adaptations not often seen in core populations. This in and of itself, however, does not satisfy the question of significance. Maintaining genetic diversity within the western population and the taxon as a whole may be important in the face of land use changes, primarily impacts from a conversion of native vegetation to agricultural crops and buffelgrass pastures for livestock grazing in Mexico (Burquez and Yrizar 1997). Land use

changes in Mexico may cause the reduction of the core pygmy-owl population in Mexico, and as such there might be an increased reliance on peripheral populations to maintain genetic adaptation and diversity. Peripheral populations often persist when core populations are extirpated (Channell and Lomolino 2000a, 2000b; Lomolino and Channell 1995). In the face of changing environmental conditions, what constitutes a peripheral population today could be the center of the species' range in the future (Nielsen *et al.* 2001). Peripheral populations survive more frequently than do core populations when species undergo dramatic reductions in their range (greater than 75 percent) (Channell and Lomolino 2000a). However, we do not have sufficient information to assess the likelihood of the Arizona peripheral population contributing to the long-term survival of the species. Additionally, as noted above, we do not have evidence to support a marked genetic difference between Arizona pygmy-owls and pygmy-owls in western Mexico.

With regard to (d) above, we determined that a gap would be significant because it would deprive the United States of its portion of the western pygmy-owl's range. The Ninth Circuit Court rejected this argument as a misconstruction of this criterion. The Court found that in designating a DPS under the DPS policy, we must find that a discrete population is significant to the taxon as a whole, not to the United States. Therefore, we have determined, based on the information available to the Service, that loss of the Arizona population would not result in a significant gap in the range of the subspecies on the basis of the significance of the Arizona population to the subspecies' status as a whole.

(3) Evidence that the discrete population segment represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historical range.

This criterion does not apply to the Arizona population of the pygmy-owl.

(4) Evidence the discrete population segment differs markedly from other populations of the taxon in its genetic characteristics.

As discussed above, we do not have evidence to support that there is a marked genetic difference between pygmy-owls in Arizona and the rest of the western population of pygmy-owls.

On the basis of the discussion above, we believe that the Arizona population of the pygmy-owl does not meet the definition of a DPS in accordance with our 1996 DPS policy. As such, we are proposing to remove the Arizona DPS of the cactus ferruginous pygmy-owl from the Federal List of Endangered and Threatened Wildlife on the basis that the original classification data was in error. Accordingly, we are also proposing to remove the designation of critical habitat at 50 CFR 17.95(b) for the Arizona DPS of the pygmy-owl, and we are proposing to withdraw our proposed rule of November 27, 2002 (67 FR 71032) to set forth new critical habitat for this population.

Effects of the Proposed Rule

If the Arizona DPS of the pygmy-owl is delisted, the requirements under section 7 of the Act would no longer apply. Federal agencies would be relieved of the need to consult with us on their actions that may affect the pygmy-owl and to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of the pygmy-owl. Federal agencies would also be relieved of their responsibilities under section 7(a)(1) of the Act to use their authorities to further the conservation of the pygmy-owl. Additionally, we would not finalize the designation of critical habitat proposed on November 2, 2002 (67 FR 71032) nor would we complete a final recovery plan.

Permitted scientific take as a result of surveys and research would likely continue to be regulated by the State of Arizona, Arizona Game and Fish Department, and will be considered in the context of potential effects to population stability.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our proposal is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding this proposal. We will consider all comments and information received during the 60-day comment period on this proposed rule as we prepare our final rulemaking.

Public Hearings

Section 4(b)(5)(E) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (*see* **ADDRESSES** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each Federal agency to write regulations that are easy to understand. We invite your comments on how to make this proposal easier to understand including answers to questions such as the following: (1) Is the discussion in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposal? (2) Does the proposal contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposal (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce clarity? What else could we do to make the proposal easier to understand?

Send a copy of comments that concern how we could make this proposal easier to understand to Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also send comments by e-mail to *Exsec@ios.doi.gov*.

Required Determinations

Paperwork Reduction Act

OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. Implementation of this proposal does not include any collections of information that require approval by OMB under the Paperwork Reduction Act.

National Environmental Policy Act (NEPA)

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Arizona Ecological Services Field Office (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of Chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. Amend § 17.11(h) by removing the entry for "Pygmy-owl, cactus ferruginous" under BIRDS from the List of Endangered and Threatened Wildlife.

§ 17.95 [Amended]

3. Amend § 17.95(b) by removing the entry for "Cactus Ferruginous Pygmy-owl (*Glaucidium brasilianum cactorum*)."

Dated: July 27, 2005.

Marshall P. Jones, Jr.,

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

[FR Doc. 05–15302 Filed 8–2–05; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 70, No. 148
Wednesday, August 3, 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

Animal and Plant Health Inspection Service

[Docket No. 05–052–1]

Notice of Request for Extension of Approval of an Information Collection; Foreign Quarantine Notices

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations to prevent the introduction or spread of foreign plant pests within the United States.

DATES: We will consider all comments that we receive on or before October 3, 2005.

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

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05–052–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 05–052–1.

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

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information regarding foreign quarantine regulations, contact Ms. Linda Toran, Management Analyst, Regulatory Coordination, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737–1236; (301) 734–5307. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION: *Title:* Foreign Quarantine Notices.

OMB Number: 0579–0049.

Type of Request: Extension of approval of an information collection.

Abstract: As authorized by the Plant Protection Act (PPA, 7 U.S.C. 7701–7772), the Secretary of Agriculture may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, means of conveyance, or other article if the Secretary determines that the prohibition or restriction is necessary to prevent a plant pest or noxious weed from being introduced into or disseminated within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service. Regulations governing the importation of plants, fruits, vegetables, roots, bulbs, seeds, unmanufactured wood articles, and other plant products are contained in 7 CFR part 319, "Foreign Quarantine Notices."

Implementing the regulations described above is necessary in order to prevent injurious plant pests and noxious weeds from entering the United States, a situation that could produce serious consequences for U.S. agriculture. In administering the regulations, we collect information from persons both within and outside the United States who are involved in growing, packing, handling, transporting, and importing articles regulated under part 319.

For example, many plants or plant products may not be imported until the person wishing to import them receives a permit from us. The person wishing to import these items must first fill out a permit application. We consider the permit application process extremely important, since the information on the application enables us to determine whether the items for import represent a potential pest threat to U.S. agriculture.

Under certain circumstances, we also require importers to supply us with other types of information. We require, for example, that containers used to import various plants or plant products be marked in a certain way so that our inspectors can accurately identify them and match them to their accompanying documentation.

We require that certain shipments be accompanied by a phytosanitary inspection certificate, which is a document completed by plant health officials in the originating country that attests to the condition of the shipment with respect to plant pests at the time it was inspected prior to its export to the United States. We use this important information as a guide in determining the intensity of the inspection we must conduct when the shipment arrives in the United States.

This and other information we collect is vital to helping us ensure that imported plants and plant products do not harbor plant pests or noxious weeds that, if introduced into the United States, could cause millions of dollars in damage to U.S. agriculture.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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;

(2) Evaluate the accuracy of our estimate of the burden of the 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 collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.3341847 hours per response.

Respondents: U.S. importers of fruits and vegetables, foreign plant protection authorities, individuals involved in growing, packing, handling, transporting, and exporting plants and plant products.

Estimated annual number of respondents: 90,781.

Estimated annual number of responses per respondent: 2.9583062.

Estimated annual number of responses: 268,558.

Estimated total annual burden on respondents: 89,748 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 28th day of July 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–15288 Filed 8–2–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–110–2]

Saltcedar; Availability of an Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment relative to the control of saltcedar (*Tamarix* spp.). The environmental assessment considers the effects of, and alternatives to, the release of a nonindigenous leaf beetle, *Diorhabda elongata*, into the environment to reduce the severity of saltcedar infestations. The environmental assessment provides a basis for our conclusion that the release into the environment of the biological control agent will not present a risk of introducing plant pests into the United States or disseminating plant pests within the United States and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. William Kauffman, Western Region Program Manager, PPQ, APHIS, 2150 Centre Avenue Building B, Fort Collins, CO 80526–8117; (970) 494–7565.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 2003, we published in the **Federal Register** (68 FR 70755–70756, Docket No. 03–110–1) a notice advising the public that a draft environmental assessment had been prepared by the Animal and Plant Health Inspection Service (APHIS) relative to the release of a nonindigenous leaf beetle, *Diorhabda elongata*, into the environment to reduce the severity of saltcedar (*Tamarix* spp.) infestations, a major weed pest of watercourses and riparian habitats.

We solicited comments on the draft environmental assessment for 30 days, ending January 20, 2004. We received 37 comments by that date. The comments were from researchers, State plant organizations, individuals, and industry groups. Of the comments received, 13 were supportive and 1 was a request for an extension of the comment period. The remaining 23 commenters raised issues concerning water usage, endangered and protected species considerations, additional saltcedar eradication options, and projected results. We have taken the issues raised by the 23 commenters into consideration in formulating our final environmental assessment.

The environmental assessment and finding of no significant impact may be viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/sltcedr.html.* You may request paper copies of the environmental assessment and finding of no significant impact by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the environmental assessment and finding of no significant impact when requesting copies. The environmental assessment and finding of no significant impact are also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act (NEPA) of 1969, (2) as amended (43 U.S.C. 4321 *et seq.*), regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 28th day of July 2005 .

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–15287 Filed 8–2–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 05–027N]

Public Meeting on Advances in Pre-Harvest Reduction of *Salmonella* in Poultry

AGENCY: Food Safety and Inspection Service.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it will hold a public meeting on Advances in Pre-Harvest Reduction of *Salmonella* in Poultry on August 25 and August 26, 2005, in Athens, GA. The

meeting will consist of presentations on research and practical experiences aimed at reducing *Salmonella* at the poultry production level, before poultry reaches federally inspected plants.

This meeting is the first in a series of public meetings that FSIS intends to hold to discuss new approaches for strengthening food safety.

DATES: The public meeting is scheduled for August 25, 2005, from 9 a.m. to 5:30 p.m., and August 26, 2005, from 8:30 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at Richard B. Russell Research Center, 950 College Station Rd., Athens, GA, 30605. A tentative agenda will be available on the FSIS Web site at *http://www.fsis.usda.gov/*. The official transcript of the meeting, when it becomes available, will be available in the FSIS Docket Room, Room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700.

FSIS welcomes comments on the topics to be discussed at the public meeting. Comments may be submitted by any of the following methods:

- Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.
- Electronic mail: *fsis.regulationscomments@fsis.usda.gov*.

All submissions received must include the Agency name and docket number 05–027N.

All comments submitted in response to this notice, as well as the official transcript, when it becomes available, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations_&_policies/2005_Notices_Index/index.asp*.

FOR FURTHER INFORMATION CONTACT: Dr. Alice Thaler at (202) 690–2687.

Pre-registration is encouraged for this meeting. Participants who are pre-registered will have building access badges prepared in advance to facilitate their entry through security to the Richard B. Russell Research Center. To pre-register, call (800) 485–4424. Persons requiring a sign language interpreter or other special accommodations should contact Sheila Johnson at (202) 690–6498, fax: (202) 690–6500, or e-mail: *Sheila.johnson@fsis.usda.gov* as soon as possible.

SUPPLEMENTARY INFORMATION: The scientific community continues to work with animal producers to investigate methods to reduce food safety hazards at federally inspected meat and poultry establishments through the use of specific production practices. A food safety hazard is defined in 9 CFR 417 as any biological, chemical or physical property that may cause a food to be unsafe for human consumption. FSIS' public health mandate requires that the Agency consider hazards that could arise during animal production as part of a comprehensive strategy to prevent foodborne illness. Therefore, FSIS believes that a prudent establishment will address food safety hazards on the farm, including the use of animal production technologies and practices, as a means to control and reduce pathogen hazards at slaughter. Although much has been learned about the ecology of biological, chemical, and physical hazards during animal production, there are, as yet, no specific poultry production practices addressing biological hazards that consistently and predictably lead to improvement in food safety. Results are promising in some cases, but these avenues are still under investigation.

A key point to recognize is that future hazard reduction interventions will likely arise from those areas currently under research or from new areas added to the research agenda. It is important, therefore, for producers to be aware of the practices being explored, so that they can provide input into the process and raise concerns about (1) areas that are not under investigation, (2) the economic impact of implementing new practices on the farm, and (3) the impact of food safety hazards on the marketability of their products.

One food safety hazard that seems susceptible to attack through interventions at the producer level is *Salmonella*. FSIS is looking at *Salmonella* as a pathogen of concern because of the risks that it presents for public health. *Salmonella*, a group of bacteria that can cause diarrheal illness in humans, is the most frequently reported cause of foodborne illness. Contaminated foods are often of animal origin, such as beef, poultry, milk, or eggs, but all foods, including vegetables, may become contaminated. FSIS Hazard Analysis and Critical Control Point (HACCP) verification testing for all meat and poultry product categories in calendar year 2003, the most recent year for which FSIS has data, showed that the percentage of samples positive for *Salmonella* was lower than the pre-HACCP baselines which were derived from a statistical sampling of plants nationwide. However, based on current regulatory verification samples in classes of poultry, the percentage of samples positive for *Salmonella* in calendar year 2003 increased from calendar year 2002 for broilers, ground chicken, and ground turkey. FSIS is concerned about the food safety hazard associated with the increased percentage of positive regulatory verification samples in these classes of poultry.[1]

To pursue initiatives related to production practices that will result in lower, more controlled levels of *Salmonella* in and on birds when they are offered for slaughter, FSIS is holding a public meting on Advances in Pre-Harvest Reduction of *Salmonella* in Poultry. The meeting has three goals.

The first goal is to determine whether interventions available to producers can form the basis for best management practices to reduce the load of *Salmonella* in poultry before slaughter. The second goal is to identify promising interventions and to determine what steps need to be taken to make these interventions to limit and control *Salmonella* available at the poultry production level. The third goal is to identify which research gaps with respect to *Salmonella* control at the production level should be the focus of the research community, including government, academia, and industry.

Based on the input from the meeting, and any other information available to the Agency, FSIS will develop compliance guideline materials for producers that address pre-harvest food safety issues and *Salmonella*.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov*. FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** Notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents/stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of

[1] FSIS. Progress Report on *Salmonella* Testing of Raw Meat and Poultry Products, 1998–2003. Available at *http://www.fsis.usda.gov/PDF/Salmonella_Progress_Report_1998-2003.pdf*.

industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update is also available on-line through the FSIS Web page located at *http://www.fsis.usda.gov*. Through Listserv and its Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an electronic mail subscription service that provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options in eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to protect their accounts with passwords.

Done in Washington, DC, on: August 1, 2005.

Barbara J. Masters,

Acting Administrator.

[FR Doc. 05–15428 Filed 8–2–05; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic Province Advisory Committee (OPAC) will meet on Friday, August 26, 2005. The meeting will be held at the DNR/Forest Service Conference Room, 437 Tillicum Lane, Forks, Washington. The meeting will begin at 9:30 a.m. and end at approximately 3 p.m. Agenda topics are: Current Status of Key Forest Issues; Management of Late Successional Reserves; Pacific Ranger District's Recent and Planned Activities; Pacific Northwest Lab Update; Olympic Discovery Trail Update; Open forum; and Public comments. All Olympic Province Advisory Committee Meeetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Ken Eldredge, Province Liaison, USDA, Olympic National Forest Headquarters, 1835 Black Lake Blvd., Olympia, WA 98512–5623, (360) 956–2323 or Virginia Grilley, Acting Forest Supervisor at (360) 956–2301.

Dated: July 27, 2005.

V. Grilley,

Acting Forest Supervisor, Olympic National Forest.

[FR Doc. 05–15274 Filed 8–2–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Project Proposal/Possible Action, (5) Sub-Committee Reports, (6) Organization/Comment on Projects, (7) General Discussion, (8) County Update, (9) Next Agenda.

DATES: The meeting will be held on August 11, 2005, from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, PO Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by August 9, 2005 will have the opportunity to address the committee at those sessions.

Dated: July 27, 2005.

Art Quintana,

Acting Designated Federal Official.

[FR Doc. 05–15256 Filed 8–2–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno County Resource Advisory Committee will meet in Prather, California. The purpose of the meeting is to review funded projects, discuss 2006 project submittal process and new committee appointments regarding the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) for expenditure of Payments to States Fresno County Title II funds.

DATES: The meeting will be held on September 27th from 6:30 p.m. to 9 p.m.

ADDRESSES: The meeting will be held at the Sierra National Forest, High Sierra District Ranger office, 29688 Auberry Road, Prather, California 93651. Send written comments to Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *rekman@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, (559) 855–5355 ext. 3341.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public sessions will be provided and individuals who made written requests by August 10, 2004 will have the opportunity to address the Committee at those sessions. Agenda items to be covered include: (1) Call for new projects process; (2) recruitment for new members; (3) review of funded projects and (4) public comment.

Dated: July 28, 2005.

Ray Porter,

District Ranger.

[FR Doc. 05–15273 Filed 8–2–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2006 Census Test, Group Quarters Validation/Advance Visit Operation.

Form Number(s): DD–351, DD–31, DD–352.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 198 hours.

Number of Respondents: 720.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the 2006 Census Test Group Quarters Validation/Advance Visit (GQV/AV) operation. The 2006 GQV/AV is one of two iterative tests planned to improve the enumeration of the group quarters population in the 2010 Census.

The Census Bureau must provide everyone in the United States—including persons who do not live in housing units—the opportunity to be counted. In Census 2000, we implemented a set of procedures designed to enumerate persons who live or stay in GQs, such as nursing homes, college residence halls, jails, and shelters for persons experiencing homelessness. In order to count these persons, we first developed a list of GQs using the Special Place Facility Questionnaire operation. This operation was designed to identify, verify, classify, and obtain pertinent enumeration information about every GQ prior to the enumeration of persons living in group quarters.

As a result of lessons learned from Census 2000, the Census Bureau implemented the Group Quarters Validation (GQV) operation in 2004 to develop methodologies that would improve the enumeration of the GQ population in the 2010 Census. In addition to developing a new questionnaire and revising definitions for some GQ types, the 2004 GQV operation evaluated new GQ address listing procedures. For the first time, the GQ address list was integrated with the housing unit address list, and the development of the GQ inventory was managed at the GQ level. This new operation replaced the Census 2000 Special Place Facility Questionnaire operation. The 2004 GQV operation was planned to develop new procedures that would verify and update the existing Census 2000 GQ inventory, as well as properly classify places with housing units that were potentially difficult to classify or that required special procedures (*e.g.*, hotels/motels and assisted living facilities).

As part of ongoing planning for the 2010 Census, the Census Bureau now plans to conduct the 2006 Census Test GQV/AV operation. This operation is designed to incorporate lessons learned from the 2004 GQV operation and Census 2000 with the focus group research that we conducted on GQ definitions. The goal of the 2006 GQV/AV operation is to evaluate revised procedures and definitions designed to improve the classification and geocoding of GQs. The planned dates for the 2006 GQV/AV operation are December 5, 2005 through January 13, 2005.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Frequency: One Time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. 141 and 193.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202)482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or email (*susan_schechter@omb.eop.gov*).

Dated: July 28, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–15265 Filed 8–2–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Export Trading Companies Contact Facilitation Service.

Agency Form Number: ITA 4094P.

OMB Number: 0625–0120.

Type of Request: Regular Submission.

Burden: 3,625 hours.

Number of Respondents: 14,500.

Avg. Hours Per Response: 15 minutes.

Needs and Uses: Many U.S. firms do not export because of a fear of the risks involved in exporting, lack of knowledge about the international marketplace, and insufficient resources. These firms need a venue to find one another and share the risks and costs of exporting, and they need the assistance of companies that specialize in providing export trade facilitation services. The Export Trading Company Act of 1982 directs the U.S. Department of Commerce to (a) encourage the formation of export associations and export service firms, and (b) provide an exporter referral service that will facilitate contact between producers and export service firms. Commerce fulfills its mandate through the Contact Facilitation Service (CFS). The CFS provides a platform for producers to (a) find one another and form export alliances, to achieve economies of scale, and (b) locate export service firms and attract foreign importers.

The CFS registration form is currently available on-line via the Internet at *http://www.myexports.com* and in hard copy. MyExports®, a U.S. Department of Commerce public-private partnership, produces two directories that draw upon CFS data collection: (a) "The Export Yellow Pages®;" (also known as the "U.S. Exporters' Yellow Pages®"), a directory of U.S. producers of goods and services, and (b) the "U.S. Trade Assistance Directory," a directory of export trade facilitation firms. These directories are accessible via the Internet at *http://www.myexports.com* and in print by international traders located worldwide.

Without the subject information collection, the Contact Facilitation Service provided through the MyExports' public-private partnership would be unreliable and ineffective, because users of this kind of information need current and consistent information about the listed companies.

Affected Public: Businesses or other for-profit, not-for-profit institutions, state, local or tribal Governments.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution, NW., Washington, DC 20230. Email: *dHynek@doc.gov*. Phone: (202) 482–0266.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, *David_Rostker@omb.eop.gov* or fax (202) 395–7285 within 30 days of the publication of this notice in the **Federal Register**.

Dated: July 28, 2005.

Madeline Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–15266 Filed 8–2–05; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Survey of International Air Travelers.

Agency Form Number: None.

OMB Number: 0625–0227.

Type of Request: Extension-Regular Submission.

Burden: 24,840 hours.

Number of Respondents: 99,360.

Avg. Hours Per Response: 15 minutes.

Needs and Uses: The International Trade Administration, Tourism Industries' "Survey of International Air Travelers" is the only source for estimating international travel and passenger fare exports and imports for this country. This program also supports the U.S. Department of Commerce, Bureau of Economic Analysis mandate to collect and report this type of information which is used to calculate Gross Domestic Products for the United States. In addition, this project serves as the core data source for Tourism Industries. Numerous reports and analyses are developed to assist businesses in increasing U.S. exports in international travel. An economic impact of international travel on state economies, visitation estimates, traveler profiles, presentations and reports are generated by Tourism Industries to help the federal government agencies and the travel industry better understand the international market. It is also a service that the U.S. Department of Commerce provides to travel industry businesses seeking to increase international travel and passenger fare exports for the country. It provides the only comparable estimates of nonresident visitation to the states and cities within the U.S., as well as U.S. resident travel abroad. Traveler characteristics data are also collected to help travel related businesses better understand the international travelers to and from the U.S. so they can develop targeted marketing and other planning related materials.

Affected Public: International travelers departing the United States 18 years or older which includes U.S. and non-U.S. residents.

Frequency: Monthly.

Respondent's Obligation: Voluntary survey.

OMB Desk Officer: David Rostker, (202) 395–7285.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230. E-mail: *dHynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, at *David_Rostker@omb.eop.gov* or fax (202) 395–7285 within 30 days of publication of this **Federal Register** notice.

Dated: July 28, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–15267 Filed 8–2–05; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 35–2005]

Foreign-Trade Zone 93—Raleigh/Durham, NC, Application for Subzone; Revlon Consumer Products Corporation (Cosmetic and Personal Care Products), Oxford, NC

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Triangle J Council of Governments, grantee of FTZ 93, requesting special-purpose subzone status for the manufacturing and warehousing facilities of Revlon Consumer Products Corporation (Revlon), located in Oxford, North Carolina. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 26, 2005.

The Revlon facility (123 acres, 2,087 employees) is located at 1501 Williamsboro Street, Oxford, Granville County, North Carolina. The facility is used for the manufacturing and warehousing of cosmetic and personal care products including nail enamel, hair care products, cosmetics, skin care, products anti-perspirants/deodorants and fragrances (HTS 3208.90, 3303.00, 3304.10, 3304.20, 3304.30, 3304.91, 3304.99, 3305.10, 3305.20, 3305.30, 3305.90 and 3307.20). Components and materials sourced from abroad represent some 25% of all parts consumed in manufacturing. The primary inverted tariff savings will come from the following components: plastic packaging materials, powder puffs and glass containers (HTS 3923.10, 3923.30, 3923.50, 3923.90, 3924.90, 3926.90, 7010.90 and 9616.20, duty rates range from 2.5 to 5.3%). The company is also requesting authority to import components for manufacturing under FTZ procedures under the following categories: HTS 1108.11, 1209.30, 1505.00, 1513.29, 1520.00, 2204.21, 2505.10, 2513.19, 2526.20, 2707.99, 2710.99, 2804.61, 2805.11, 2821.10, 2901.10, 2905.17, 2905.41, 2906.13, 2909.20, 2912.30, 2915.13, 2915.22, 2915.29, 2915.39, 2916.39, 2917.12, 2917.37, 2917.39, 2918.30, 2919.00, 2923.20, 2933.19, 2933.29, 2933.59, 2936.26, 2936.28, 3302.90, 3303.00, 3304.10, 3304.20, 3304.30, 3304.91, 3304.99, 3305.10, 3305.90, 3307.10, 3307.20, 3307.30, 3401.11, 3401.19, 3402.13, 3402.19, 3402.90, 3501.90, 3505.10, 3507.90, 3808.30, 3808.40, 3823.13, 3823.19, 3823.70, 3902.10, 3902.90, 3903.19, 3906.10, 3906.90, 3907.30, 3909.30, 3910.00, 3912.39, 3912.90, 3919.10, 3920.91, 3921.90, 3923.10, 3923.21, 3923.29, 3923.30, 3923.40, 3923.50, 3923.90, 3924.90, 3926.20, 3926.40, 3926.90, 4808.10, 4811.59, 4819.10, 4819.20, 4819.40, 4819.50, 4821.10, 4821.90, 4822.90, 4908.90, 6506.10, 6805.20, 6806.20, 6815.99, 7009.92, 7010.20, 7010.90, 7013.99, 7612.10, 7616.99, 8203.20, 8205.59, 8205.70, 8213.00, 8214.10, 8214.20, 8214.90, 8306.30, 8413.20, 8413.81, 9603.29, 9603.30, 9603.40, 9605.00, 9615.11, 9616.10, 9616.20 (duty rate ranges from duty-free to 9%). In addition, the application indicates

that they may import products under Chapter 32 or 42 of the HTSUS, but that such products would be admitted to the subzone in domestic or privileged-foreign status.

FTZ procedures would exempt Revlon from Customs duty payments on the foreign components used in export production. Some 22 percent of the plant's shipments are exported. On its domestic sales, Revlon would be able to choose the duty rates during Customs entry procedures that apply to cosmetic and personal care products (duty-free to 4.9%) for the foreign inputs noted above. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

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

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

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

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is October 3, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 17, 2005).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce Export Assistance Center, 10900 World Trade Assistance Center, Suite 110, Raleigh, NC 27617.

Dated: July 26, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–15368 Filed 8–2–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1404]

Expansion of Foreign-Trade Zone 38 Spartanburg, SC, Area

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

Whereas, the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 38, submitted an application to the Board for authority to expand FTZ 38 to include a site (20 acres) at the Lakeside Business Center (Site 6) in Greer; to restore zone status to 118 acres at the Gateway International Business Center (Site 2) in Greer; and, to request an extension of authority for the TNT Logistics facility (Site 5) in Laurens, South Carolina, within the Greenville/Spartanburg Customs port of entry (FTZ Docket 48–2004, filed 10/29/04);

Whereas, notice inviting public comment has been given in the **Federal Register** (69 FR 64715, 11/08/04) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

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

Now, therefore, the Board hereby orders:

The application to expand FTZ 38 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and subject to the Board's standard 2,000-acre activation limit for the overall zone project, and further subject to a five-year time limit (to July 31, 2010) for Site 5 with extension available upon review.

Signed at Washington, DC, this 21st day of July 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 05–15367 Filed 8–2–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Open Meeting

The Materials Processing Equipment Technical Advisory Committee (MPETAC) will meet on August 18, 2005 at 9 a.m. in Room 6087B of the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

1. Opening Remarks and Introductions.

2. Presentation of Papers and Comments by the Public.

3. Report on Proposals for September Wassenaar Experts Meeting.

4. Report on proposed changes to the Export Administration Regulation.

5. Comments on Machine Tool Export.

6. Other Business.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to Yvette Springer at *Yspringer@bis.doc.gov*.

For more information, please contact Ms. Springer at 202–482–4814.

Dated: July 25, 2005.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 05–15364 Filed 8–2–05; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–849]

Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review

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

DATES: Effective August 3, 2005.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Carrie Blozy, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3207, and (202) 482–5403 respectively.

SUMMARY: In response to a request by Beijing Shougang Xingang Co., Ltd., and Beijing Alliance of Xingang Science and Trade Co., Ltd., (collectively "Shougang"), an exporter of subject merchandise, the Department of Commerce (the "Department") initiated an administrative review of the antidumping duty order on cut-to-length carbon steel plate ("CTL Plate") from the People's Republic of China ("PRC"). No other interested party requested a review of Shougang. The period of review ("POR") is November 3, 2003, through October 31, 2004. On July 5, 2005, Shougang withdrew its request for a review. The Department is now rescinding the administrative review of Shougang.

Background

On November 1, 2004, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on CTL Plate from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 69 FR 63359 (November 1, 2004). On November 29, 2004, Shougang requested an administrative review of its sales and shipments to the United States during the POR. On December 27, 2004, the Department published a notice of the initiation of the antidumping duty administrative review of CTL Plate from the PRC for the period November 3, 2003, through October 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 77181 (December 27, 2004). On July 5, 2005, Shougang withdrew its request for an administrative review.

Rescission of Review

The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. It further states that the Secretary may extend this time limit if the Secretary finds it reasonable to do so. Shougang withdrew its request for review after the 90-day deadline; however, the Department finds it reasonable to extend the time limit by which a party may withdraw its request for review in the instant proceeding. The Department finds it reasonable to extend the withdrawal deadline because the Department has not yet devoted considerable time and resources to this review.[1] Shougang was the only party to request the review, and has withdrawn that request. Therefore, we are rescinding this review of the antidumping duty order on CTL Plate from the PRC covering the period November 3, 2003, through October 31, 2004. The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection within 15 days of publication of this recession.

Notification to Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during 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 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 that is subject to sanction.

[1] After analyzing Shougang's questionnaire response, the Department issued a supplemental questionnaire to Shougang. Shougang did not respond to the supplemental questionnaire.

This notice is issued and published in accordance with sections 751 and 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: July 27, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–4130 Filed 8–2–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–533–809

Certain Forged Stainless Steel Flanges From India; Preliminary Results of New Shipper Review

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

SUMMARY: The Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on certain forged stainless steel flanges (stainless steel flanges) from India manufactured by Hilton Forge (Hilton). The period of review (POR) covers February 1, 2004, through July 31, 2004. We preliminarily determine that Hilton made sales of subject merchandise at less than normal value (NV) in the United States during the POR.

If these preliminary results are adopted in the final results of this new shipper review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of the subject merchandise for which the importer–specific assessment rates are above *de minimis*.

We invite interested parties to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument 1) a statement of the issues and 2) a brief summary of the argument.

EFFECTIVE DATE: August 3, 2005.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, 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) 482–2924 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1994, the Department published the antidumping duty order on stainless steel flanges from India. *See Amended Final Determination and*

Antidumping Duty Order; Certain Forged Stainless Steel Flanges from India, 59 FR 5994, (February 9, 1994). On August 31, 2004, Hilton requested that the Department initiate a new shipper review for the period February 1, 2004, through July 31, 2004. We initiated the review on October 6, 2004. *See Stainless Steel Flanges from India: Notice of Initiation of Antidumping Duty New Shipper Review.*

On March 28, 2005, we extended the time limit for the preliminary results of this new shipper review to no later than July 27, 2005. *See Forged Stainless Steel Flanges From India: Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Review*, 70 FR 15615 (March 28, 2005).

For our analysis of the *bona fides* of Hilton's sales, see *Memorandum to Richard Weible*, Re: *Bona Fide* Nature of the Sale in the New Shipper Review of Hilton Forge, dated July 27, 2005, which is on file in the Central Records Unit (CRU), room B–099 of the main Commerce Building.

Scope of the Order

The products covered by this order are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld–neck, used for butt–weld line connection; threaded, used for threaded line connections; slip–on and lap joint, used with stub–ends/butt–weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above–described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the scope of the order.

Verification

As provided in section 782(i)(3) of the Tariff Act of 1930, as amended (the Tariff Act), we verified information provided by Hilton from June 6, 2005, through June 10, 2005, using standard verification procedures, the examination of relevant sales, cost, and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report, on file in the CRU located in room B–099 in the main Department of Commerce building.

Comparisons to Normal Value

To determine whether sales of subject merchandise to the United States by Hilton were made at less than NV, we compared the U.S. export price (EP) to the NV, as described in the "Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(2) of the Tariff Act, we calculated monthly weighted–average prices for NV and compared these to the prices of individual EP transactions.

Product Comparisons

In accordance with section 771(16) of the Tariff Act, we considered all products described by the Scope of the Order section, above, which were produced and sold by Hilton in the home market, to be foreign like products for purposes of determining appropriate comparisons to U.S. sales. We determined that Hilton had sufficient sales of identical product in the home market; therefore, we did not need to resort to comparisons based on either sales of similar merchandise or constructed value. We made comparisons using the following five model match characteristics: (1) Grade; (2) Type; (3) Size; (4) Pressure rating; (5) Finish.

Export Price and Constructed Export Price

In accordance with section 772(a) of the Tariff Act, EP is defined as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Tariff Act, constructed export price (CEP) is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d). For Hilton's sales to the United States, we used EP in accordance with section 772(a) of the Tariff Act because its merchandise was sold directly to the first unaffiliated purchaser prior to importation, and CEP was not otherwise warranted based on the facts of record.

We calculated EP based on the prices charged to the first unaffiliated customer in the United States. We used the date of invoice as the date of sale. We based EP on the packed CIF prices to the first unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act, including foreign inland freight, foreign brokerage and handling, international freight, marine insurance, and export inspection fees.

We denied Hilton's claimed adjustment for duty drawback. Section 772(c)(1)(B) of the Tariff Act provides that EP or CEP shall be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." The Department determines that an adjustment to U.S. price for claimed duty drawback is appropriate when a company can demonstrate that there is (i) a sufficient link between the import duty and the rebate, and (ii) sufficient imports of the imported material inputs to account for the duty drawback received for the export of the manufactured product (the so–called "two–prong test"). *See Rajinder Pipes, Ltd. v. United States*, 70 F. Supp. 2d 1350, 1358 (Ct. Int'l Trade 1999); *see also Viraj Group, Ltd. v. United States*, 162 F. Supp. 2d 656 (Ct. Int'l Trade 2001) (Commerce's rejection of claimed adjustments to either price or cost for Indian duty drawback sustained; remanded on other grounds).

In a supplemental questionnaire the Department requested that Hilton establish its entitlement to the duty drawback adjustment by providing evidence that its duty drawback claim met the two–pronged test described above. *See* April 5, 2005 Supplemental Questionnaire at 4. Hilton's response in its April 21, 2005, submission failed to provide evidence of either point. Furthermore, the Department presented Hilton with another opportunity to establish its entitlement to this claim at the verification in June 2005, and Hilton again failed to do so. Therefore, we have denied the duty drawback adjustment in these preliminary results.

Normal Value

A. *Viability*

In order to determine whether there is sufficient volume of sales in the home market to serve as a viable basis for

calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product during the POR is equal to or greater than five percent of the aggregate volume of U.S. sales of subject merchandise during the POR), we compared Hilton's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. (We found no reason to determine that quantity was not the appropriate basis for these comparisons, so value was not used. *See* section 773(a)(1)(C) of the Tariff Act and 19 CFR 351.404(b)(2).) Based on Hilton's reported home market and U.S. sales quantities, we determine that Hilton had a viable home market. Therefore, we based NV on home market sales to unaffiliated purchasers made in the usual quantities and in the ordinary course of trade.

We based our comparisons of the volume of U.S. sales to the volume of home market sales on reported stainless steel flange weight, rather than on number of pieces. The record demonstrates that there can be large differences between the weight (and corresponding cost and price) of stainless steel flanges based on relative sizes, so comparisons of aggregate data would be distorted for these products if volume comparisons were based on the number of pieces.

B. *Price–to-Price Comparisons*

As indicated above, we compared U.S. sales with contemporaneous sales of the foreign like product in India. As noted, we considered stainless steel flanges identical based on the following five criteria: grade, type, size, pressure rating, and finish. We made adjustments for differences in packing costs between the two markets and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act. Finally, we adjusted for differences in the circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. We made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we determine NV based on sales in the home market at the same level of trade (LOT) as EP or CEP. The NV LOT is that of the starting–price sales in the home market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For CEP it is the level of the constructed sale from the exporter to an affiliated importer after the deductions required under section 772(d) of the Tariff Act.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison–market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Tariff Act (the CEP–offset provision). *See Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (November 19, 1997).

In implementing these principles in this review, we obtained information from Hilton about the marketing stages involved in its U.S. and home market sales, including a description of its selling activities in the respective markets. Generally, if the reported levels of trade are the same in the home and U.S. markets, the functions and activities of the seller should be similar. Conversely, if a party reports differences in levels of trade the functions and activities should be dissimilar.

Hilton reported one channel of distribution and one LOT in the home market contending that all home market sales were to trading companies on a door–delivered basis. *See* Hilton's November 22, 2004, submission, pp. B–, 10 and B–19, and its April 21, 2005, submission, p. 7. After examining the record evidence provided by Hilton, we preliminarily determine that a single LOT exists in the home market.

Hilton further contends it provided substantially the same level of customer support on its U.S. EP sales to trading companies/importers as it provided on its home market sales to trading companies. This support included manufacturing to order, and making arrangements for freight and insurance. *See* Hilton's April 21, 2005 submission at 2. The Department has determined that we will find sales to be at the same LOT when the selling functions performed for each customer class are sufficiently similar. *See* 19 CFR 351.412 (c)(2). We find Hilton performed virtually the same level of customer support services on its U.S. EP sales as it did on its home market sales.

The record evidence supports a finding that in both markets and in all channels of distribution Hilton performs essentially the same level of services. Therefore, based on our analysis of the selling functions performed on EP sales in the United States, and its sales in the home market, we determine that the EP and the starting price of home market sales represent the same stage in the marketing process, and are thus at the same LOT. Accordingly, we preliminarily find that no level of trade adjustment is appropriate for Hilton.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773(a) of the Tariff Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review we preliminarily find that a weighted–average dumping margin of 0.89 percent exists for Hilton for the period February 1, 2004, through July 31, 2004.

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication. *See* CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d).

Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of these preliminary results of new shipper review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument 1) a statement of the issue, 2) a brief summary of the argument, and 3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment Rates

Upon issuance of the final results of this review, the Department shall determine, and the CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer–specific assessment rates based on the total amount of antidumping duties calculated for the examined sales made during the POR divided by the total quantity (in kilograms), of the examined sales. Upon completion of this review, where the assessment rate is above *de minimis*, we shall instruct CBP to assess duties on all entries of subject merchandise by that importer.

Cash Deposit Requirements

The following cash deposit rate will be effective upon publication of the final results of this new shipper review for shipments of stainless steel flanges from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Tariff Act. For subject merchandise produced and exported by Hilton, the cash deposit rate will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit rate will be zero. This cash deposit requirement, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

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

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: July 27, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4128 Filed 8–2–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review

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

DATES: Effective August 3, 2005.

FOR FURTHER INFORMATION CONTACT: Sochieta Moth or Brian Ledgerwood, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0168 and (202) 482–3836, respectively.

Background

The Department of Commerce (the Department) published an antidumping duty on fresh garlic from the People's Republic of China on November 16, 1994. *See Antidumping Duty Order: Fresh Garlic from the People's Republic of China*, 59 FR 28462. On December 27, 2004, the Department published the *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 77181, in which it initiated an administrative review of this order for the period November 1, 2003, through October 31, 2004, for nineteen exporters: Clipper Manufacturing Ltd.; Fook Huat Tong Kee Pte., Ltd.; H&T Trading Company; Heze Ever-Best International Trade Co., Ltd.; Huaiyang Hongda Dehydrated Vegetable Company; Jinan Yipin Corporation, Ltd.; Jining Trans-High Trading Co., Ltd.; Jining Yun Feng Agriculture Products Co., Ltd.; Jinxiang Dong Yun Freezing Storage Co., Ltd.; Jinxiang Hongyu Freezing and Storing Co., Ltd.; Jinxiang Shanyang Freezing and Storage Co., Ltd.; Linshu Dading Private Agricultural Products Co., Ltd.; Pizhou Guangda Import and Export Co., Ltd.; Shanghai Ever Rich Trade Company; Shanghai LJ International Trading Co., Ltd.; Sunny Import & Export Limited; Taian Ziyang Food Co., Ltd.; Weifang Shennong Foodstuff Co., Ltd.; and Zhengzhou Harmoni Spice Co., Limited.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), provides that the Department will issue the preliminary results of an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act provides further that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

The Department has determined that it is not practicable to complete the preliminary results by the current deadline of August 2, 2005. There are a number of complex factual and legal questions related to the calculation of the antidumping margins in this administrative review, in particular the analysis of the valuation of the factors of production. We require additional time to issue supplemental questionnaires, review the responses, and conduct verification if necessary. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results by 100 days, until no later than November 10, 2005.

We are issuing this notice in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: July 28, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–4127 Filed 8–2–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Duty Drawback Practice in Antidumping Proceedings

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

DATE: August 3, 2005.

ACTION: Extension of Comment Period

SUMMARY: On June 30, 2005, the Department of Commerce (the Department) published a notice in the **Federal Register** requesting comments regarding its practice with respect to duty drawback adjustments to export price in antidumping proceedings (70 FR 37764). The Department has decided to extend the comment period by one week, making the new deadline for the submission of public comments August 15, 2005. Written comments (original and six copies) should be sent to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, 14th Street and Constitution Ave., NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: John C. Kalitka, Office of Policy, Import Administration, U.S. Department of Commerce, Room 3712, 14th Street and Constitution Ave., NW, Washington, DC 20230, (202) 482–2730.

SUPPLEMENTARY INFORMATION:

Comments--Deadline, Format, and Number of Copies

The Department is extending the deadline for submission of comments by one week, making the new deadline August 15, 2005. Persons wishing to comment should file a signed original and six copies of each set of comments by the date specified above. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of any changes to its practice. All comments responding to this notice will be a matter of public record and will be available for public inspection and copying at Import Administration's Central Records Unit, Room B–099, between the hours of 8:30 a.m. and 5 p.m. on business days. The Department requires that comments be submitted in written form. The Department recommends submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e–mail to the webmaster below, or on CD–ROM, as comments submitted on diskettes are likely to be damaged by postal radiation treatment.

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration Web site at the following address: *http://ia.ita.doc.gov/*.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, e–mail address: *webmaster–support@ita.doc.gov*.

Dated: July 28, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4129 Filed 8–2–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Evaluation of NOAA's Chesapeake Bay Watershed Education and Training Programs

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 3, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Shannon Sprague, 410–267–5664 or *shannon.sprague@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

In 2002 the National Oceanic and Atmospheric Administration (NOAA) began administering the Bay Watershed Education and Training (B–WET) Program to offer competitive grants to support implementation of the Chesapeake 2000 Agreement. This will be achieved by promoting success on the agreement's significant goal for education and outreach: Beginning with the class of 2005, provide a meaningful Bay or stream outdoor experience for every school student in the watershed before graduation from high school. (Chesapeake 2000 Agreement).

The B–WET Program funding, over $2 million per year, assists school jurisdictions in providing "Meaningful Watershed Educational Experiences" (MWEEs) to all students before they graduate from high school. B–WET funding is awarded to organizations that provide MWEEs directly to students and to organizations that provide professional development to teachers, training them to conduct MWEEs with their students. For FY2005, 32 organizations, including non-profits, school districts, state agencies, and universities, are funded to provide MWEEs to over 27,000 students and professional development to over 2,000 teachers.

Through this evaluation, NOAA seeks to learn how B–WET-funded programs implement MWEEs and what outcomes are being achieved. In particular, the information collected will determine whether B–WET-funded MWEE programs are improving students' stewardship and academic achievement and building teachers' confidence in implementing MWEEs with their students. The evaluation's results will be used by NOAA B–WET managers to document the effects of currently-funded programs, inform future funding decisions, and identify critical "lessons learned" to share with national education communities. The instruments developed as part of this initial evaluation will also be made available to B–WET Program providers for their use in monitoring their individual programs' effectiveness.

II. Method of Collection

Depending on the response group, either paper questionnaires, electronic questionnaires, or telephone interviews are required from participants, and methods of submittal include Internet and postal service transmission of paper forms.

III. Data

OMB Number: 0648–0530.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; not-for-profit institutions; and state, local, or tribal governments.

Estimated Number of Respondents: 7,427.

Estimated Time Per Response: 0.5 hours for students; 0.33 hours for teachers; 1 hour for program providers; 0.33 hours for professional development teachers; 1 hour for professional development program providers; and 0.33 hours for past professional development teachers.

Estimated Total Annual Burden Hours: 4,838.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 28, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–15264 Filed 8–2–05; 8:45 am]

BILLING CODE 3510–12–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

August 1, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee)

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of cotton, wool, and man-made fiber socks (Category 332/432 and 632 Part).

SUMMARY: On July 8, 2005, the Committee received a request from the Domestic Manufacturers Committee of The Hosiery Association, the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, and the National Textile Association requesting that the Committee reapply the limit on imports from China of cotton, wool, and man-made socks (Category 332/432 and 632 Part). They request that a textile and apparel safeguard action, as provided for in the Report of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement), be reapplied on imports of such socks. The current limit on socks expires on October 28, 2005. The Committee hereby solicits public comments on this request, in particular with regard to whether imports from China of such socks are, due to market disruption and/or the threat of market disruption, threatening to impede the orderly development of trade in this product. Comments must be submitted by September 2, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, United States Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

BACKGROUND:

The Report of the Working Party on the Accession of China to the World Trade Organization (WTO) provides that, if a WTO Member, such as the United States, believes that imports of Chinese origin textile and apparel products are, "due to market disruption, threatening to impede the orderly development of trade in these products", it may request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption. Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On July 8, 2005, the Committee received a request that an Accession Agreement textile and apparel safeguard action be reapplied on imports from China of cotton, wool, and man-made fiber socks (Category 332/432 and 632 Part). The Committee has determined that this request provides the information necessary for the Committee to consider the request in light of the considerations set forth in the Procedures. The text of the request is available at *http://otexa.ita.doc.gov/Safeguard05.htm.*

The Committee is soliciting public comments on this request, in particular with regard to whether imports from China of such socks are, due to market disruption and/or the threat of market disruption, threatening to impede the orderly development of trade in this product.

Comments may be submitted by any interested person. Comments must be received no later than September 2, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

If a comment alleges that there is no market disruption or that the subject imports are not the cause of market disruption, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive products. Particular consideration will be given to comments representing the views of actual producers in the United States of a like or directly competitive product.

The Committee will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked "business confidential", will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee expects to make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If, however, the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it

will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin cotton, wool, and man-made fiber socks are, due to market disruption and/or the threat of market disruption, threatening to impede the orderly development of trade in these products, the United States will request consultations with China with a view to easing or avoiding such market disruption in accordance with the Accession Agreement and the Committee's Procedures.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–15443 Filed 8–1–05; 1:41 pm]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

August 1, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee)

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of women's and girls' cotton and man-made fiber woven shirts and blouses (Category 341/641).

SUMMARY: On July 11, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of women's and girls' cotton and man-made fiber woven shirts and blouses (Category 341/641). They request that a textile and apparel safeguard action, as provided for in the Report of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement) be applied on imports of such shirts and blouses. The Committee hereby solicits public comments on this request, in particular with regard to whether imports from China of such shirts and blouses are, due to market disruption, threatening to impede the orderly development of trade in this product. Comments must be submitted by September 2, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, United States Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

BACKGROUND:

The Report of the Working Party on the Accession of China to the World Trade Organization (WTO) provides that, if a WTO Member, such as the United States, believes that imports of Chinese origin textile and apparel products are, "due to market disruption, threatening to impede the orderly development of trade in these products", it may request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption. Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On July 11, 2005, the Committee received a request that an Accession Agreement textile and apparel safeguard action be applied on imports from China of women's and girls' cotton and man-made fiber woven shirts and blouses (Category 341/641). The Committee has determined that this request provides the information necessary for the Committee to consider the request in light of the considerations set forth in the Procedures. The text of the request is available at *http://otexa.ita.doc.gov/Safeguard05.htm*.

The Committee is soliciting public comments on this request, in particular with regard to whether imports from China of such shirts and blouses are, due to market disruption, threatening to impede the orderly development of trade in this product.

Comments may be submitted by any interested person. Comments must be received no later than September 2, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

If a comment alleges that there is no market disruption or that the subject imports are not the cause of market disruption, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive products. Particular consideration will be given to comments representing the views of actual producers in the United States of a like or directly competitive product.

The Committee will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked "business confidential", will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee expects to make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If, however, the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin women's and girls' cotton and man-made fiber woven shirts and blouses are, due to market disruption,

threatening to impede the orderly development of trade in these products, the United States will request consultations with China with a view to easing or avoiding such market disruption in accordance with the Accession Agreement and the Committee's Procedures.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–15444 Filed 8–1–05; 1:41 pm]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

August 1, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee)

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of cotton and man-made fiber skirts (Category 342/642).

SUMMARY: On July 11, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of cotton and man-made fiber skirts (Category 342/642). They request that a textile and apparel safeguard action, as provided for in the Report of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement) be applied on imports of such skirts. The Committee hereby solicits public comments on this request, in particular with regard to whether imports from China of such skirts are, due to market disruption, threatening to impede the orderly development of trade in this product. Comments must be submitted by September 2, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, United States Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

BACKGROUND:

The Report of the Working Party on the Accession of China to the World Trade Organization (WTO) provides that, if a WTO Member, such as the United States, believes that imports of Chinese origin textile and apparel products are, "due to market disruption, threatening to impede the orderly development of trade in these products", it may request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption. Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On July 11, 2005, the Committee received a request that an Accession Agreement textile and apparel safeguard action be applied on imports from China of cotton and man-made fiber skirts (Category 342/642). The Committee has determined that this request provides the information necessary for the Committee to consider the request in light of the considerations set forth in the Procedures. The text of the request is available at *http://otexa.ita.doc.gov/Safeguard05.htm.*

The Committee is soliciting public comments on this request, in particular with regard to whether imports from China of such skirts are, due to market disruption, threatening to impede the orderly development of trade in this product.

Comments may be submitted by any interested person. Comments must be received no later than September 2, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

If a comment alleges that there is no market disruption or that the subject imports are not the cause of market disruption, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive products. Particular consideration will be given to comments representing the views of actual producers in the United States of a like or directly competitive product.

The Committee will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked "business confidential", will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee expects to make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If, however, the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin cotton and man-made fiber skirts are, due to market disruption, threatening to impede the orderly development of trade in these products, the United States will request consultations with China with a view to easing or avoiding such market disruption in accordance with the Accession Agreement and the Committee's Procedures.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–15445 Filed 8–1–05; 1:41 pm]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

August 1, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee)

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of cotton and man-made fiber nightwear (Category 351/651).

SUMMARY: On July 11, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of cotton and man-made fiber nightwear (Category 351/651). They request that a textile and apparel safeguard action, as provided for in the Report of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement) be applied on imports of such nightwear. The Committee hereby solicits public comments on this request, in particular with regard to whether imports from China of such nightwear are, due to market disruption, threatening to impede the orderly development of trade in this product. Comments must be submitted by September 2, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, United States Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

BACKGROUND:

The Report of the Working Party on the Accession of China to the World Trade Organization (WTO) provides that, if a WTO Member, such as the United States, believes that imports of Chinese origin textile and apparel products are, "due to market disruption, threatening to impede the orderly development of trade in these products", it may request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption. Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On July 11, 2005, the Committee received a request that an Accession Agreement textile and apparel safeguard action be applied on imports from China of cotton and man-made fiber nightwear (Category 351/651). The Committee has determined that this request provides the information necessary for the Committee to consider the request in light of the considerations set forth in the Procedures. The text of the request is available at *http://otexa.ita.doc.gov/Safeguard05.htm*.

The Committee is soliciting public comments on this request, in particular with regard to whether imports from China of such nightwear are, due to market disruption, threatening to impede the orderly development of trade in this product.

Comments may be submitted by any interested person. Comments must be received no later than September 2, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

If a comment alleges that there is no market disruption or that the subject imports are not the cause of market disruption, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive products. Particular consideration will be given to comments representing the views of actual producers in the United States of a like or directly competitive product.

The Committee will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked "business confidential", will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee expects to make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If, however, the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the Federal Register, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the Federal Register. If the Committee makes an affirmative determination that imports of Chinese origin cotton and man-made fiber nightwear are, due to market disruption, threatening to impede the orderly development of trade in these products, the United States will request consultations with China with a view to easing or avoiding such market disruption in accordance with the Accession Agreement and the Committee's Procedures.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–15446 Filed 8–1–05; 1:41 pm]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

August 1, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee)

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of cotton and man-made fiber swimwear (Category 359-S/659-S).

SUMMARY: On July 11, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of cotton and man-made fiber swimwear (Category 359-S/659-S). They request that a textile and apparel safeguard action, as provided for in the Report of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement) be applied on imports of such swimwear. The Committee hereby solicits public comments on this request, in particular with regard to whether imports from China of such nightwear are, due to market disruption, threatening to impede the orderly development of trade in this product. Comments must be submitted by September 2, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, United States Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

BACKGROUND:

The Report of the Working Party on the Accession of China to the World Trade Organization (WTO) provides that, if a WTO Member, such as the United States, believes that imports of Chinese origin textile and apparel products are, "due to market disruption, threatening to impede the orderly development of trade in these products", it may request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption. Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On July 11, 2005, the Committee received a request that an Accession Agreement textile and apparel safeguard action be applied on imports from China of cotton and man-made fiber swimwear (Category 359-S/659-S). The Committee has determined that this request provides the information necessary for the Committee to consider the request in light of the considerations set forth in the Procedures. The text of the request is available at *http://otexa.ita.doc.gov/Safeguard05.htm*.

The Committee is soliciting public comments on this request, in particular with regard to whether imports from China of such swimwear are, due to market disruption, threatening to impede the orderly development of trade in this product.

Comments may be submitted by any interested person. Comments must be received no later than September 2, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

If a comment alleges that there is no market disruption or that the subject imports are not the cause of market disruption, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive products. Particular consideration will be given to comments representing the views of actual producers in the United States of a like or directly competitive product.

The Committee will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked "business confidential", will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee expects to make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If, however, the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the Federal Register, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the Federal Register. If the Committee makes an affirmative determination that imports of Chinese origin cotton and man-made fiber swimwear are, due to market disruption, threatening to impede the orderly development of trade in these products, the United States will request consultations with China with a view to easing or avoiding such market disruption in accordance with the Accession Agreement and the Committee's Procedures.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–15447 Filed 8–1–05; 1:41 pm]

BILLING CODE 3510–DS–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Draft Strategic Plan and Request for Comment

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of draft strategic plan and request for comment.

SUMMARY: The Corporation for National and Community Service ("Corporation") announces the availability of its draft strategic plan for 2005–2010. The Government Performance and Results Act of 1993 (GPRA) requires Federal agencies to establish a strategic plan covering not less than a 5-year period. and to solicit the views and suggestions of those entities potentially affected by or interested in the plan. The Corporation is interested in receiving comments on its draft strategic plan. Comments may be provided in writing or expressed during scheduled conference calls.

DATES: Written comments must be submitted by August 31, 2005. If comments are received after that date, we will consider them to the extent practicable.

ADDRESSES: Written comments on the draft strategic plan may be submitted to the Corporation by any of the following methods:

1. Electronically via the Corporation's e-mail address system to: *strategicplan@cns.gov.*

2. By fax to 202–606–3464, Attention: CNCS Strategic Plan Coordinator, Office of Research and Policy Development, 1201 New York Avenue, NW., Suite 10900, Washington, DC.

3. By hand delivery or courier to the Corporation's mailroom at room 8410 at the address given in paragraph (2) above, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

4. By mail sent to: Corporation for National and Community Service, Attention: Strategic Plan Coordinator, Office of Research and Policy Development, 1201 New York Avenue, NW., Suite 10900, Washington, DC 20525.

Due to continued delays in the Corporation's receipt of mail, we strongly encourage responses via e-mail, fax, and hand or courier delivery. Additionally, comments may be expressed during scheduled conference calls described below. This notice may be requested in alternative format for the visually impaired.

FOR FURTHER INFORMATION CONTACT: LaMonica Shelton; Corporation for National and Community Service, 1201 New York Avenue, NW., Washington, DC 20525; (202) 606–6743. For additional information about the conference calls, please refer to our Web site *http://www.NationalService.gov* or contact Angela Martin at 202–606–6711 or *amartin@cns.gov.* The TDD/TTY number is 202–606–3472.

SUPPLEMENTARY INFORMATION: GPRA requires Federal agencies to establish a strategic plan covering not less than a 5-year period, and to solicit the views and suggestions of those entities potentially affected by or interested in the plan. This notice represents one in a series of consultations seeking input from a variety of sources on the Corporation's draft strategic plan. The draft strategic plan is available on the Corporation's Web site at *http://www.NationalService.gov.* The draft plan includes the Corporation's mission statement and a description of strategic goals and implementation steps. The Corporation's annual operating plans and budgets are designed to implement the strategic plan. We would like to receive input from a wide range of organizations, public bodies, and other stakeholders. We especially encourage the views and suggestions of organizations sponsoring national service programs, state commissions on national and community service, state and local education agencies, other state and local government entities, other volunteer and service organizations, and Members of Congress. The Corporation also encourages comments from current and former participants in Corporation-funded national service programs and has sought the input of our own employees.

Please consider the following questions in providing your input:

- Does the document express the spirit and history of service while also explaining why Corporation-funded national service programs are critical today?
- Are the focus areas appropriate cross-program priorities for the agency for the next five years?
- Under the focus areas, have we identified strong strategies and targets?
- Will this Strategic Plan help you in your future planning?

Public Comment. It is the policy of the Corporation to encourage stakeholders in our programs and other interested parties to comment on the draft strategic plan. This policy is intended to provide a means for gathering a collection of opinions and perspectives that will enable us to make more informed decisions on matters that affect the future of our national service programs. In addition to written comments, which may be submitted in the manner set out above in the **ADDRESSES** section, input also may be provided by participating in one of our conference calls.

Conference Calls. During the month of August, the Corporation is planning three conference calls for the purpose of obtaining comments on the draft strategic plan. Please check our Web site at *http://www.NationalService.gov* for further information on dates, times, and other information regarding these conference calls, or contact Angela Martin at 202–606–6711 or *amartin@cns.gov.*

As you comment, please provide the rationale for any suggestions and identify whether you base your suggestions on participation in, or direct observation of, national service programs and activities conducted and supported by the Corporation. We anticipate publishing the final Strategic Plan for 2005–2010 in the fall of 2005, and making it available on our Web site at that time.

Dated: July 28, 2005.

Frank R. Trinity,

General Counsel.

[FR Doc. 05–15261 Filed 8–2–05; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 2, 2005.

Title and OMB Number: Secretary of Defense Biennial Review of Defense Agencies and DoD Field Activities; OMB Number 0704–0422.

Type of Request: Extension.

Number of Respondents: 3,000.

Responses Per Respondent: 1.

Annual Responses: 3,000.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 750.

Needs and Uses: Section 192(c) of Title 10, U.S.C., requires that the Secretary of Defense review the services and supplies provided by each Defense Agency and DoD Field Activity. The purposes of the Biennial Review are to ensure the continuing need for each Agency and Field Activity and to ensure that the services and supplies provided by each entity is accomplished in a more effective, economical, or efficient manner than by the Military Departments. A standard organizational customer survey process serves as the principal data-gathering methodology in the Biennial Review. As such, it provides valuable information to senior officials in the Department regarding the levels of satisfication held by the organizational customers of the approximately 27 Defense Agencies and DoD Field Activities covered by the Biennial Review.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; and State, local or tribal governments.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Lewis Oleinick.

Written comments and recommendations on the proposed

information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings, WHS/ESD/ Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: July 27, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–15289 Filed 8–2–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Notice of the Defense Acquisition Performance Assessment Project Meetings

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 96–463, notice is hereby given that the Defense Acquisition Performance Assessment (DAPA) Project will hold meetings at the Anteon Conference Center, 1560 Wilson Blvd., Suite 400, Arlington, VA 22209, on the dates as stated below. In accordance with Federal Advisory Committee Act of 1972, as amended, it has been determined that designated Project meetings will be confidential and/or proprietary in nature pursuant to 5 U.S.C. 552b(c)(4) and will be closed to the public.

This notice is being published in less than the 15 calendar days required by law (August 10–11, 2005, meeting) due to administrative oversight in publishing.

Purpose: The Panel will meet on the dates as stated below. Any interested citizens are encouraged to attend the meetings open to the public, subject to the availability of space.

DATES: August 10, 2005, 9 a.m.–4 p.m. (open to public); August 11, 2005, 8 a.m.–5 p.m. (closed to public); August 17, 2005, 9 a.m.–3 p.m. (open to the public); August 18, 2005, 8 a.m.–5 p.m. (closed to the public); August 23, 2005, 9 a.m.–1 p.m. (open to public); August 24, 2005, 8 a.m.–5 p.m. (closed to public); September 8 & 9, 2005, 8 a.m.–5 p.m. (closed to public); September 15, 2005, 9 a.m.–4 p.m. (open to public); September 16, 2005, 8 a.m.–5 p.m. (closed to public).

Agenda (August 10, 2005, open session)

0900–0915 DAPA Director: Introduction of Military Services Project Officers and DAPA Status Report.
0915–0930 Panel Chairman: Acquisition Big "A" ~little "a".
0930–1030 "Perspective from the Aerospace Assn".
1030–1130 Views from Industry.
1130–1200 Q&A.
1200–1215 Break.
1215–1315 Working Lunch/Views from Industry (Cont).
1315–1330 Break.
1330–1545 Views from Industry (Cont).
1545–1600 Break.
1600–1630 Q&A.
1630–1700 DAPA Chair, Wrap-up.

Location: Anteon Conference Center, 1560 Wilson Blvd., Suite 400, Arlington VA 22209.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this meeting or wishing to submit comments must contact: Lt. Col. Rene Bergeron, Assistant Director of Staff, Defense Acquisition Performance Assessment Project, 1670 Air Force Pentagon, Rm 4E886, Washington, DC 20330–1670. Telephone: (703) 697–1361. DSN: 225–1361. Fax: (703) 693–4303. *rene.bergeron@pentagon.af.mil.*

Interested persons may submit a written statement for consideration by the Panel, preferably via e-mail. Statements to the Panel must be directed to the point of contact listed above, received no later than 5 p.m., September 7, 2005.

Dated: August 1, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–15455 Filed 8–1–05; 1:42 pm]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Threat Reduction Agency; Privacy Act of 1974; Systems of Records

AGENCY: Defense Threat Reduction Agency, DOD.

ACTION: Notice to Amend a System of Records; HDTRA 011-Inspector General Investigation Files.

SUMMARY: The Defense Threat Reduction Agency is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 2, 2005 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 325–1205.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency 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 specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 15, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 011

SYSTEM NAME:

Inspector General Investigation Files (December 14, 1998, 63 FR 68736).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Office of the Inspector General, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. Appendix 4, Ethics in Government; 10 U.S.C. 141, Inspector General; DTRA 5505.2, DTRA Inspector General (IG) Inquiry and Investigation Procedures; The Inspector General Act of 1978 (5 U.S.C. Appendix 3); and E.O. 9397 (SSN)."

* * * * *

SAFEGUARDS:

Delete "Commanding Officer, or Officer-in-Charge" and replace with "Director"

RETENTION AND DISPOSAL:

Delete entry and replace with "Requests for assistance and/or complaints acted on by the Inspector

General are retained in office for 1 year after completion of investigation, transferred to the Federal Records Center and then transferred to the National Archives in 10 year blocks when 20–30 years old."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Office of the Inspector General, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201."

NOTIFICATION PROCEDURE:

Delete address and replace with "General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201."

RECORD ACCESS PROCEDURES:

Delete address and replace with "General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201."

CONTESTING RECORD PROCEDURES:

Delete address and replace with "General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201."

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete address and replace with "General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201."

* * * * *

HDTRA 011

SYSTEM NAME:

Inspector General Investigation Files.

SYSTEM LOCATION:

Office of the Inspector General, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who is the subject of or a witness for an Inspector General investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains files on individual investigations including investigative reports and related documents generated during the course of or subsequent to an investigation.

Reports of investigation contain the authority for the investigation, matters investigated, narrative, documentary evidence, and transcripts of verbatim testimony or summaries thereof.

The system includes 'Hotline' telephone logs, investigator work papers and memoranda and letter referrals to management or others, and a chronological listing for identification and location of files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Appendix 4, Ethics in Government; 10 U.S.C. 141, Inspector General; DTRA 5505.2, DTRA Inspector General (IG) Inquiry and Investigation Procedures; The Inspector General Act of 1978 (5 U.S.C. Appendix 3); and E.O. 9397 (SSN).

PURPOSE(S):

To investigate the facts and circumstances surrounding allegations or problems reported to the OIG.

Open and closed case listings are used to manage investigations, to produce statistical reports, and to control various aspects of the investigative process.

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 'Blanket Routine Uses' set forth at the beginning of the DTRA's compilation of systems of records notices will apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage:

Paper records in file folders, computer disks and log books.

RETRIEVABILITY:

Retrieved alphabetically by surname of individual, year, investigation number, hotline case number, referral number or investigative subject matter.

SAFEGUARDS:

Access is limited to the Inspector Generals staff, and, as delegated by the Director on a need to know basis. Case records are maintained in locked security containers.

Automated records are controlled by limiting physical access to terminals and by the use of passwords. Work areas are sight controlled during normal duty hours. Buildings are protected by security guards and an intrusion alarm system.

RETENTION AND DISPOSAL:

Requests for assistance and/or complaints acted on by the Inspector General are retained in office for 1 year after completion of investigation, transferred to the Federal Records Center and then transferred to the National Archives in 10 year blocks when 20–30 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Inspector General, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Individuals should provide their name, address, and proof of identity (photo identification for in person access or an unsworn declaration in accordance with 28 U.S.C. 1746 or a notarized statement may be required for identity verification).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Individuals should provide their name, address, and proof of identity (photo identification for in person access or an unsworn declaration in accordance with 28 U.S.C. 1746 or a notarized statement may be required for identity verification).

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

RECORD SOURCE CATEGORIES:

From the individual, DTRA records and reports, DTRA employees, witnesses, informants, and other sources providing or containing pertinent information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal

law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 318. For additional information contact the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

[FR Doc. 05–15351 Filed 8–2–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Threat Reduction Agency; Privacy Act of 1974; Systems of Records

AGENCY: Defense Threat Reduction Agency.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Threat Reduction Agency is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on September 2, 2005, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Freedom of Information Act/Privacy Act Officer, Defense Threat Reduction, 8725 John J. Kingman Road, Stop 6201, Fort Belvoir, VA 22060–6201.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 325–1205.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency 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 specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 27, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 017

SYSTEM NAME:

Voluntary Leave Sharing Program Records (December 14, 1998, 63 FR 68736).

CHANGES:

SYSTEM LOCATION:

Delete primary location and replace with "Office of Manpower and Personnel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201".

Delete secondary location and replace with "Civilian Personnel Office, Building 20203A, Kirtland Air Force Base, Albuquerque, NM 87115–5000."

* * * * *

SYSTEM MANAGER(S) AND ADDRESSES:

Delete entry and replace with "Chief, Manpower and Personnel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201".

NOTIFICATION PROCEDURE:

Delete address and replace with "General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201".

RECORD ACCESS PROCEDURES:

Delete address and replace with "General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201".

CONTESTING RECORD PROCEDURES:

Delete "DTRA Instruction 5400.11B" and replace with "DTRA Instruction 5400.11" Delete address and replace with "General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201".

* * * * *

HDTRA 017

SYSTEM NAME:

Voluntary Leave Sharing Program Records.

SYSTEM LOCATION:

Office of Manpower and Personnel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Secondary locations: Civilian Personnel Office, Building 20203A, Kirtland Air Force Base, Albuquerque, NM 87115–5000.

Technology Security Directorate, Defense Threat Reduction Agency, 400 Army Navy Drive, Arlington, VA 22202–2884.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have volunteered to participate in the leave sharing program as either a donor or recipient of annual leave.

CATEGORIES OF RECORDS IN THE SYSTEM:

Leave recipient records contain the individual's name, organization, office telephone number, Social Security Number, position title, grade, pay level, leave balances, brief description of the medical or personal hardship which qualifies the individual for inclusion in the leave transfer program, the status of the hardship, and a statement that selected data elements may be used in soliciting donations.

The file may also contain medical or physician certifications and DTRA approvals or denials.

Donor records include the individual's name, organization, office, telephone number, Social Security Number, position title, grade, pay level, leave balances, number of hours being transferred (or donated leave), and, in the case of the transfer program, the designated leave recipient.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 6331 *et seq* (Leave); 10 U.S.C. 136; 5 CFR part 630; and E.O. 9397 (SSN).

PURPOSE(S):

The file is used in managing the DTRA Voluntary Leave Sharing Program. The recipient's name, and a brief description of the hardship, if authorized by the recipient, are published internally for solicitation purposes. The Social Security Number is obtained to ensure the transfer of leave from the donor's account to the recipient's account.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Labor in connection with a claim filed by an employee for compensation due to a job-related injury or illness; where the leave donor and leave recipient are employed by different Federal agencies, to the

personnel and finance offices of the Federal agency involved to effectuate the leave transfer.

The 'Blanket Routine Uses' set forth at the beginning of DTRA'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:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the records or by persons responsible for servicing the record system in the performance of their official duties. Records are stored in locked cabinets or rooms, and are controlled by personnel screening and computer software.

RETENTION AND DISPOSAL:

Records are destroyed one year after the end of the year in which the file is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Manpower and Personnel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written requests to the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Individual should provide full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written requests to the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201. Individual should provide full name and Social Security Number.

CONTESTING RECORDS PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11; 32 CFR part 318; or may be obtained from the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

RECORD SOURCE CATEGORIES:

Information is provided primarily by the record subject; however, some data may be obtained from personnel and leave records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–15353 Filed 8–2–05; 8:45 am]

BILLING CODE 5001–06–P

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; DHA 07–Military Health Information System.

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 September 2, 2005 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Irvin at (703) 601–4722, extension 110.

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 July 27, 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: July 28, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

DHA 07

SYSTEM NAME:

Military Health Information System (April 27, 2005, 70 FR 21740).

CHANGES:

* * * * *

SYSTEM LOCATION:

Add the following secondary location: 'Joint Task Force Sexual Assault Prevention and Response Office (JTF–SAPR), 1401 Wilson Blvd, Suite 402, Arlington, VA 22209–2318.'

* * * * *

PURPOSE(S):

Add the following purpose: 'Data collected and maintained in electronic and paper records is used to track the management of victims of sexual assault crimes, and the medical and other support services provided to them. Data collected and maintained is also used to capture demographics and perform trend analysis.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Add the following program manager, 'Program Manager, Joint Task Force Sexual Assault Prevention and Response, 1401 Wilson Blvd, Suite 402, Arlington, VA 22209–2318.'

NOTIFICATION PROCEDURE:

Add the following address for written inquiries, 'Commander, Joint Task Force Sexual Assault Prevention and Response, 1401 Wilson Blvd, Suite 402, Arlington, VA 22209–2318.'

RECORD ACCESS PROCEDURES:

Add the following address for written inquiries, 'Commander, Joint Task Force Sexual Assault Prevention and Response, 1401 Wilson Blvd, Suite 402, Arlington, VA 22209–2318.'

* * * * *

DHA 07

SYSTEM NAME:

Military Health Information System

SYSTEM LOCATION:

Primary location: Defense Enterprise Computing Center–Denver/WEE. 6760 E. Irvington Place Denver, CQ 80279–5000.

Secondary locations: Directorate of Information Management, Building 1422, Fort Detrick, MD 21702–5000; Service Medical Treatment Facility Medical Centers and Hospitals:

Uniformed Services Treatment Facilities; Defense Enterprise Computing Centers; TRICARE Management Activity, Department of Defense, 5111 Leesburg Pike, Skyline 6, Suite 306, Falls Church, VA 22041–3206; Joint Medical Information Systems Office, 5109 Leesburg Pike Suite 900, Skyline Building 6, Falls Church, VA 22041–3241, and contractors under contract to TRICARE. Program Executive Officer, Joint Medical Information Systems Office, 5109 Leesburg Pike, Suite 900, Skyline Building 6, Falls Church, Virginia 22041–3241. Joint Task Force Sexual Assault Prevention and Response Office (JTF–SAPR), 1401 Wilson Blvd, Suite 402, Arlington, VA 22209–2318. For a complete listing of all facility addresses write to the system manger.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Uniformed services medical beneficiaries enrolled in the Defense Enrollment Eligibility Reporting System (DEERS) who receive or have received medical care at one or more of DoD's medical treatment facilities (MTFs), Uniformed Services Treatment Facilities (USTFs), or care provided under TRICARE programs. Uniformed services medical beneficiaries who receive or have received care at one or more dental treatment facilities or other system locations including medical aid stations, Educational and Developmental Intervention Services clinics and Service Medical Commands. Uniformed service members serving in a deployed status and those who receive or received care through the Department of Veterans Affairs (VA).

CATEGORIES OF RECORDS IN THE SYSTEM:

PERSONAL IDENTIFICATION DATA:

Selected electronic data elements extracted from the Defense Enrollment and Eligibility Reporting System (DEERS) beneficiary and enrollment records that include data regarding personal identification including demographic characteristics.

ELIGIBILITY AND ENROLLMENT DATA:

Selected electronic data elements extracted from DEERS regarding personal eligibility for and enrollment in various health care programs within the Department of Defense (DoD) and among DoD and other federal healthcare programs including those of the Department of Veterans Affairs (DVA), the Department of Health and Human Services (DHHS), and contracted health care provided through funding provided by one of these three Departments.

CLINICAL ENCOUNTER DATA:

Electronic data regarding beneficiaries' interaction with the MHS including health care encounters, health care screenings and education, wellness and satisfaction surveys, and cost data relative to such healthcare interactions. Electronic data regarding Military Health System beneficiaries' interactions with the DVA or DHHS healthcare delivery programs where such programs effect benefits determinations between these Department-level programs, continuity of clinical care, or effect payment for care between Departmental programs inclusive of care provided by commercial entities under contract to these three Departments.

Electronic data regarding dental tests, pharmacy prescriptions and reports, data incorporating medical nutrition therapy and medical food management, data for young MHS beneficiaries eligible for services from the military medical departments covered by the Individuals with Disabilities Education Act (IDEA). Data collected within the system also allows beneficiaries to request an accounting of who was given access to their medical records prior to the date of request. It tracks disclosure types, treatment, payment and other Health Care Operations (TPO) versus non-TPO, captures key information about disclosures, processes complaints, processes and tracks requests for amendments to records, generates disclosure accounting and audit reports, retains history of disclosure accounting processing.

BUDGETARY AND MANAGERIAL COST ACCOUNTING DATA:

Electronic budgetary and managerial cost accounting data associated with beneficiaries' interactions with the MHS, DVA, DHHS or contractual commercial healthcare providers.

CLINICAL DATA:

Inpatient and out patient medical records, diagnosis procedures, and pharmacy records.

OCCUPATIONAL AND ENVIRONMENTAL EXPOSURE DATA:

Electronic data supporting exposure-based medical surveillance; reports of incidental exposures enhanced industrial hygiene risk reduction; improved quality of occupational health care and wellness programs for the DoD workforce; hearing conservation, industrial hygiene and occupational medicine programs within the MHS; and timely and efficient access of data and information to authorized system users

MEDICAL AND DENTAL RESOURCES:

Electronic data used by the MHS for resource planning based on projections of actual health care needs rather than projections based on past demand.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Department Regulation; 10 U.S.C., Chapter 55; Pub.L. 104–91, Health Insurance Portability and Accountability Act of 1996; DoD 6025.18–R, DoD Health Information Privacy Regulation; 10 U.S.C. 1071–1085, Medical and Dental Care; 42 U.S.C. Chapter 117, Sections 11131–11152, Reporting of Information; 10 U.S.C. 1097a and 1097b, TRICARE Prime and TRICARE Program; 10 U.S.C. 1079, Contracts for Medical Care for Spouses and Children; 10 U.S.C. 1079a, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); 10 U.S.C. 1086, Contracts for Health Benefits for Certain Members, Former Members, and Their Dependents; DoD Instruction 6015.23, Delivery of Healthcare at Military Treatment Facilities (MTFs); DoD 6010.8–R, CHAMPUS; 10 U.S.C. 1095, Collection from Third Party Payers Act; and E.O. 9397 (SSN).

PURPOSE(S):

Data collected within and maintained by the Military Health Information System supports benefits determination for MHS beneficiaries between DoD, DVA, and DHHS healthcare programs, provides the ability to support continuity of care across Federal programs including use of the data in the provision of care, ensures more efficient adjudication of claims and supports healthcare policy analysis and clinical research to improve the quality and efficiency of care within the MHS.

The electronic medical records portion of the system (EMR) addresses documenting and tracking environmental health readiness data located in arsenals, depots, and bases. Data collected and maintained is used to assess the medical and dental deployability of Service members for the purposes of pre- and post-deployment exams. This assists in recording health conditions before deployment and any changes during and after deployment.

Data collected and maintained in the EMR system is used to perform disease management and the prevention of exacerbations and complications using evidence-based practice guidelines and patient empowerment strategies. Data collected and maintained in the EMR system is used in proactive health intervention activities for the active duty and non-active duty beneficiary population. Data collected and

maintained is used to capture data on hearing loss and occupational exposures, to perform noise exposure surveillance and injury referrals to assess auditory readiness.

Data collected and maintained in the EMR system is used to establish individual longitudinal exposure records using pre-deployment exposure records. These records are used as a baseline against new exposures to facilitate post-deployment follow-up and workplace injury root-cause analysis in an effort to mitigate loss work time within the DoD.

Data collected within and maintained in the system is used for patient administration (including registration, admission, disposition and transfer); patient appointing and scheduling, delivery of managed care; workload and medical services accounting; and quality assurance.

Data collected will be provided to Special Oversight Boards created by applicable DoD authorities to investigate special circumstances and conditions resulting from a deployment of DoD personnel to a theater of operations.

Data collected and maintained in electronic and paper records is used to track victims of sexual assault crimes, and medical and other support services provided to them. Data collected and maintained is also used to capture demographics and perform trend analysis.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To permit the disclosure of records to the Department of Health and Human Services (HHS) and its components for the purpose of conducting research and analytical projects, and to facilitate collaborative research activities between DoD and HHS.

To the Congressional Budget Office for projecting costs and workloads associated with DoD Medical benefits.

To the Department of Veterans Affairs (DVA) for the purpose of providing medical care to former service members and retirees, to determine the eligibility for or entitlement to benefits, to coordinate cost sharing activities, and to facilitate collaborative research activities between the DoD and DVA.

To the National Research Council, National Academy of Sciences, National Institutes of Health, Armed Forces Institute of Pathology, and similar institutions for authorized health research in the interest of the Federal Government and the public. When not essential for longitudinal studies, patient identification data shall be deleted from records used for research studies. Facilities/activities releasing such records shall maintain a list of all such research organizations and an accounting disclosure of records released thereto.

To local and state government and agencies for compliance with local laws and regulations governing control of communicable diseases, preventive medicine and safety, child abuse, and other public health and welfare programs.

To federal offices and agencies involved in the documentation and review of defense occupational and environmental exposure data, including the National Security Agency, the Army Corps of Engineers, National Guard, and the Defense Logistics Agency.

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system, except as identified below.

NOTE 1:

This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18-R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

NOTE 2:

Personal identity, diagnosis, prognosis or treatment information of any patient maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, except as provided in 42 U.S.C. 290dd–2, will be treated as confidential and will be disclosed only for the purposes and under the circumstances expressly authorized under 42 U.S.C. 290dd–2. The "Blanket Routine Uses" do not apply to these types of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on optical and magnetic media.

RETRIEVABILITY:

Records may be retrieved by individual's Social Security Number, sponsor's Social Security Number, Beneficiary ID (sponsor's ID, patient's name, patient's DOB, and family member prefix or DEERS dependent suffix), diagnosis codes, admission and discharge dates, location of care or any combination of the above.

SAFEGUARDS:

Automated records are maintained in controlled areas accessible only to authorized personnel. Entry to these areas is restricted to personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of a cipher lock. Back-up data maintained at each location is stored in a locked room. The system will comply with the DoD Information Technology Security Certification and Accreditation Process (DITSCAP) Access to HMIS records is restricted to individuals who require the data in the performance of official duties. Access is controlled through use of passwords.

RETENTION AND DISPOSAL:

Records are maintained until no longer needed for current business.

SYSTEM MANAGER(S) AND ADDRESS:

Program Manager, Executive Information/Decision Support Program Office, Six Skyline Place, Suite 809, 5111 Leesburg Pike, Falls Church, VA 22041–3201.

Program Manager, Joint Task Force Sexual Assault Prevention and Response, 1401 Wilson Blvd, Suite 402, Arlington. VA 22209–2318.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3201 or Commander, Joint Task Force Sexual Assault Prevention and Response, 1401 Wilson Blvd, Suite 402, Arlington, VA 22209–2318.

Requests should contain the full names of the beneficiary and sponsor, sponsor Social Security Number, sponsor service, beneficiary date of birth, beneficiary sex, treatment facility(ies), and fiscal year(s) of interest.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written requests to TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3201 or Commander, Joint Task Force Sexual Assault Prevention and Response, 1401 Wilson Blvd, Suite 402, Arlington, VA 22209–2318.

Requests should contain the full names of the beneficiary and sponsor, sponsor's Social Security Number, sponsor's service, beneficiary date of birth, beneficiary sex, treatment facility(ies) that have provided care, and fiscal year(s) of interest.

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.

RECORD SOURCE CATEGORIES:

The individual data records that are assembled to form the MHIS are submitted by the Military Departments' medical treatment facilities, commercial healthcare providers under contract to the MHS, the Defense Enrollment Eligibility Reporting System, the Uniformed Service Treatment Facility Managed Care System, the Department of Health and Human Services, the Department of Veterans Affairs, and any other source financed through the Defense Health Program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–15355 Filed 8–2–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Threat Reduction Agency; Privacy Act of 1974; Systems of Records

AGENCY: Defense Threat Reduction Agency.

ACTION: Notice to Amend a System of Records; HDTRA 019—Treaty Inspection Information Management System.

SUMMARY: The Defense Threat Reduction Agency is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on September 2, 2005 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Freedom of Information Act/Privacy Act Officer, Defense Threat Reduction, 8725 John J. Kingman Road, Stop 6201, Fort Belvoir, VA 22060–6201.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 325–1205.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency 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 specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 27, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 019

SYSTEM NAME:

Treaty Inspection Information Management System (December 14, 1998, 63 FR 68736).

CHANGES:

SYSTEM LOCATION:

Delete entry and replace with "Defense Threat Reduction Agency, Room 0620, 8725 John J. Kingman Rd, VA 22060–6201".

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete from entry "marital status" and "years of federal service".

* * * * *

RETRIEVABILITY:

Add to entry "title" and "personnel type"

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Treaty Inspection Information Management System Administrator, Information Technology Division, Defense Threat Reduction Agency, Room 0620, 8725 John J. Kingman Rd, VA 22060–6201"

NOTIFICATION PROCEDURE:

Delete address and replace with "General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Drive, Ft. Belvoir, VA 22060–6201"

RECORD ACCESS PROCEDURES:

Delete address and replace with "General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Drive, Ft. Belvoir, VA 22060–6201".

CONTESTING RECORD PROCEDURES:

Delete "DTRA Instruction 5400.11B" and replace with "DTRA Instruction 5400.11" Delete address and replace with "General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Drive, Ft. Belvoir, VA 22060–6201".

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HDTRA 019

SYSTEM NAME:

Treaty Inspection Information Management System.

SYSTEM LOCATION:

Defense Threat Reduction Agency, Room 0620, 8725 John J. Kingman Rd, VA 22060–6201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals affiliated with the Defense Threat Reduction Agency, either by military assignment, civilian employment, or contractual support agreement. Individuals are weapons inspectors, linguists, mission schedulers/planners, personnel assistants/specialists, portal rotation specialists, operation technicians, passport managers, clerical staff, and database management specialists.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information includes individual's name, Social Security Number, date of birth, city/state/country of birth, education, gender, race, civilian or military member, rank (if military), security clearance, occupational category, job organization and location, and emergency locator information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 302, 4103; Pub. L. 89–554 (September 6, 1966); and E.O. 9397 (SSN).

PURPOSE(S):

To manage the Treaty Monitoring and Inspection activities, including personnel resources, manpower/billet management, passport status, mission scheduling and planning, inspection team composition, inspector and transport list management, inspector training, and inspection notification generation.

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 "Blanket Routine Uses" set forth at the beginning of DTRA'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:

Maintained on computer and computer output products.

RETRIEVABILITY:

Records may be retrieved by name or Social Security Number, title, and personnel type.

SAFEGUARDS:

Records are stored in a computer system with extensive intrusion safeguards.

RETENTION AND DISPOSAL:

Records are maintained for as long as the individual is assigned to DTRA. Upon departure from DTRA, records concerning that individual are removed from the active file and retained in an inactive file for ten years. Information that has been held in the inactive file for ten years is deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Treaty Inspection Information Management System Administrator, Information Technology Division, Defense Threat Reduction Agency, Room 0620, 8725 John J. Kingman Rd, VA 22060–6201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the General Counsel, Defense Threat Reduction Agency, Room 0620, 8725 John J. Kingman Rd, VA 22060–6201.

The inquiry should include full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Drive, Ft. Belvoir, VA 22060–6201. The inquiry must include full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11; 32 CFR part 318; or may be obtained from the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Drive, Ft. Belvoir, VA 22060–6201.

RECORD SOURCE CATEGORIES:

Information is provided by the individual, obtained from other personnel record sources, and from the individual's superiors and assignment personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–15358 Filed 8–2–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Threat Reduction Agency; Privacy Act of 1974; Systems of Records

AGENCY: Defense Threat Reduction Agency.

ACTION: Notice to Amend a System of Records; HDTRA 002-Employee Relations.

SUMMARY: The Defense Threat Reduction Agency is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on September 2, 2005 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Freedom of Information Act/Privacy Act Officer, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Stop 6201, Fort Belvoir, VA 22060–6201.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 325–1205.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency 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 specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 27, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 002

SYSTEM NAME:

Employee Relations (December 14, 1998, 63 FR 68736)

CHANGES:

SYSTEM LOCATION:

Delete entry and replace with "Office of Manpower and Personnel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201"

* * * * *

SYSTEM MANAGER(S) AND ADDRESSES:

Delete entry and replace with "Chief, Manpower and Personnel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201"

NOTIFICATION PROCEDURE:

Delete address and replace with "General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201"

RECORD ACCESS PROCEDURES:

Delete address and replace with "General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201"

CONTESTING RECORD PROCEDURES:

Delete "DTRA Instruction 5400.11B" and replace with "DTRA Instruction 5400.11" Delete address and replace with "General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201"

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HDTRA 002

SYSTEM NAME:

Employee Relations.

SYSTEM LOCATION:

Office of Manpower and Personnel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Civilian Personnel Office, Building 20203A, Kirtland Air Force Base, Albuquerque, NM 87115–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees and former employees paid from appropriated

funds serving under career, career-conditional, temporary and excepted service appointments on whom suitability, discipline, grievance, and appeal records exist.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents and information pertaining to discipline, grievances, and appeals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, 7301; E.O. 11557; E.O. 11491; E.O. 12564 and E.O. 9397 (SSN).

PURPOSE(S):

For use by agency officials and employees in the performance of their official duties related to management of civilian employees and the processing, administration and adjudication of discipline, grievances, suitability and appeals.

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:

Appeals examiners of the Merit Systems Protection Board to adjudicate appeals.

The Comptroller General or his authorized representatives and the Attorney General of the United States or his authorized representatives in connection with grievances, disciplinary actions, suitability, and appeals, and to Federal Labor Relations officials in the performance of official duties.

The 'Blanket Routine Uses' published at the beginning of DTRA's compilation of system of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper folders.

RETRIEVABILITY:

Records at Defense Threat Reduction Agency are retrieved alphabetically by last name of individual. Records at Kirtland Air Force Base are filed by Social Security Number.

SAFEGUARDS:

Buildings are protected by security guards and an intrusion alarm system. Records are maintained in locked security containers in a locked room accessible only to personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Records are destroyed upon separation of the employee from the agency or in accordance with appropriate records disposal schedules.

SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Manpower and Personnel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

The letter should contain the full name and signature of the requester and the approximate period of time, by date, during which the case record was developed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

The letter should contain the full name and signature of the requester and the approximate period of time, by date, during which the case record was developed.

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11; 32 CFR part 318; or may be obtained from the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

RECORD SOURCE CATEGORIES:

Supervisors or other appointed officials designated for this purpose.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–15359 Filed 8–2–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Draft Environmental Impact Statement (DEIS) for the Transformation of the Pennsylvania Army National Guard's (PAARNG) 56th Brigade Into a Stryker Brigade Combat Team (SBCT) at the National Guard Training Center (NGTC)—Fort Indiantown Gap (FITG), PA

AGENCY: National Guard Bureau (NGB), Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army and NGB have proposed to transform the PAARNG's 56th Brigade into an SBCT. This DEIS discusses in-depth three alternatives: (1) the Preferred Alternative, (2) Train Using Existing Army Facilities Alternative, and (3) the No Action Alternative. Under the Preferred Alternative, the PAARNG proposed construction of new training and support facilities at NGTC–FTIG; at Fort Pickett, Virginia; and at local PAARNG facilities across the State of Pennsylvania, as well as conducting Annual Training (AT) at Fort A.P. Hill, Virginia, in order to accomplish requisite training. Under the Train Using Existing Army Facilities Alternative, no construction at NGTC–FTIG or Fort Pickett would occur; the statewide facilities improvements would occur. Required SBCT Inactive Duty Training (IDT) and AT would be conducted at select regional Army training installations using existing facilities. Other alternatives considered but eliminated from detail study are also addressed in the DEIS.

DATES: The comment period for the DEIS will end 45 days after publication of an NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Written comments or materials should be forwarded to Lieutenant Colonel Christopher Cleaver, NGTC–FTIG Public Affairs Officer, PADMVA Headquarters, Building O–47, Annville, Pennsylvania 17003–5002 or Captain Patricia Rickard, NGTC–FTIG EIS Project Officer, NGTC–FTIG Environmental Section, 1119 Utility Road, Annville, Pennsylvania 17003–5002.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Cleaver at (717) 861–8468 or Captain Richard at (717) 861–2580.

SUPPLEMENTARY INFORMATION: The PAARNG, while developing this DEIS, conducted studies concentrated on

possible effects on the following issue areas: land use; air quality; noise; geology; topography and soils; water resources; biological resources; cultural resources; socioeconomics; environmental justice; infrastructure; and hazardous and toxic materials and wastes (HTMW). Significant impacts would be anticipated from both action alternatives, although the Preferred Alternative would result in greater impacts. The Train at Existing Army Facilities Alternative would result in fewer impacts but would not achieve the purpose of and need for the Proposed Action as effectively and efficiently as the Preferred Alternative. Studies concluded that implementation of the Preferred Alternative would result in some significant but unmitigable impacts to air quality, geology and soils, and biological resources, and would result in significant but mitigable impacts to land use, water resources, cultural resources, and the HTMW. The Preferred Alternative would also result in beneficial impacts to socioeconomics and to minority and low income populations. The Train Using Existing Army Facilities Alternative would result in significant unmitigable impacts to air quality (*e.g,* via fugitive dust during training episodes) and would negate the beneficial socioeconomic impacts of the Preferred alternative in the vicinities of NGTC–FTIG and Fort Pickett; the statewide (Pennsylvania) socioeconomic benefits would still occur. The No Action Alternative would result in no significant impacts but would not achieve the established purpose of and need for the Proposed Action.

SBCT is a new concept that uses technology and information to improve the abilities of Army units. This change will allow the Army greater flexibility and will improve the variety of missions to which they can respond. The SBCT will use the ligher, more efficient, and more maneuverable Stryker vehicle to increase the speed at which Soldiers are transported to conflict areas, and will provide protective cover as Soldiers dismount and move by foot to desired target areas. The Stryker also enables Soldiers to obtain time sensitive, critical information and intelligence from their commanders and to maintain constant communication via refined satellite links and internet connections. This is a radical departure from the way Soldiers fight today and requires new ranges, training facilities and training protocols, as well as high-tech communication facilities, to ensure the military readiness and preparedness of the SBCT's to fulfill military objectives.

Dated: July 28, 2005.

Daphne Kamely,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I&E).

[FR Doc. 05–15278 Filed 8–2–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability (NOA) of the Draft Environmental Impact Statement (DEIS) for Military Training Activities at Makua Military Reservation (MMR), HI

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Army proposes to conduct military training exercises at MMR, Oahu, Hawaii, for units assigned to the 25th Infantry Division (Light) (25th ID(L)) and for other military components. Other military components that have used MMR in the past include the Marine Corps, Army Reserves, and the Hawaii Army National Guard. Conducting live-fire exercises at the company level and below is critical to maintaining the readiness of all military units assigned or stationed in Hawaii in particular because training at the company level is one of the key building blocks in the Army's progressive training doctrine. Under this doctrine, Soldiers first train as smaller units and then train collectively as part of a large unit. In addition, the training received by a company commander during a company-level combined-arms live-fire exercise (CALFEX) is invaluable in teaching Soldiers the skills required to coordinate and integrate the combined arms support provided by aviation, artillery, mortar, and combat engineer support teams. These communication and coordination skills are essential when several companies combine as a battalion under the control of a battalion commander. The DEIS addresses, among other things, the potential direct, indirect, and cumulative environmental impacts associated with the proposal to conduct military training activities at MMR. The DEIS development process was conducted in accordance with the Settlement Agreement and Stipulated Order between Malama Makua and the Department of Defense (filed October 4, 2001).

DATES: Submit comments on or before September 21, 2005.

ADDRESSES: Direct questions and/or written comments to, or request a copy of the DEIS from Mr. Gary Shirakata, Programs and Project Management Division, U.S. Army Corps of Engineers, Honolulu District, ATTN: CEPOH–PP–E (Shirakata), Building 230, Fort Shafter, HI 96858–5440.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Shirakata at (808) 438–0772; by e-mail at *Makua-EIS@poh01.usace.army.mil*; or by facsimile at (808) 438–7801.

SUPPLEMENTARY INFORMATION: The DEIS analyzes three alternatives to accomplish the proposed training on Oahu: Alternative 1 (Reduced Capacity Use with Some Weapons Restrictions), Alternative 2 (Full Capacity Use with Some Weapons Restrictions), Alternative 3 (Full Capacity Use with Fewer Restrictions). Alternative 3 is the Army's Preferred Alternative. A No Action Alternative, under which no military training would be conducted, also was evaluated.

For all alternatives (with the exception of No Action), MMR would be used for 242 training days per year. Alternative 1 (Reduced Capacity Use) involves conducting up to 19 to 28 company-level CALFEXs per year. Alternatives 2 and 3 (Full Capacity Use) involve conducting up to 50 company-level CALFEXs per year. Weapon systems used for all three training alternatives would be similar to those used during current training. In addition to the current weapons systems, Alternative 2 incorporates the use of tracer ammunition. Alternative 3 (Preferred Alternative) adds tracer ammunition; inert, tube-launched, opticallly-tracked, wire-guided (TOW) missiles; 2.75-caliber rockets; and illumination munitions. Alternative 3 also would include use of an expanded training area that would utilize the ridge between the north and south lobes of the training area.

Some of the major potential impacts discussed in the DEIS are associated with contamination of soil, surface water, and groundwater, air quality; cultural sites; natural resources; endangered and threatened species; noise; recreational resources; wildfires; and the safety and transport of munitions through the Waianae community.

Comments on the DEIS will be considered in preparing the Final EIS. Public meetings to receive comments on the DEIS will be held along the Waianae Coast, Oahu. Notification of the times and locations for the public meetings will be published in local newspapers and the Hawaii Office of Environmental Quality Control Bulletin.

Copies of the DEIS are available for review at the following libraries: Hawaii State Library, 478 South King Street,

Honolulu; Wahiawa Public Library, 820 California Avenue, Wahiawa; Waianae Public Library, 85–625 Farrington Highway, Waianae; and the Pearl City Public Library, 1138 Waimano Home Road, Pearl City.

The DEIS may also be reviewed at the following Web site: *http://www.makuaeis.com.*

Dated: July 27, 2005.

Daphne Kennedy,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA(I&E).

[FR Doc. 05–15277 Filed 8–2–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209 and 37 CFR 404.7(a)(1)(i), announcement is made of the intent to grant an exclusive (except for use as a portable lavatory.enclosure), royalty-bearing, revocable license within the geographic area of the United States of America and its territories and possessions to U.S. Patent 6,672,323, issued January 6, 2004 entitled "Multipurpose Self-Erecting Structure having Advanced Insect Protection and Storage Characteristics," to Kamp-Rite Tent Cot, Inc. with its principal place of business at 1050 Connecticut Ave., Suite 1000, Washington, DC 20036.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–ZA–J, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate, U.S. Army Medical Research and Materiel Command, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–15297 Filed 8–2–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Defense Threat Reduction Agency, DoD.

ACTION: Notice to delete systems of records; HDTRA01 Employee Assistance Program.

SUMMARY: The Defense Threat Reduction Agency is deleting a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 2, 2005, unless comments are received which result in a contrary determination.

ADDRESSES: Freedom of Information Act/Privacy Act Officer, Defense Threat Reduction, 8725 John J. Kingman Road, Stop 6201, Fort Belvoir, VA 22060–6201.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 325–1205.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 28, 2005.

Jeanette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

HDTRA01

SYSTEM NAME:

Employee Assistance Program (December 14, 1998, 63 FR 68736).

REASON:

The system of records is maintained under the Defense Logistics Agency system of records notice S330.30, entitled CAHS Employee Assistance Program Records (November 16, 2004, 69 FR 67112).

[FR Doc. 05–15352 Filed 8–2–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Alter a System of Records; A0735 SAIS-SF Library Borrowers'/Users' Profile Files.

SUMMARY: The Department of the Army proposes to alter a system of records notice in its inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 2, 2005 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, ATTN: AHRC-PDD-FPZ, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6497.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 27, 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: July 28, 2005.

Jeanette Owings-Ballard,

Federal Register Liaison Officer, Department of Defense.

A0735 SAIS-SF

SYSTEM NAME:

Library Borrowers'/Users' Profile Files (February 22, 1993, 58 FR 10002)

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with "A0215–1 DAPE'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM

Add to entry: rank, date of birth, and email address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

Add to entry "10 U.S.C. 3013, Secretary of the Army; Pub. L. 106–554, Children's Internet Protection Act; AR 215–1, Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities'

PURPOSE(S)

Add to entry "To comply with the Children's" Internet Protection Act and to provide authentication for borrowed electronic resources (*e.g.*, e-books, e-journals)."

* * * * *

STORAGE:

Delete entry and replace with "Paper in file folders; card files; and electronic storage media."

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* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Deputy Chief of Staff, G–1, 300 Army Pentagon, Washington, DC 20310–0300'

* * * * *

RECORD SOURCE CATEGORIES:

Add to entry: "and Defense Enrollment Eligibility Reporting System (DEERS) database."

* * * * *

A0215–1 DAPE

SYSTEM NAME:

Library Borrowers'/Users' Profile Files

SYSTEM LOCATION:

Libraries on Army installations and activities. Official mailing addresses of installations and activities are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Authorized users of Army library facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, Social Security Number, and telephone number rank, date of birth, and email address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN), 10 U.S.C. 3013, Secretary of the Army; Pub. L. 106–554, Children's Internet Protection Act; AR 215–1, Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities.

PURPOSE(S):

To identify individuals authorized to borrow library materials; to ensure that all library property is returned and individual's account is cleared, and to provide librarian useful information for selecting, ordering, and meeting user requirements. To comply with the Children's Internet Protection Act and to provide authentication for borrowed electronic resources (*e.g.*, e-books, e-journals).

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 the Army's compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper in file folders; card files; and electronic storage media.

RETRIEVABILITY:

By user's surname, Social Security Number, and/or residence.

SAFEGUARDS:

Information is maintained in areas accessible only to authorized persons who have official need therefore. Libraries are secured during non-duty hours.

RETENTION AND DISPOSAL:

Records are destroyed when no longer needed to obtain and/or control library materials.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff, G–1, 300 Army Pentagon, Washington, DC 20310–0300.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the specific installation library that provided services. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

For verification purposes, individuals should provide full name, period in which a user has or had an account, and any other information that would assist in locating applicable records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the specific installation library that provided services. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

For verification purposes, individuals should provide full name, period in which a user has or had an account, and any other information that would assist in locating applicable records.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and Defense Enrollment Eligibility Reporting System (DEERS) database.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–15357 Filed 8–2–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency.

ACTION: Notice to amend a system of records; S200.60 DD-Chaplain Care and Counseling Records.

SUMMARY: The Defense Logistics Agency is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on September 2, 2005, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency 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 specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 15, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

S200.60 DD

SYSTEM NAME:

Chaplain Care and Counseling Records (November 16, 2004, 69 FR 67112).

CHANGES:

SYSTEM IDENTIFIER:

Delete "DD" from entry.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Office of the Chaplain, Headquarters, Defense Logistics Agency, ATTN: DH, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 3547, Duties: Chaplains, assistance required of commanding officers; 10 U.S.C. 5142, Chaplain Corps and Chief of Chaplains; 10 U.S.C. 8067(h), Designation: officers to perform certain professional functions (chaplains); and E.O. 9397 (SSN)."

* * * * *

RETRIEVABILITY:

Replace "or" with "and/or".

SYSTEM MANAGER AND ADDRESS:

Delete and replace entry with "Command Chaplain, Headquarters, Defense Logistics Agency, ATTN: DH, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221."

NOTIFICATION PROCEDURE:

Delete address and replace with "Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221."

RECORD ACCESS PROCEDURES:

Delete address and replace with "Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221."

CONTESTING RECORD PROCEDURES:

Delete address and replace with "Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221."

* * * * *

S200.60

SYSTEM NAME:

Chaplain Care and Counseling Records.

SYSTEM LOCATION:

Office of the Chaplain, Headquarters, Defense Logistics Agency, ATTN: DH, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have received spiritual counseling, guidance, or ministration from the DLA Command Chaplain; individuals who have participated in Chaplain sponsored activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, home address and telephone number, religion, and details for which the individual sought counseling or assistance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 3547, Duties: Chaplains, assistance required of commanding officers; 10 U.S.C. 5142, Chaplain Corps and Chief of Chaplains; 10 U.S.C. 8067(h), Designation: officers to perform certain professional functions (chaplains); and E.O. 9397 (SSN).

PURPOSE(S):

To document spiritual counseling or assistance provided to individuals. The records will be used in the course of scheduling counseling sessions, conducting and evaluating training, and recording participation in spiritual activities.

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. 553a(b) of the Privacy Act, these records and information contained therein may specifically be disclosed outside DoD as a routine use pursuant to 5 U.S.C. 55a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning DLA's compilation of systems of records notices do not apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and electronic form.

RETRIEVABILITY:

Records are retrieved by individual's name and/or Social Security Number.

SAFEGUARDS:

Records are stored in locked cabinets or rooms and are controlled by personnel screening and computer software.

RETENTION AND DISPOSAL:

Information is retained in the system until superseded or no longer needed.

SYSTEM MANAGER AND ADDRESS:

Command Chaplain, Headquarters, Defense Logistics Agency, ATTN: DH, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided by the record subject or subject's family members.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–15354 Filed 8–2–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Modification of the Kissimmee Basin Structure Operating Criteria

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers, intends to prepare a Draft Environmental Impact Statement (DEIS) for the Modification of the Kissimmee Basin (KB) Structure Operating Criteria.

This project involves the establishment of a coordinated schedule of water level drawdowns throughout the seventeen lakes comprising the Kissimmee Chain of Lakes, in the Kissimmee Upper Basin (KUB), and the possible effects on the Kissimmee Lower Basin (KLB). The ultimate purpose of the action is to facilitate environmental restoration throughout those water bodies. The local sponsor is the South Florida Water Management District.

This Notice of Intent (NOI) constitutes a re-issue of the NOI titled: Intent to Prepare a Draft Environmental Impact Statement for the Kissimmee Chain of Lakes Portion of the Kissimmee River Restoration Project, and published in the **Federal Register** on May 19, 2005 (70 FR 28923). The re-issue is due to the work undergoing a change in both title and scope, to now include the entire basin (KB) of the Kissimmee River.

FOR FURTHER INFORMATION CONTACT: Mr. Esteban Jimenez, 904–232–2551, Special Projects Section, Environmental Branch, Planning Division, P.O. Box 4970, Jacksonville, FL 32232–0019.

SUPPLEMENTARY INFORMATION: The authority to conduct this comprehensive analysis is granted under Section 206 of the 1996 Water Resources Development Act. The Kissimmee River Basin flood control works were authorized by the Rivers and Harbors Act of 1954 as an addition to the Central & South Florida Flood Control Project. The primary project purposes are restoration of natural flooding in the historic floodplain in order to reestablish wetland conditions while maintaining the existing protection against flood damages within the Kissimmee Basin, and to improve the environmental setting of the KB area.

The proposed action on the Kissimmee Chain of Lakes includes: Lake Hart, Lake Mary Jane, East Lake Tohopekaliga, Lake Myrtle, Lake Preston, Lake Conlin, Lake Tohopekaliga, Lake Gentry, Lake Russell, Cypress Lake, Lake Marion, Lake Hatchinehea, Lake Pierce, Lake Rosalie, Tiger Lake, Lake Jackson, Lake Marian, and Lake Weohykapka. The lakes are all located in the Kissimmee River Upper Basin (KUB), and covers both Osceola and Polk Counties in Florida. The action is also expected to have effects on the Kissimmee Lower Basin (KLB).

The objective of the study is to evaluate the possibility of implementing revised regulation schedules for the Upper Kissimmee Chain Of Lakes. This is so that common and coordinated regulation schedules can be enacted for the Chain of Lakes, in order to facilitate ecosystem restoration throughout the KB.

Flora and Fauna—The 35,000 acres of wetlands that existed in the Kissimmee River Flood Plain prior to canalization are estimated to have declined to about 14,000 acres in the existing condition. Existing conditions of flora and fauna in the KB are addressed below.

Type	Total	Percent
Wetland Forested		
Cypress	262	1.9
Wetland Prairie		
Rhynchospora	1005	7.2
Aquatic Grass	2359	16.8
Maidencance	2743	19.5
Wetland Shrub		
Buttonbush	803	5.7
Primrose Willow	693	4.9
Willow	1639	11.7
Broadleaf	3447	24.4
Switchgrass	471	3.4
Tussock	630	4.5
Total	14052	100

The lakes are generally surrounded by pine flatwoods, dry and wet prairies, and cypress domes.

Wildlife in the Kissimmee River Lower Basin (KLB) consists of deer, small mammals, alligators and small reptiles, amphibians, invertebrates, wading birds, and ducks. Because of the large expanse of area involved, the following Federally-listed threatened or endangered species could occur in both the KUB and KLB: bald eagle, snail kite, indigo snake, Audubon's crested caracara, wood stork, and grasshopper sparrow.

Endangered and threatened species in the KB include:

—Endangered: bald eagle, snail kite, wood stork, whooping crane, and Audubon's crested caracara, and Florida grasshopper sparrow.
—Threatened: indigo snake.
—State listed as threatened species: Sandhill crane.
—Species of special concern: American alligator, snowy egret, gopher tortoise, osprey, burrowing owl, limpkin, little blue heron, least tern, and tricolored heron.

Fluctuating water levels of the lake littoral zones are important for over wintering waterfowl that utilize these lakes during migrational periods. Wading birds use the littoral zone as an important feeding habitat.

Alternatives: The various scheduling alternatives will be developed upon modeling based on the determination of the existing environment and the goals to be attained. The no action alternative will be considered.

Issues: The proposed action is to modify the regulation schedules for the Upper Kissimmee Chain of Lakes, to include periodic extreme low water stages for the purposes of enhancing the lake's environmental resources and improving the physical and chemical characteristics of these lakes. This habitat enhancement technique involves lowering lakes to consolidate bottom sediments and expand desirable aquatic plant communities. The extreme drawdown of these areas mimic low water conditions prior to flood control (activities which result in more stable water levels than would occur naturally). Low water levels historically occurred about every seven to ten years. The drawdown will be coordinated with the South Florida Water Management District (SFWMD).

Habitat enhancement activities would be carried out by the Florida Fish and Wildlife Conservation Commission (FWC) or others acting under it. The FWC would obtain all necessary permits.

Enhancement activities may include much removal, burning, discing and herbicide application to reduce dense

vegetation, tussock formation and organic build-up on lake bottoms.

Scoping: Scoping public and agency comments on this work will take place from June 2005 to August 2006, by means of a scoping letter. In addition, all parties are invited to participate in the scoping process by identifying any additional concerns on issues, studies needed, alternatives, procedures, and other matters related to the scoping process. At this time, there are no plans for a public scoping meeting.

Public Involvement. We invite the participation of affected Federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties.

Coordination: The proposed action is being coordinated with the Fish and Wildlife Service (FWS) under Section 7 of the Endangered Species act, and the Fish and Wildlife Coordination Act, and with the State Historic preservation Officer.

Other Environmental Review and Consultation: The proposed action would involve evaluation for compliance with guidelines pursuant to Section 404(b) of the Clean Water Act; application to the State of Florida for Water Quality Certification pursuant to Section 401 of the Clean Water Act; and certification of state lands, easements, and rights of way.

Agency Role: As non-Federal sponsor and leading local expert; the South Florida Water Management District (SFWMD) will provide extensive information and assistance on the resources to be impacted, mitigation measures, and alternatives.

DESIS Preparation: It is estimated that the DEIS will be avaiiable to the public on or about November 2006.

Dated: July 11, 2005.

Susan S. Lucas,

Acting Chief, Planning Division.

[FR Doc. 05–15295 Filed 8–2–05; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Lake Okeechobee Regulation Schedule Study of the Central and Southern Florida Project for Flood Control and Other Purposes, Lake Okeechobee, FL

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Jacksonville District, intends to prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for the Lake Okeechobee Regulation Schedule Study (LORSS), Lake Okeechobee, FL. The DSEIS will supplement the Final Environmental Impact Statement (FEIS) for the Lake Okeechobee Regulation Schedule Study prepared in 2000. The DSEIS will address additional alternatives to the current regulation schedule in order to optimize environmental benefits at minimal or no impact to the competing project purposes, primarily flood control and water supply. This study will consider operational changes to water management structures that discharge water from the lake as well as criteria used to determine those operations. Any operational changes will also consider current and planned water management activities within the Kissimmee River Basin. No new structural features will be considered except those already embedded within the South Florida Water Management Model.

DATES: Comments and recommendations on this notice should be received by September 30, 2005.

ADDRESSES: Written comments should be addressed to Ms. Yvonne Haberer, Biologist, U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL 32232.

FOR FURTHER INFORMATION CONTACT: Ms. Yvonne L. Haberer, at the address above, by electronic mail at *Yvonne.l.haberer@saj02.usace.army.mil* or telephone at (904) 232–1701.

SUPPLEMENTARY INFORMATION:

a. *Authorization:* Authority for this action is the Flood Control Act of 1948. It authorized the Central and Southern Florida (C&SF) Project, which is a multipurpose project that provides flood control, water supply for municipal, industrial, and agricultural uses; prevention of salt water intrusion; water supply for Everglades National Park; and protection of fish and wildlife resources.

b. *Study Area:* The study area considered to be most affected by the regulation schedule is Lake Okeechobee, particularly within the littoral and marsh areas of the lake, the St. Lucie Estuary, the Caloosahatchee Estuary, the Everglades Agricultural Area (EAA), and the Water Conservation Areas south of Lake Okeechobee. Lake Okeechobee lies 30 miles west of the Atlantic Ocean and 60 miles east of the Gulf of Mexico, in south central Florida. Lake Okeechobee is the largest lake in Florida covering approximately 730 square miles with an average depth of 10 feet.

c. *Need or Purpose.* There have been various regulation schedules since authorization of the C&SF project in 1948. The current regulation schedule, Water Supply and Environment (WSE), was the preferred alternative in the LORSS FEIS and approved in July 2000 for the regulation of Lake Okeechobee. the WSE regulation schedule and the Operational Guidelines Decision Trees incorporate tributary hydrologic conditions and climate forecasts into guidelines for managing Lake Okeechobee discharges and water levels. This logic-driven regulation schedule balances the various purposes of flood storage, water supply, fish and wildlife resources, and water delivery to the St. Lucie and Caloosahatchee estuaries. The unusual range of weather conditions occurring since implementation of the WSE regulation schedule and the lessons learned as a result, have indicated that modifications to the WSE are needed. The regulation schedule would benefit from greater flexibility in achieving optimal lake levels and optimal discharges to various downstream parts of the C&SF system.

d. *Scoping Process.* The scoping process as outlined by the Council on Environmental Quality would be utilized to involve Federal, State, and local agencies, affected Indian tribes, and other interested persons and organizations. A scoping letter will be sent to the appropriate parties requesting their comments and concerns. Any persons or organizations requesting to participate in the scoping process should contact the U.S. Army Corps of Engineers (*see* **ADDRESSES**).

e. *Alternatives.* The DSEIS will analyze reasonable alternatives, including the "no action" alternative to regulating lake levels and downstream discharges to various parts of the system.

f. *Issues.* The work being performed for this study will consist of identifying the impacts (both beneficial and adverse) associated with alternative Lake Okeechobee regulation schedules and the approved regulation schedule currently in place, WSE. Studies and investigations will be conducted to provide the basis for determining the environmental and socio-economic impacts of any proposed modifications to the WSE regulation schedule.

Significant issues anticipated include concern for: Water supply, continued flood control, agriculture, protection of the lake's environmental resources and its downstream estuaries, water quality, fish and wildlife habitat, endangered and threatened species, and any issues

identified through scoping and public involvement. Lake Okeechobee is one of the most critical components of the C&SF project and achieving the right balance among the many, oftentimes competing demands on the lake, remains a difficult challenge.

The proposed action will be coordinated with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (NMFS) pursuant to Section 7 of the Endangered Species Act, with the NMFS concerning Essential Fish Habitat, and with the State Historic Preservation Officer concerning historic and cultural resources.

g. *Agency Role.* The Corps is the lead agency for this action. However, the non-Federal sponsor,and leading local expert, the South Florida Water Management District will provide extensive information and assistance on the resources to be impacted, mitigation measures, and alternatives.

h. *Draft Environmental Impact Statement Availability.* The DSEIS would be available on or about June 2006.

Dated: July 21, 2005.

Susan Scott Lucas,

Acting Chief, Planning Division.

[FR Doc. 05–15296 Filed 8–2–05; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for the Atchafalaya Basin Floodway System, Louisiana Project, Including Flat Lake Management Unit, Beau Bayou Management Unit and Cocodrie Swamp Management Unit, and Possible Modifications or Additions to the Buffalo Cove Management Unit, Located in St. Martin, St. Mary, Iberville, and Iberia Parishes, LA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, New Orleans District (CEMVN), intends to evaluate water management features for the Atchafalaya Basin Floodway, System, Louisiana Project, excluding the Henderson Lake Management Unit, to improve water quality and interior water circulation, remove barriers to reestablish north to south water flow; provide input of oxygenated low temperature water; and reduce or manage sediment input into the interior swamp. The action is necessary due to the existing poor water quality resulting from the lack of internal circulation and oxygenated water inputs, and increased sedimentation. In addition if action is not taken, both deep-water and shallow water habitat utilized by fish and wildlife resources will continue to be lost, reduced, or degraded. The intended result of the proposed work is to prolong the life expectancy of the productive habitat (primarily aquatic and cypress tupelo habitats) that would become scarce over time by restricting or redirecting sediments, while simultaneously achieving a healthy water circulation pattern that would maintain or restore water quality and reestablish north to south water movement. This is a modification of the notice of intent posted in the **Federal Register** on July 16, 2004 (69 FR 42696).

FOR FURTHER INFORMATION CONTACT: Questions concerning the DSEIS should be addressed to Mr. Larry Hartzog at U.S. Army Corps of Engineers, PM-RP, P.O. Box 60267, New Orleans, LA 70160–0267, phone (504) 862–2524, fax number (504) 862–2572 or by E-mail at *Larry.M.Hartzog@mvn02.usace.army.mil.*

SUPPLEMENTARY INFORMATION: The Corps of Engineers is initiating this DSEIS under the authority of the Flood Control Act of May 15, 1928 (Pub. L. 391, 70th Congress), as amended and supplemented. Construction of two pilot management units (Buffalo Cove and Henderson Lake) was authorized by the Supplemental Appropriations Act of 1985 (Pub. L. 99–88) and the Water Resources Development Act (WRDA) of 1986 (Pub. L. 99–662), with construction of three conditionally authorized management units—Flat Lake Management Unit, Beau Bayou Management Unit, and Cocodrie Swamp Management Unit to take place upon approval of the Chief of Engineers after evaluation of the operational success of the pilot management units. (Hereafter, the three conditionally authorized management units will be collectively referred to as "conditionally authorized management units".) Section 601(a) of WRDA 1986 authorized the U.S. Army Corps of Engineers to carry out the recommended plan for management units as described in the Atchafalaya Basin Floodway System, Louisiana Feasibility Study and Environmental Impact Statement of January 1982, as approved by the Chief of Engineers Report dated February 28, 1983.

The Engineering Documentation Report (EDR), Buffalo Cove Pilot Management Unit (BCMU) and supporting Environmental Assessment (EA) No. 366 and Finding of No Significant Impact (FONSI) on July 15, 2004, satisfy the requirements of the National Environmental Policy Act (NEPA) for the referenced pilot water management unit impacts. The expected results of these improvements, while beneficially effective alone, will continue to contribute to the entire comprehensive BCMU improvements in water quality and habitat that will be expanded as additional possible elements are added in the future. Because the BCMU constitutes a "pilot" management unit, both the EDR and EA No. 366 clearly identify the possibility that additional future work may be recommended in the BCMU if the analysis of the operational monitoring data supports a finding that the present EDR elements do not fully accomplish the goals and objectives of the authorized management unit project.

The preparation of the DSEIS addressed by this NOI will commence and continue concurrently with the monitored construction and operation, data collection and analysis of the BCMU water circulation improvements and sediment management initiatives (as described in EA No. 366), as well as analysis and solicitation of public and resource agency input. Monitoring of the 10 elements and the elements constructed for the Bayou Eugene Prototype Model Test Modification ("Bayou Eugene"), comprising the water circulation and sediment management initiatives (described in EA No. 366) will continue for a period of 5 years following the construction of the last of the elements described in EA No. 366. If data collected during and prior to the end of the 5 year monitoring period indicates that modifications or relocations of elements within the bounds of the original project rights-of-way or areas of influence are needed to achieve the goals and objectives for fish and wildlife enhancement, a report will be prepared and submitted for approval. The DSEIS will be prepared following the incorporation and analysis of the data from the completed construction monitoring of the 10 elements as described in the approved EDR and EA No. 366. Construction monitoring described in the approved EDR is scheduled for completion 5 years after the construction of the last of the 10 elements is completed. Based on this completion date, construction monitoring and the concurrent DSEIS are currently estimated to be completed in 2012. The DSEIS will utilize the monitoring data to evaluate the

operational effectiveness of the Bayou Eugene elements and the 10 elements described in EA No. 366 on the areas of influence outlined in EA No. 366. In addition, the DSEIS will evaluate the possible need for and effect of additional elements, and modifications or relocations of previously constructed elements to accomplish the fish and wildlife enhancement goals for the entire BCMU. The contemplated DSEIS will provide an overall evaluation of the influence of both previously constructed prototype model study features along Bayou Eugene, the currently proposed 10 elements (as described in EA No. 366), possible modifications, additions or relocations associated with the monitoring findings of EA No. 366, and the environmental impacts of the possible additional elements. Based on the analysis and evaluation of the operational effectiveness of the BCMU elements, including the Bayou Eugene elements, in enhancing the aquatic ecosystem and attaining the fish and wildlife enhancement goals of the management unit feature of the Atchafalaya Basin Floodway System, Louisiana project (ABFS), the DSEIS will investigate the feasibility of, and formulate recommendations for, the implementation and construction of the conditionally authorized management units. Henderson Lake Management Unit (Henderson Lake) is hydrologically separate and independent from all of the other authorized management units. Additionally, the management unit objectives, public interests and concerns that will be addressed at Henderson Lake differ substantially from those present for the other management units at Buffalo Cove, Flat Lake, Cocodrie Swamp and Beau Bayou. As such, Henderson Lake will be the subject of a separate DSEIS.

1. *Proposed Action.* The proposed action will consist of a series of closures and sediment traps (to reduce sediment influx); construction of new, or improvement of existing inputs for river water; and gap construction in existing embankments. Closures will be placed in areas that have the greatest potential for introduction of sediment. Closure heights will be designed to optimize sediment reduction. Construction of water inputs will be evaluated in areas where sediment-lean, fresh water sources can be easily connected to existing canals or bayous to conduit water into areas of poor water quality. Sediment traps will be designed as necessary in conjunction with the freshwater input sites. Gaps will be sized and placed in both elevated natural banks as well as dredged material embankments that impede water flow or induce stagnation. These gaps are primarily intended to improve drainage and reestablish flow through the interior swamp basin. Excavated material will be either placed in a non-continuous manner in order to not disrupt sheet flow, or if practicable, the material will be used to create closures.

2. *Alternatives.* The alternative formulation process will include an evaluation of the "no action alternative", a monitored passive management plan, and the original structural alternative plan as proposed in the 1982 Atchafalaya Basin Floodway System, Louisiana Final Environmental Impact Statement which included construction of ring levees and active structures. The current alternatives analysis will continue to evolve throughout the development of the DSEIS. Alternatives to be evaluated include different methods of sediment reduction, water input, and improving internal circulation within the management unit. Sediment reduction alternatives will include the use of various sediment trap sizes and placements, construction of sediment traps with and without maintenance, and monitoring the effectiveness of sediment reduction utilizing both partial and complete closures at sites of suspected sediment inputs. Alternative methods will also be evaluated for water introduction and include; diverse configurations of water inputs (sinuous, straight, length and depth), improvements to existing natural and manmade inlets, reopening natural and man-made inputs, and siting of bank shavings to reduce barriers to water input. In addition, various sizes, numbers and placement of gaps in existing canal banks, ridges and other internal circulation impediments will be considered in the alternatives.

3. *Scoping Process.* The Council on Environmental Quality regulations implementing the National Environmental Policy Act (NEPA) process directs Federal agencies that have made a decision to prepare an environmental impact statement to engage in a public scoping process. The scoping process is designed to provide an early and open means of determining the scope of issues (problems, needs, and opportunities) to be identified and addressed in the draft environmental impact assessment, which in this case is a DSEIS.

Scoping is the process used to: (a) Identify the affected public and agency concerns; (b) facilitate an efficient DSEIS preparation process; (c) define the issues and alternatives that will be examined in detail in the DSEIS; (d) and save time in the overall process by helping to ensure that the draft statements adequately address relevant issues. Scoping is a part of the planning process, and will involve meetings, telephone conversations, and/or written comments. Scoping comments will be compiled, analyzed, and utilized in the plan formulation. A scoping report, summarizing the comments, will be made available to all scoping participants and included in the public involvement appendix of the report and DSEIS.

a. *Public Involvement.* Scoping is a critical component of the overall public involvement program. An intensive public involvement program will continue throughout the study to solicit input from affected Federal, state, and local agencies, Native American tribes, and other interested parties. This public input will be obtained through a series of scoping meetings open to the general public. In addition to these meetings there will be additional continual public involvement through the Louisiana Department of Natural Resources Division's Atchafalaya Basin Advisory Committee meetings on Water Management. CEMVN personnel will be available for additional informational meetings if needed or requested by various interested and/or affected public, private and conservation interests such as: landowners, oil and gas interests, commercial and recreational hunters and fishers, forestry interests, and the Sierra Club, Nature Conservancy, Audubon Society or other conservation organizations.

b. *Significant Issues.* The tentative list of resources and issues to be evaluated in the DSEIS includes forested wetlands (includes cypress/tupelo swamp as well as infrequently inundated areas of ash, oak, elm, hackberry and cypress), water quality, aquatic resources, commercial and recreational fisheries, wildlife resources, essential fish habitat, water quality, air quality, threatened and endangered species, recreation resources, and cultural resources. Socioeconomic items to be evaluated in the DSEIS include employment, land use, property values, community and regional growth, transportation, housing, and community cohesion.

c. *Interagency Coordination.* The Department of Interior, U.S. Fish and Wildlife Service (USFWS), will provide a Fish and Wildlife Coordination Act Report. Coordination will be maintained with the Natural Resources Conservation Service regarding prime and unique farmlands. Coordination will be maintained with the Advisory Counsel on Historic Preservation and the State Historic Preservation Officer.

The Louisiana Department of Natural Resources will be consulted regarding consistency with the Coastal Zone Management Act. The Louisiana Department of Wildlife and Fisheries will be contacted concerning potential impacts to Natural and Scenic Rivers and Streams. The Louisiana Department of Environmental Quality will review the action for consistency with applicable laws regarding the discharge of dredged material as it relates to impacting water quality and will provide the State of Louisiana Water Quality Certification.

d. *Environmental Consultation and Review.* The U.S. Fish and Wildlife Service (USFWS) will be assisting in the documentation of existing conditions and assessment of effects of project alternatives through Fish and Wildlife Coordination Act consultation procedures. Consultation will be accomplished with the USFWS and the National Marine Fisheries Service (NMFS) concerning threatened and endangered species and their critical habitat. The NMFS will be consulted on the effects of this proposed action on Essential Fish Habitat. The DSEIS or a notice of its availability will be distributed to all interested agencies, organizations, and individuals.

4. Public scoping meetings are to be scheduled throughout the DSEIS preparation period. Based on available funding the tentative meeting locations will be Baton Rouge, Lafayette and St. Martinsville, LA. Exact dates and meeting facility will be announced by public notice at a later date. The purpose of the scoping meeting is to provide the agencies and the interested public with the initial conceptual designs, known preliminary designs and other designs under consideration for the proposed management unit project for the Buffalo Cove Management Unit and issues concerning its construction and operation. If determined to be feasible and appropriate for implementation (based upon the determinations of the operational effectiveness of the BCMU) scoping meetings will also provide the agencies and the interested public with the initial conceptual designs, preliminary designs known and designs under consideration for the proposed for the conditionally authorized management units and issues concerning their construction and operation. These scoping meetings will be sequenced such that the data stream from the ongoing monitoring (associated with the 10 elements in the BCMU) can be utilized to assist in the formulation and design of elements planned for the three conditionally authorized management units. The scoping process, more importantly, will provide the opportunity to solicit public views on the proposed action and provide input to development of project alternatives. The initial scoping meetings will focus on the Buffalo Cove Management Unit (including the operational success of the ten elements described in EA No. 366, modification of those ten elements and construction of new elements for the Buffalo Cove Management Unit) and preliminary discussions of problems and possible alternatives for the three conditionally authorized management units. As additional information is available on the operational effectiveness of the monitored EA No. 366 elements and as the existing conditions and potential management alternatives for the conditionally authorized management units are better defined, the agenda of the scoping meetings will be expanded to address the feasibility of implementing the conditionally authorized management units.

5. *Estimated Date of Availability.* Funding levels will dictate the date when the DSEIS is available. The earliest that the DSEIS is expected to be available is in the fall of 2012.

Dated: July 18, 2005.

Richard P. Wagenaar,

Colonel, U.S. Army, District Engineer.

[FR Doc. 05–15298 Filed 8–2–05; 8:45 am]

BILLING CODE 3710–84–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Rehabilitation Training: Rehabilitation Long-Term Training; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.129L, P, and Q.

DATES: *Applications Available:* August 3, 2005.

Deadline for Transmittal of Applications: September 19, 2005.

Deadline for Intergovernmental Review: November 16, 2005.

Eligible Applicants: States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

Estimated Available Funds: The Administration has requested $38,826,000 for the Rehabilitation Training program for FY 2006, of which we intend to use an estimated $700,000 for this 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.

Estimated Range of Awards: $75,000–$100,000.

Estimated Average Size of Awards: $87,500.

Maximum Award: We will reject any application that proposes a budget exceeding $75,000 for Undergraduate Education in the Rehabilitation Services (84.129L) and $100,000 for Specialized Personnel for Rehabilitation of Individuals Who Are Blind or Have Vision Impairment (84.129P) and Rehabilitation of Individuals Who Are Deaf or Hard of Hearing (84.129Q) 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**.

Estimated Number of Awards: 8.

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 Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in areas of personnel shortages in rehabilitation as identified by the Assistant Secretary;

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in areas of personnel shortages in rehabilitation as identified by the Assistant Secretary; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

Priorities: In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from the regulations for this program (34 CFR 386.1).

Absolute Priorities: For FY 2006 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that propose to provide training in the priority areas of personnel shortages listed in the following chart.

CFDA number	Priority Area (Maximum Number of Awards in Parentheses)
84.129L ..	Undergraduate Education in the Rehabilitation Services (5).

CFDA number	Priority Area (Maximum Number of Awards in Parentheses)
84.129P	Specialized Personnel for Rehabilitation of Individuals Who Are Blind or Have Vision Impairment (2).
84.129Q	Rehabilitation of Individuals Who Are Deaf or Hard of Hearing (4).

Program Authority: 29 U.S.C. 772.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, and 99. (b) The regulations for this program in 34 CFR parts 385 and 386.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $38,826,000 for the Rehabilitation Training program for FY 2006, of which we intend to use an estimated $700,000 for this 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.

Estimated Range of Awards: $75,000–$100,000.

Estimated Average Size of Awards: $87,500.

Maximum Award: We will reject any application that proposes a budget exceeding $75,000 for Undergraduate Education in the Rehabilitation Services (84.129L) and $100,000 for Specialized Personnel for Rehabilitation of Individuals Who Are Blind or Have Vision Impairment (84.129P) and Rehabilitation of Individuals Who Are Deaf or Hard of Hearing (84.129Q) 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**.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

2. *Cost Sharing or Matching:* Cost sharing of at least 10 percent of the total cost of the project is required of grantees under the Rehabilitation Training program (34 CFR 386.30).

Note: Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. Indirect costs in excess of the eight percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

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 84.129L, P, and Q.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this 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 50 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, 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: August 3, 2005.

Deadline for Transmittal of Applications: September 19, 2005.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-Grants system. For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, 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: November 16, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically, unless you qualify for an exception to this requirement in accordance with the instructions in this section.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and*

submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

a. *Electronic Submission of Applications.*

Applications for grants under the Rehabilitation Training: Rehabilitation Long-Term Training program—CFDA Number 84.129L, P, and Q must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Any narrative sections of your application must be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the e-Application system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Department's e-Application system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Marilyn P. Fountain, U.S. Department of Education, 400 Maryland Avenue, SW., room 5028, Potomac Center Plaza, Washington, DC 20202–2800. FAX: (202) 245–7591.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for any exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. 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 84.129L, P, and Q), 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 84.129L, P, and Q), 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 qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You 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 84.129L, P, and Q), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and 34 CFR 386.20 and are listed in the application package.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are the geographical distribution of projects in each Rehabilitation Training program category throughout the country (see 34 CFR 385.33(a)) and the past performance of the applicant in carrying out similar training activities under previously awarded grants, as indicated by factors such as compliance with grant conditions, soundness of programmatic and financial management practices, and attainment of established project objectives (see 34 CFR 385.33(b)).

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 Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. The Rehabilitation Long-Term Training program is designed to provide academic training in areas of personnel shortages.

The goal of the Rehabilitation Services Administration's (RSA) Rehabilitation Long-Term Training program is to increase the number of qualified vocational rehabilitation personnel working in State vocational rehabilitation agencies or related agencies. At least seventy-five percent of all grant funds must be used for direct payment of student scholarships. Each grantee is required to track students receiving scholarships and must maintain information on the cumulative support granted to RSA scholars, scholar-debt in years, program completion data for each scholar, dates each scholar's work begins and is completed to meet his or her payback agreement, current home address, and the place of employment of individual scholars.

Grantees are required to report annually to RSA on these data using the RSA Grantee Reporting Form, OMB# 1820–0617, an electronic reporting system. The RSA Grantee Reporting Form collects specific data regarding the number of RSA scholars entering the rehabilitation workforce, in what rehabilitation field, and in what type of employment (*e.g.* State agency, nonprofit service provider, or practice group). This form allows RSA to measure results against the goal of increasing the number of qualified vocational rehabilitation personnel working in State vocational rehabilitation agencies or related agencies.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Marilyn P. Fountain, U.S. Department of Education, 400 Maryland Avenue, SW., room 5028, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7346 or by e-mail: *Marilyn.Fountain@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: July 28, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–15254 Filed 8–2–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: The Department gives notice that on November 9, 2004, an arbitration panel rendered a decision in the matter of *Arland Stratton* v. *Illinois Department of Human Services, Office of Rehabilitation Services (Docket No. R–S/03–1).* This panel was convened by the U.S. Department of Education, under 20 U.S.C. 107d–1(a), after the Department received a complaint filed by the petitioner, Arland Stratton.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., room 5022, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7374. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Randolph-Sheppard Act (the Act), 20 U.S.C. 107d–2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerns the alleged improper termination of Mr. Arland Stratton's vending license as a blind licensee under the Randolph-Sheppard vending facility program by the Illinois Department of Human Services, Office of Rehabilitation Services, the State licensing agency (SLA), in violation of the Act (20 U.S.C. 107 *et seq.*), the implementing regulations in 34 CFR part 395, and State rules and regulations.

A summary of the facts is as follows: Mr. Arland Stratton (complainant) operated Vending Facility #451 (Facility #451) at the Illinois Prairie Rest Area, I–57 in Champaign, Illinois, until April 1, 2002, when his vending license was terminated.

Previously, on March 28, 2002, complainant alleged that he reported to his business counselor at the SLA during the counselor's onsite visit to Facility #451 that a possible bookkeeping error may have resulted in his using program assets for personal use. Upon complainant's disclosure of the alleged bookkeeping error, the business counselor informed the SLA's Director of the Business Enterprise Program (BEP). The Director of the BEP instructed the business counselor to do a complete inventory of Facility #451 and to remove the keys from complainant's possession.

Complainant further alleged that the SLA's termination of his vending operator's license and removal from Facility #451 occurred without first providing him with an opportunity for a full evidentiary hearing, in violation of the Act and implementing regulations.

The SLA alleged that complainant, as a blind vendor, had been licensed, trained, and certified in the operation and management of vending facilities in the Illinois BEP. The SLA also stated that complainant was aware of the policies governing vending facilities and, in particular, the rules concerning use of program funds for personal use.

The SLA further alleged that in August 2001 the complainant's business counselor found him to be deficient in financial management practices and his paperwork to be unorganized. In January 2002, complainant received a written reprimand for a second violation of a State rule regarding accounting procedures. On March 19, 2002, the complainant's business counselor scheduled a financial audit. At the time of the audit, the business counselor alleged that complainant provided incomplete and incorrect paperwork, and the vendor was given one week to provide all of the correct information.

Following termination of his vending license, complainant filed for an administrative hearing. The hearing was held on June 10, 2002. In a decision dated July 8, 2002, the hearing officer affirmed the SLA's decision to terminate complainant's vending license and removal from Facility #451. The SLA adopted the hearing officer's decision as final agency action, and complainant sought review of that decision by a Federal arbitration panel.

Arbitration Panel Decision

The issues heard by the panel were: (1) Did the SLA violate 20 U.S.C. 107 *et seq.*, the implementing regulations in 34 CFR part 395, and its own regulations in allegedly improperly terminating the vendor's operating license and removing him from Facility #451, and (2) Did the SLA violate Federal law by removing the complainant as the vendor of Facility #451 and terminating his license before providing him with a full evidentiary hearing in those decisions?

After reviewing all of the records and hearing testimony of witnesses, the panel ruled as follows: On the first issue, the panel ruled that the Federal regulations in 34 CFR 395.7(b) provide for the termination of a vendor's license *after* an SLA has afforded the vendor a full evidentiary hearing and must be applied as written. The panel concluded that a vendor's license could not be terminated before a State fair hearing was held. However, the panel noted that the SLA's authority to remove complainant from his facility was not in question as distinguishable from terminating his vending license.

Concerning the second issue, the panel ruled that the termination of complainant's vending license was not consistent with the rehabilitative purposes of the Act to provide training and additional services to blind licensees.

Finally, the panel was divided on the appropriate remedy. The majority of the panel ruled that complainant's license must be restored, and, upon successful completion of a retraining program, complainant was to be placed in a suitable location with provisions for follow-up supervision and training by the SLA. The panel further ruled that, since the SLA had not previously collected the outstanding debt from complainant, it should be forgiven allowing him to begin anew.

One panel member concurred with the majority decision on the finding of a violation but dissented in part regarding the appropriate remedy, believing that complainant was entitled to lost wages, compensatory relief, and attorney's fees.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: July 28, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–15284 Filed 8–2–05; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

* * * * *

ACTION: Notice of Public Meeting for the Executive Board of the EAC Standards Board.

DATE & TIME: Tuesday, August 23, 2005, 6:30 a.m.–8:30 p.m.

PLACE: Adam's Mark Hotel, 1550 Court Place, Denver, CO 80202.

TOPICS: The Executive Board of the U.S. Election Assistance Commission (EAC) Standards Board will meet to plan and prepare for the meeting of Standards Board, to plan and prepare a presentation of recommendations to the Standards Board on the Voluntary Voting System Guidelines proposed by EAC, and to handle other administrative matters.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, telephone: (202) 566–3100.

* * * * *

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 05–15449 Filed 8–1–05; 1:18 pm]

BILLING CODE 6820–YN–M

ELECTION ASSISTANCE COMMISSION

Voluntary Guidance on Implementation of Statewide Voter Registration Lists

AGENCY: United States Election Assistance Commission.

ACTION: Notice; publication of final Voluntary Guidance on the Implementation of Statewide Voter Registration Lists.

SUMMARY: The U.S. Election Assistance Commission (EAC) is publishing its final voluntary guidance on Section 303(a) of the Help America Vote Act of 2002 (HAVA). HAVA was enacted to set standards for the administration of Federal elections. Included in these standards is a requirement that each State develop and maintain a single, statewide list of registered voters. The voluntary guidance published here by the EAC will assist the States in understanding, interpreting and implementing HAVA's standards regarding statewide voter registration lists.

FOR FURTHER INFORMATION CONTACT: Gavin S. Gilmour, Associate General Counsel, Washington, DC, (202) 566–3100, Fax: (202) 566–1392.

SUPPLEMENTARY INFORMATION:

Background. HAVA mandates that the EAC draft and publish voluntary guidance to assist States in implementing the HAVA requirements for computerized statewide voter registration lists. (42 U.S.C. 15501(b)). To meet its obligation, the EAC gathered information and sought input from experts and stakeholders. Specifically, the EAC held public meetings, receiving testimony from State election officials whose States had implemented statewide voter registration lists. Additionally, the EAC, assisted by the National Academies, convened a two-day working group of State and local election officials. The working group received technical assistance from technology experts invited by the academies and representatives of the country's motor vehicle administrators.

Following this research and information gathering, the EAC drafted its *Proposed Voluntary Guidance on Implementation of Statewide Voter Registration Lists.* This proposed voluntary guidance was published with a request for public comment on April 18, 2005. (70 FR 20114). The public comment period was open until 5 p.m. e.d.t. on May 25, 2005. All comments received were considered in the drafting of this final guidance.

Discussion of Comments. The EAC received 310 comments from the public. The overwhelming majority of these comments came from public interest groups or their members (221 comments in all). The EAC received 14 comments from State and local officials. Finally, 75 of the comments the EAC received were either not relevant to the subject matter, broad in nature or otherwise provided no specific recommendation.

The comments received from public interest groups were generally consistent in content, focusing primarily on what they perceived were missing from the guidelines. These groups focused on the need to provide additional information and guidance to States. They recommended that the guidance be expanded to provide States direction on (1) list verification and maintenance processes and protocols, (2) implementation of policies to protect registrants against removal from registration lists in error, (3) coordination with voter registration agencies, (4) security procedures to both prevent unauthorized access and protect database information and (5) database features such as public access portals and election management. The comments from State and local officials were more diverse. Most of the comments focused upon the types of databases that meet HAVA requirements. While the comments differed and often conflicted in their conclusions, as a whole they made it clear that further guidance on database structure and operation was desired. A number of comments from State and local officials also expressed concern over definitions with the guidance, fearing that they were absent, overly broad or might otherwise conflict with definitions under State law. Finally, a few State and local officials shared the concerns articulated by the public interest groups regarding security (specifically, limiting database access).

The EAC reviewed and considered each of the comments presented. In doing so, it also gathered additional information and performed research regarding the suggestions. The EAC's commitment to public participation is evident in the final version of the voluntary guidelines. The guidelines have been enhanced in a number of areas in response to conscientious public comment. The document has been reorganized to improve readability. Definitions for "statewide voter registration list" and "chief State election official" have been added. Similarly, the definition of "local election official" has been clarified. Additional guidance was added regarding (1) the creation of stricter standards by States; (2) election officials' responsibility to track voter history; (3) security requirements

(including provisions on technological security; access protocols; transactional record keeping and system backup, recovery and restoration); (4) records retention and (5) public access portals. Similarly, many existing guidelines were enhanced in response to public comment. Previous guidance on coordinating statewide voter registration lists with other State, local and Federal databases was expanded. Further guidance was added on (1) voter registration coordination, (2) registration verification coordination; and (3) registration list maintenance. Finally, guidance on the types of databases that meet HAVA requirements has been amended to provide clearer direction to States.

Voluntary Guidance on the Implementation of Statewide Voter Registration Lists

I. Introduction

The Help America Vote Act of 2002 (HAVA) requires the Chief Election Official in each State to implement a "single, uniform, official, centralized, interactive computerized statewide voter registration list." That list is to be "defined, maintained, and administered at the State level" and must contain the "name and registration information of every legally registered voter in the State."

Congress mandated that the United States Election Assistance Commission (EAC) issue voluntary guidance to assist the States in implementing the provisions of HAVA relating to statewide voter registration list requirements. While it is the responsibility of the EAC to interpret and issue guidance on HAVA, civil enforcement of the statute is expressly assigned to the United States Department of Justice (DOJ).

The following interpretative guidance clarifies the meaning of certain portions of Section 303(a) of HAVA (42 U.S.C. 15483(a)). Specifically, this guidance serves to assist States in their efforts to develop and implement a single, uniform, official, centralized, interactive computerized statewide voter registration list. Moreover, the guidance also serves to encourage State and local election officials to work together to define and assume their appropriate responsibilities for meeting this HAVA requirement, and engage other relevant stakeholders in this process.

II. Scope and Definitions

A. Is this guidance regarding statewide voter registration lists or section 303(a) of HAVA mandatory?

No. The guidance issued here by the EAC is voluntary. This means that States can choose to adopt this guidance to assist in the implementation of HAVA's requirements for a statewide voter registration list or create their own policies. However, to the extent the policies below reiterate HAVA mandates, such requirements are not voluntary but are statutorily required.

B. What is a computerized statewide voter registration list?

A computerized statewide voter registration list is a single, uniform, centralized, interactive computerized voter registration list that is technically and functionally able to perform tasks described in Sections 303(a)(1)(A)(i) through 303(a)(1)(A)(viii) of HAVA. In essence, it is the one official list of lawfully registered voters within a State for all elections for Federal office and the only lawful source of Federal registration information for poll books or precinct registers on Election Day. The list must be centrally managed at the State level in a uniform and non-discriminatory manner. The list must be computerized and technically capable of providing immediate electronic access to appropriate State and local election officials; assigning unique identifiers; affording local officials expedited entry of voter registration information; allowing voter registration information to be verified with other State, local and Federal agencies; providing a means for list maintenance; tracking appropriate voting history; and ensuring appropriate system security.

C. Who would benefit from this guidance?

This guidance is targeted to assist the States and local governments in fulfilling their requirements under Section 303(a) of HAVA. This guidance may help election officials understand HAVA's establishment of a single, uniform statewide voter registration list and the responsibilities that HAVA places on all election officials to assure that the names and information contained in the statewide voter registration list are accurate, secure and complete.

D. To whom is section 303(a) of HAVA applicable?

The provisions of Section 303(a) apply to all States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands except those that on or after date of enactment of HAVA had no requirement for registration of voters with respect to elections for Federal office. Currently, only North Dakota has no voter registration requirement.

E. Does this guidance in any way alter, interpret, or affect the requirements of the National Voter Registration Act of 1993?

No. Nothing in this guidance should be construed to alter, interpret or effect, in any way whatsoever, the requirements of the National Voter Registration Act of 1993 (NVRA), including requirements and timeframes with respect to the administration of voter registration and/or the process States must follow in removing names of registrants from the voting rolls.

F. Who is a local election official?

For the purposes of this guidance, a local election official is a public employee who has, as a primary duty, the responsibility for collecting and processing voter registration information for Federal elections or otherwise maintaining voter registration information pursuant to State mandates and the requirements of HAVA.

G. Who is the chief state election official?

The chief State election official is the highest ranking State official who has, as a primary duty, the responsibility to ensure the lawful administration of voter registration in Federal elections. Ultimately, it is the State's responsibility to determine the identity of this official. Each State should have previously identified their chief State election official as required by the NVRA (42 U.S.C. § 1973gg–8).

H. Who is responsible for implementing the provisions of section 303(a) of HAVA?

The State, through the State's Chief Election Official, is responsible for ensuring that the State has a single, uniform, official, centralized, interactive computerized Statewide voter registration list. This official is also responsible for defining, maintaining and administering this list. However, local election officials also have certain responsibilities outlined in Section 303(a) of HAVA, particularly with regard to entering voter registration information into the statewide voter registration list on an expedited basis. Local election officials may also be required to perform list maintenance activities pursuant to State mandates.

I. Will the EAC provide additional guidance on computerized statewide voter registration lists?

Yes. The EAC and a working group of State and local election officials will continue to explore technical issues related to the maintenance and upgrade of these database systems, with assistance from the National Academies. The EAC also plans to work with public interest groups to help ensure these guidelines serve all Americans. Additional guidance and/or best practices regarding statewide voter registration lists will be developed.

III. Guidance on Statewide Voter Registration Lists

A. May a State create policies for Statewide Voter Registration lists that go beyond HAVA's requirements?

Yes. Under Sections 304 and 305 of HAVA, the details of implementing Statewide Voter Registration Lists have been left to the States. HAVA requirements are minimum requirements. States are free to establish policies that provide stricter standards as long as such standards are not inconsistent with HAVA or other Federal Laws. States must ensure that their additional policies are indeed stricter than HAVA and do not create impermissible standards that fall below the statute's minimum requirements. In this way, a stricter standard, in terms of a provision that protects voter access, would be a standard that further enhances or expands such access. Similarly, a stricter standard, in terms of a provision that protects the integrity and security of the voting process, would be a standard that furthers that goal.

B. What types of databases meet the requirements of HAVA to generate a single, uniform voter registration list?

HAVA requires a State to define, maintain and administer one official and uniform statewide voter registration list. This computerized list must be accessible by local election officials for purposes of conducting voter registration and voting in an election for Federal office. Generally, in order to meet HAVA's computerized list requirement, the State must define and have immediate, real-time access to all the data that serves as the State's official voter registration list. Moreover, the State must be able to control access to this data and perform HAVA mandated action on the information (such as coordinating with other databases for the purpose of performing voter registration verification and list maintenance). Finally, local election officials must have immediate access to this official list. While HAVA requires that both State and local election officials have immediate access to the voter registration list, ultimately the State must direct the degree of access and control any one official or class of officials have over the list's data.

A State database hosted on a single, central platform (*e.g.*, mainframe and/or client servers) and connected to terminals housed at the local level (often referred to as a "top down" system) is most closely akin to the requirements of HAVA. However, other database systems may also meet the single, uniform list requirement as long as they function consistent with the general rule stated, above.

For example, a State database that gathers or uploads its information from local voter registration databases to form the statewide voter registration list (often referred to as a "bottom up" system) may serve to meet the single, uniform list requirement. This is a true as long as the State database, the data and the data flow are defined, maintained, and administered by the State. Thus, the State database must house the only official list of registered voters; establish interactive and compatible software and user protocols that allow each local jurisdiction to seamlessly transfer data to and from the State; require local databases to routinely upload or electronically send registration information to the State; and ensure that the data that forms the official voter registration list is regularly downloaded or otherwise sent electronically to local officials so that they may have immediate access to the entire official list. It is important to understand that in a "bottom up" system the official statewide voter registration list is that list hosted on the State's database and downloaded to local jurisdictions. The list remains static until the State electronically provides the next, updated version. Registration information held solely in a local database is not a part of the official registration list until it is electronically sent to the State and added to the official list. States must require local information to be uploaded and the official statewide voter registration list to be downloaded on a regular basis. In this way, both State and local election officials will have immediate, real time access to the statewide voter registration list.

C. How frequently must the statewide voter registration list be synchronized with any local databases to assure that the statewide voter registration list is the single source for the names and registration information of all legally registered voters in the State?

If a statewide voter registration list is not hosted on a single, centralized platform, States must ensure that all information contained on local, satellite databases is uploaded (synchronized) into the statewide voter registration database routinely, such that the State database can be viewed as the sole, official list of registered voters. Similarly, States must assure that the data comprising the official list (maintained by the State database) is downloaded or sent electronically to local systems on a regular basis so that local officials may have immediate access to the official list. At a minimum, the statewide voter registration list should be synchronized with local voter registration databases at least once every 24 hours to assure that the statewide voter registration list contains the names and registration information for all legally registered voters in the State. In the same way, the State must electronically send or download the appropriate information in its database to local election officials at least every 24 hours, so that they have immediate electronic access to the official voter registration list.

D. How should the statewide voter registration list be coordinated with other agencies?

In order to ensure the completeness and accuracy of statewide voter registration lists, HAVA requires timely coordination between various Federal, State and local agencies. Generally, there are three forms of coordination required under HAVA: Coordination with voter registration agencies, coordination to verify voter registration information (e.g., motor vehicle authorities and Social Security Administration), and coordination necessary to perform list maintenance (e.g., death and felony records).

1. Voter registration agencies. HAVA makes accurate and complete voter registration lists a priority. States must coordinate the statewide voter registration list with other State agency databases that collect, correct or update voter registration information. These agencies must include State motor vehicle agencies and voter registration agencies as defined by NVRA (i.e., State public assistance and disability agencies). Proper coordination with these databases is essential for ensuring

that statewide voter registration lists are complete. As such, the chief State election official shall:

a. Establish policies and provide adequate support to local election officials to ensure that registration applications or other registration information is entered into the State voter registration list on an expedited basis. (See HAVA Section 303(a)(1)(A)(vii)). This responsibility includes the obligation to create requirements that ensure election officials will receive registration information from voter registration agencies promptly; and

b. Establish policies that ensure information will be coordinated accurately, securely and efficiently. The EAC recommends that voter registration information be transmitted electronically. Further, to the greatest extent allowed by State law and available technologies, this electronic transfer between statewide voter registration lists State motor vehicle agencies and voter registration agencies should be accomplished through direct, secure, interactive and integrated connections.

2. Verification of voter registration. Generally, Section 303(a) of HAVA requires that registration applications include either a valid driver's license number or, if none, the last four digits of a social security number.[1] States are prohibited from accepting or processing registration applications that do not have this information (with the exception of individuals who do not possess either identification). Moreover, HAVA requires States to match information received on voter registration forms against driver's license and social security databases for the purpose of verifying the accuracy of the information received from all new voter registrants. Under Section 303(b), such validation provides an exemption to the voter identification requirement for first-time registrants by mail if the information matches. States must take steps to ensure that this matching or verification process is accomplished promptly and performed in a uniform and non-discriminatory manner. Ultimately, States are required to determine if the information provided in a registration application meets the above verification requirements pursuant to State law. States must take great care in formulating these policies, taking into consideration the different ways databases may record information and the possibility of errors within the database. Consistent with this task, States should:

a. Create matching or verification protocols to ensure that properly filed registration applications from eligible voters are not rejected due to a database error or inflexible database coordination or matching rules. States must have a documented plan that specifies how election officials will identify and deal with a variety of outcomes that may result from the matching process (such as a mismatch, partial match, multiple match or failed match). States should avoid proffering protocols that automatically reject all registration applications that do not result in a perfect match with a verification database, as such procedures may be impractical, unrealistic and result in the rejection of a large number of eligible voters.

b. Use additional databases (beyond drivers' license and social security databases) to assist in the verification process, when such use would be effective and efficient. When the outcome of the verification process is unclear or suspect, use of other databases may help identify data errors and allow for appropriate corrections to be made to a database.

c. Make every effort to ensure that a voter registration application is not rejected as unverifiable until the State has given the individual an opportunity to correct the information at issue and attempted to validate the accuracy of the government information contained in its databases. This does not mean that States should accept or add unverified registration applications to the statewide list. Rather, it means only that election officials should make certain efforts before an application is determined to be unverifiable and finally rejected. The EAC recommends that in the event a State determines that the information provided in a registration application does not match the information contained in an verification databases, States contact the individual in order to: (1) Inform him or her of the disparity; (2) provide a meaningful opportunity for the applicant to respond or provide the correct information and (3) explain the consequences of failing to reply. In the event the voter registration applicant informs election officials that the information provided to the application was correct, steps should be taken to ensure that the information contained in the verification databases was accurate.

d. Ensure that the coordination of information in the verification process is accurate and efficient. Verification of voter registration information shall be accomplished through electronic transmission. Further, in the greatest extent allowed by State law and available technologies, this electronic transfer between stateside voter registration lists and coordinating, verification databases should be accomplished through direct, secure, interactive and integrated connections.

e. When the verification process indicates the possible commission of an election crime (such as the submission of false registration information), such matters should be timely forwarded to local, State and Federal law enforcement authorities for investigation.

3. *List maintenance:* HAVA requires that election officials perform computerized list maintenance in order to remove duplicate names and the names of ineligible voters. HAVA specifically requires coordination with State death and felony record databases to meet this requirement. States should also coordinate with relevant federal databases, such as the U.S. Postal Service National Change of Address and Social Security Death Index databases, as well as criminal conviction records from U.S. Attorneys and the U.S. District Courts. It is essential that States regularly coordinate with these databases to ensure their statewide voter registration lists are current and accurate. In meeting this goal, chief State election officials shall:

a. Ensure State procedures for removing names from the statewide voter registration list are consistent with the provisions of the NVRA (42 U.S.C. 1973gg–6). The NVRA contains certain requirements regarding the removal of names from official voter rolls. It requires States to conduct a program that removes individuals from voting registration lists who have died or changed residence (42 U.S.C. 1973gg–6(a)(4)). These requirements include the notification of individuals (in certain circumstances such as a change of residence) prior to their removal from the list (42 U.S.C. 1973gg–6(d) & (e)). It also requires the removal of individuals who have moved outside of a given registration jurisdiction, have been sent proper notice, have failed to respond to such notice and have not voted in two consecutive general elections for Federal office (42 U.S.C. 1973gg–6(d)(1)(B)). The statute additional requires election officials to complete any systematic programs to remove ineligible voters not later than 90 days before a Federal election (42 U.S.C. § 1973gg–6(c)(2)).

b. Create "provisions" that include "[s]afeguards to ensure that eligible voters are not removed in error from the official list of eligible voters." (HAVA

[1] Some States may require use of a registration applicant's full Social Security Number pursuant to 42 U.S.C. 15483(A)(5)(D).

Section 303(a)(4)). HAVA requires States to create procedures that recognize the fallibility of databases and ensure that only ineligible voters are removed from a statewide voter registration list. States shall create procedures and requirements to ensure that:

(i.) The removal process and list maintenance program is transparent, non-discriminatory and uniform. To this end, the EAC recommends that States perform list maintenance regularly and over the list as a whole. In any event, States should avoid the appearance of impropriety associated with performing maintenance on limited geographical jurisdictions unless a specific need has been identified in a particular jurisdiction.

(ii.) All databases used to determine an individual's voting eligibility (e.g., agency records on felony and death) or otherwise maintain that statewide voter registration list are accurate, up-to-date and secure. Moreover, States may rely conclusively on such databases only to the extent they provide all the information necessary to determine voter eligibility. To the extent coordination with a given database is not dispositive of a voter's eligibility, States must consult additional sources or databases before taking action. For example, if a State maintains felony records and records on the restoration of voting rights in different databases, both must be consulted during the maintenance process.

(iii.) Adequate safeguards are created to ensure that properly registered and otherwise eligible voters are not removed from the statewide voter registration list in error. As such, the EAC recommends that when information on a coordinating database matches only in part with data contained on a statewide voter registration list or there are otherwise indications that some data may be unclear, incomplete or untrustworthy; election officials should coordinate with other State databases. This should be done in order to verify data and ensure the information contained on the statewide voter registration list and the coordinating database are accurate and refer to the same individual. States should make efforts to correct databases when necessary.

The EAC further recommends that States contact individuals prior to removing their names from the statewide voter registration list. This will allow the public to serve as a further check in the maintenance process. In the event a State has identified a name on the voter list that it believes is either a duplicate name or an ineligible voter, election officials should contact the individual. Such contact should inform the individual (1) That the official intends to remove them from the registration list, (2) the basis for their removal (i.e., ineligibility factor or duplicate name), (3) how and to whom they may respond if they believe the basis for the removal is unfounded and (4) the timeframe they have to respond. While contacting the registrant often provides him or her added protection against being mistakenly removed from the registration list, in some circumstances it may be unnecessary. Where contacting the registrant is not required by the NVRA, election officials may consider foregoing the step if it is clear that no further information is required to correctly determine a registrant's voting eligibility. In such cases, election officials are obligated to assess the accuracy and completeness of any information that will serve as the basis for removal of a name from the voter registration list. Officials must be confident that no additional safeguards are needed to protect the registrant. For example, if election officials identify duplicate voter registration entries and all information contained in the entries is complete and identical, the State may reasonably determine that contacting the registrant is unnecessary.

c. Establish policies that ensure information will be coordinated accurately and efficiently. The EAC recommends that the coordination necessary to perform list maintenance be accomplished through electronic transmission. Further, to the greatest extent allowed by State law and available technologies, this electronic transfer between statewide voter registration lists and coordinating maintenance databases should be accomplished through direct, secure, interactive and integrated connections.

E. Must states track a registrant's voting and registration history?

Yes. While a registrant's voting and registration history are not specifically mandated to be a part of the statewide voter registration list, the tracking of this information is required in order to meet NVRA and HAVA requirements regarding the removal of names from voter rolls and voter identification requirements. This voter-specific information must be accessible and available to the appropriate election officials so these provisions may be timely met. The most efficient and effective means to track voter and registration history information is through a State's statewide voter registration list. As such, the EAC recommends that databases housing statewide voter registration lists should be capable of tracking the following information in order to comply with NVRA and HAVA:

1. Registration by mail. States must track whether an individual registered to vote by mail, as registering in this way triggers Federal identification requirements. 42 U.S.C. 15483(b)(1).

2. Voting history. States must also track an individual's voting history. This is necessary to:

a. Meet NVRA requirements regarding the removal of names from voter rolls. Under the NVRA, if a registrant has moved from a registration jurisdiction, failed to respond to required NVRA notice, and failed to vote in two consecutive Federal general elections, the person's name may be removed from the list of eligible voters. (42 U.S.C. 1973gg-6)

b. Meet HAVA identification requirements. Under HAVA, individuals who register by mail and have not previously voted in an election for Federal office are subject to Federal identification requirements. (42 U.S.C. 15483(b)(1)(B))

3. Identification and verification information for first time voters who register by mail. States must track whether first-time voters who registered by mail provided appropriate identification (*i.e.*, a copy of a valid photo identification or current utility bill) or verification information (*i.e.*, verified driver's license number or last four digits of a social security number[2]) in their registration applications under 42 U.S.C. 15483(b)(3)(A) & (B), sufficient to exempt him or her from HAVA's voter identification requirements (42 U.S.C. 15483(b)(2)). If such registrants failed to provide this identification or verification information during the registration process, they will be required to present it in person, at the polls. This should also be tracked by election officials.

4. Individuals entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). (42 U.S.C. 1973ff-1 *et seq*). States must identify registrants who are entitled to cast an absentee ballot under UOCAVA as they are exempt from HAVA's 42 U.S.C. 15483(b)(2) identification requirements. Furthermore, UOCAVA, as amended by HAVA, requires States to report to the EAC the individual and combined numbers of absentee ballots transmitted to uniformed services voters and

[2] Some States may require use of a registration applicant's full Social Security Number pursuant to 42 U.S.C. § 15483(a)(5)(D).

overseas citizens, as well as the individual and combined number of such ballots returned and cast by such voters. (42 U.S.C. 1973ff-1(c))

5. Individuals entitled to vote otherwise than in person under the Voter Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee–1(b)(2)(B)(ii)) or any other Federal law. States must identify registrants who are entitled to cast an absentee ballot under such statutes as they are exempt from HAVA's 42 U.S.C. 15483(b)(2) identification requirements.

F. What obligations do election officials have concerning the security of the statewide voter registration list?

HAVA makes election officials responsible for ensuring that statewide voter registration lists are accurate, complete and technologically secure.

1. *Technological Security.* HAVA requires election officials to provide adequate, technological database security for statewide voter registration lists that prevent unauthorized access. Such computerized security must be designed to prevent unauthorized users from altering the list or accessing private or otherwise protected information contained on the list. Access may be controlled through a variety of tools including network or system-level utilities and database applications (such as passwords and "masked" data elements). Special care must be taken to ensure that voter registration databases are protected when linked to outside systems for the purposes of coordination.

2. Access Protocols. Election officials must also create clear policies and protocols to make statewide voter registration lists secure. These protocols must identify appropriate classes of authorized users and clearly delineate the members of each class, when they have access, what data they have access to and what level of access each class holds. It is essential to security that the authority to remove a name from the voter registration list be properly limited and documented. Access protocols should also provide physical security requirements to further limit unauthorized access to a system.

3. Transactional Recordkeeping. The EAC recommends that systems housing statewide voter registration lists have the capability to track and record transactions which add or remove names or otherwise alter information contained in the voter registration list. This includes documenting the identity of the individuals who initiate such transactions. This capacity will allow the system to be audited, providing a means to hold authorized users accountable for their actions. Such accountability can serve as an important security measure by deterring unlawful or inappropriate use of the statewide voter registration list.

4. Backup, Recovery and Restoration Capabilities. Due to the important nature of the information stored on the statewide voter registration list, State election officials must ensure that the systems storing the list have adequate backup, recovery and restoration capabilities. These capabilities must be routinely tested. Officials must be confident that the system is properly backed up and that the data may be timely and accurately recovered and restored when needed. Further, the EAC recommends that statewide voter registration list backups occur regularly on an automated basis and that the backup system be housed in a physical location separate from the primary database. Moreover, backup systems should be protected by technological security to the same degree as primary systems.

G. Do record retention requirementsaapply to statewide voter registration databases?

Yes. States must adhere to all State and Federal law (e.g. 42 U.S.C. 1974 and 42 U.S.C. 1973gg–6(i)) applicable to voter registration document retention. Such requirements must be applied to all records contained in or produced by statewide voter registration databases.

H. Should the public be granted access to their information on the computerized statewide voter registration list?

While not required by HAVA, the EAC encourages States to set-up accessible, secure means by which members of the public may verify their registration status and records. This type of public access could provide many benefits, it would serve to (1) enhance openness and voter confidence in the registration system, (2) encourage self-identification of database errors and duplication and (3) decrease instances of multiple registration as a result of an individual's inability to recall registration status.

Further, States could use public access portals to provide other information to voters, such as the location of their proper polling place, important election dates and contact information for registration queries and updates. However, any public access portal must be protected with strong security measures to prevent unauthorized access.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 05–15336 Filed 8–2–05; 8:45 am]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

Office of Environmental Management

Notice of Preferred Sodium Bearing Waste Treatment Technology

AGENCY: Office of Environmental Management, U.S. Department of Energy.

ACTION: Notice of Preferred Sodium Bearing Waste Treatment Technology.

SUMMARY: In October 2002, the U.S. Department of Energy (DOE or the Department) issued the Final Idaho High-Level Waste (HLW) and Facilities Disposition Environmental Impact Statement (DOE/EIS–0287 (Final EIS)). The Final EIS contains an evaluation of reasonable alternatives for the management of mixed transuranic waste/sodium bearing waste (SBW),[1] mixed HLW calcine, and associated low-level waste (LLW), as well as disposition alternatives for HLW facilities when their missions are completed. DOE's preferred alternative in the Final EIS for SBW waste processing was to implement the proposed action by selecting from among the action alternatives, options, and technologies analyzed in the Final EIS, and to construct facilities necessary to prepare the SBW located at the Idaho Nuclear Technology and Engineering Center (INTEC) for the preferred disposition path to the Waste Isolation Pilot Plant (WIPP). In the Final EIS DOE did not identify a preferred treatment technology for SBW from among the several technology options evaluated.

The Department is now announcing that the Non Separations Alternative, Steam Reforming Option, as analyzed in the Final EIS and its associated Supplement Analysis (SA), DOE/ EIS–0287–SA–01, June 2005, is DOE's preferred treatment technology for the SBW. DOE plans a phased decision-making process and will issue its first Record of Decision (ROD) focusing on SBW treatment and facilities disposition no sooner than 30-days from the date of this Notice. A subsequent ROD addressing Tank Farm Facility Closure

[1] The Final EIS refers to SBW as mixed transuranic waste/SBW. However, a determination that SBW is transuranic waste has not been made.

will be issued in coordination with the Secretary of Energy's determination pursuant to Section 3116 of the Ronald W. Reagan National Defense Authorization Act (NDAA) for Fiscal Year 2005, Public Law 108–375. A future ROD for HLW calcine disposition is scheduled for issuance in 2009.

FOR FURTHER INFORMATION CONTACT: Requests for further information on the preferred technology should be addressed to: Richard Kimmel, Document Manager, U.S. Department of Energy, Idaho Operations Office, 1955 North Fremont, MS–1222, Idaho Falls, Idaho, 83415, Telephone (208) 526–5583, or via email at *Richard.Kimmel@nuclear.energy.gov*. Any comments on the preferred technology should be submitted to Mr. Kimmel no later than 30-days from the date of publication of this notice. The Final EIS and SA are available on the Internet at *http://www.id.doe.gov/* and *http://www.eh.doe.gov/nepa/.html*.

For further information on DOE's National Environmental Policy Act (NEPA) process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

SBW is a liquid mixed radioactive waste (contains hazardous and radioactive constituents) produced primarily from INTEC decontamination and cleanup activities. SBW also includes approximately one percent (by volume) commingled 1st cycle reprocessing waste, approximately two percent 2nd cycle reprocessing waste, and approximately four percent 3rd cycle reprocessing waste. SBW contains large quantities of sodium and potassium nitrates; however, the radionuclide concentrations for liquid SBW are generally ten to 1,000 times less than for liquid HLW.

In 1992, DOE entered into a Notice of Noncompliance Consent Order with the State of Idaho Department of Environmental Quality and the Environmental Protection Agency that requires DOE to cease use of the tanks in which the SBW is stored by December 31, 2012.

In 1995, DOE and the State of Idaho entered into a settlement agreement that resolved litigation and that established dates for the treatment of approximately 900,000 gallons of liquid SBW stored at INTEC.

In September 1997, DOE published a Notice of Intent to complete an EIS in accordance with NEPA. In September 1998, the State of Idaho became a cooperating agency in the development of the EIS.

In January 2000, DOE issued the Draft Idaho High-Level Waste and Facilities Disposition EIS (Draft EIS). Subsequently, DOE and the State of Idaho evaluated approximately 1,000 comments received on that document. The Final EIS was issued in October 2002 and reflects changes to the Draft EIS based on public comments, further review by DOE and the State of Idaho, and incorporation of the DOE and State of Idaho preferred alternatives.

The Department's preferred alternative identified in the Final EIS was to implement the proposed action, which consists of five elements to meet the purpose and need for agency action: (1) Select appropriate technologies and construct facilities necessary to prepare INTEC SBW for shipment to WIPP, the preferred disposition path, (2) prepare the HLW calcine to allow disposal in a repository, (3) treat and dispose of associated radioactive wastes, (4) provide safe storage of HLW destined for a repository, and (5) disposition INTEC HLW management facilities when their missions are completed. Alternatives/Options not included in DOE's Preferred Alternative are: the No Action Alternative, storage of calcine in the bin sets for an indefinite period under the Continued Current Operations Alternative, the shipment of calcine to the Hanford Site for treatment under the Minimum Idaho National Engineering and Environmental Laboratory (INEEL) Processing Alternative, and disposal of mixed LLW on the INEEL under any alternative. The INEEL is now known as the Idaho National Laboratory. The State of Idaho, as a cooperating agency, identified the Direct Vitrification Alternative for SBW and vitrification with or without separations of the HLW calcine as their preferred waste-processing alternatives. The Final EIS did not identify a DOE preferred treatment technology from among the several technology options evaluated for treatment of the SBW.

DOE conducted four workshops to inform the public about the five technologies that the DOE was considering for treatment of the SBW with the preferred disposition at WIPP. The five technologies were Direct Vitrification, Cesium Ion Exchange with a grout waste form, Calcination with Maximum Achievable Control Technology upgrades, Direct Evaporation, and Steam Reforming. DOE issued a **Federal Register** notice on March 10, 2003, 68 FR 11388, announcing the public workshops. Workshops were held between March 13–April 28, 2003, in Jackson, Wyoming, and Idaho Falls, Twin Falls, and Fort Hall, Idaho. In addition, briefings were held with individual stakeholders through June 2003. The public was given the opportunity to provide comments on all technologies presented through August 31, 2003, via e-mail or regular mail. Though the focus of the comment period was for SBW treatment, the nature of the comments received also included HLW calcine and closure of HLW facilities. DOE considered those comments, which addressed the following issues: Potential environmental impacts from waste processing operations, technical viability, uncertainties related to regulatory requirements and permits, public or agency acceptance, vitrification, cost, transportation of waste for disposal, waste form stability, and plan and schedule for cleanup activities. These comments did not raise any new issues that were not expressed during the comment period on the Draft EIS. DOE and the State of Idaho responses to these issues are in the Final EIS, Chapter 11.

During the workshops and briefings, DOE informed the public that the DOE's strategy was to select one of the five technologies for treatment of the SBW. Subsequently, DOE changed this strategy by incorporating the requirement for a contractor to propose a treatment technology for SBW in a draft Request for Proposals (RFP) for the Idaho Cleanup Project (ICP) contract to complete the Environmental Management accelerated cleanup mission. At public meetings of the Idaho Environmental Management Citizens Advisory Board, public meetings conducted by the National Academy of Sciences in Idaho, and other meetings with local stakeholders, DOE informed the public of the change in strategy and that the DOE would identify a preferred treatment technology for SBW after the contract was awarded. At these meetings, DOE also informed the public that they would have an opportunity to provide comments on the draft RFP.

DOE issued the draft RFP for the ICP contract for comment in February 2004. The draft RFP required bidders to propose technologies for treating SBW for disposal at WIPP and an alternative technical approach to prepare this waste for disposal as HLW in the geologic repository for HLW and spent nuclear fuel if this waste could not be disposed of at WIPP. DOE responded to comments received on the draft RFP and issued the final RFP in July 2004. The

ICP contract was awarded on March 23, 2005. The ICP contractor proposed Steam Reforming as the treatment technology for SBW. Under the contract DOE would have to fulfill its NEPA requirements before authorizing action to treat SBW.

Preferred Treatment Technology

DOE has identified Steam Reforming as its preferred treatment technology for SBW after considering technical maturity, the regulatory schedule for treatment of the SBW, and the environmental impacts presented in the Final EIS. The central feature of the Steam Reforming process is the reformer, a fluidized bed reactor in which steam is used as the fluidizing gas and a refractory oxide material is used as the bed medium. An organic reductant and other additives are also fed to the bed to enhance denitration. Water in the waste is vaporized to superheated steam, while organic compounds in the waste are broken down through thermal processes and reaction with hot nitrates, steam, and oxygen. A solid, remote-handled waste consisting of primarily inorganic salts is produced. The solids are packaged for disposal. This technology supports the Department's objective to treat SBW in a manner such that it would be ready for shipment out of Idaho, by December 31, 2012, in accordance with the *Environmental Management Performance Management Plan for Accelerating Cleanup of the INEEL, DOE/ID–11006, August 2002.*

DOE prepared a SA in accordance with DOE NEPA regulations (10 CFR 1021.314) to determine whether there are substantial changes to the scope of the proposed action identified in the Final EIS or significant new circumstances or information relevant to environmental concerns within the meaning of CEQ NEPA regulations [40 CFR 1502.9(c)(1)] that would require preparation of a supplemental EIS. The SA contains DOE's evaluation of new information (*e.g.*, updated waste characterization data) and revised methodologies (*e.g.*, for estimating cancer risk). Based on the SA, DOE determined that a supplemental EIS is not required.

DOE plans a phased decision-making process and will issue its first ROD focusing on SBW treatment and facilities disposition no sooner than 30-days from the date of this Notice. DOE will consider any comments received before issuing this ROD.

A subsequent ROD addressing Tank Farm Facility Closure will be issued in coordination with the Secretary of Energy's determination pursuant to Section 3116 of the Ronald W. Reagan NDAA for Fiscal Year 2005, Public Law 108–375. A future ROD for HLW calcine disposition is scheduled for issuance in 2009.

Issued in Washington, DC, July 26, 2005.

Charles E. Anderson,

Principal Deputy Assistant Secretary for Environmental Management.

[FR Doc. 05–15293 Filed 8–2–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency information collection activities: Proposed collection; comment request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed three-year extension to the "Recordkeeping Requirements of DOE's General Allocation and Price Rules," ERA–766R.

DATES: Comments must be filed by October 3, 2005. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Mr. John D. Bullington. To ensure receipt of the comments by the due date, submission by FAX (202–586–6191) or e-mail (*Dan.Bullington@hq.doe.gov*) is recommended. The mailing address is Office of General Counsel, GC–90, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Mr. Bullington may be contacted by telephone at 202–586–7364.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Mr. Bullington at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

The recordkeeping requirements are authorized by section 203(a)(1) of the Economic Stabilization Act (ESA) of 1970, as amended (Pub. L. 92–210, 85 Stat. 743) and by section 13(g) of the Federal Energy Administration Act (FEAA) of 1974, as amended (Pub.L. 93–275). DOE proposes to extend for three years the limited recordkeeping requirements presently contained in 10 CFR 210.1. The antecedent regulation was narrowed by amendment in January 1985. This limited extension is proposed as a protective measure to preserve records relating to the prior price and allocation regulations for an additional three years.

II. Current Actions

This is an extension with no change of the existing requirements. The requirements are proposed to be extended for a period of three years, from February 28, 2006, to February 28, 2009.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. EIA is interested in receiving comments from persons regarding whether the proposed recordkeeping requirements are necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is

defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. Are the instructions regarding the recordkeeping requirements clear and sufficient? If not, which instructions require clarification?

B. Can information be maintained as specified in the recordkeeping requirements?

C. Public reporting burden for the recordkeeping requirements are estimated to average 4 hours per respondent. The estimated burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose and provide information.

D. The agency estimates respondents will incur no additional costs other than the hours required to maintain the records. What is the estimated: (1) Total dollar amount annualized for capital and start-up costs, and (2) recurring annual costs of operation and maintenance, and purchase of services associated with these recordkeeping requirements.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, July 26, 2005.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. 05–15292 Filed 8–2–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulaltory Commission

[Docket No. OR05–10–000]

BP Pipelines (Alaska) Inc., ConocoPhillips Transportation Alaska, Inc., ExxonMobil Pipeline Company, Koch Alaska Pipeline Company, L.L.C., Unocal Pipeline Company; Notice of Petition

July 29, 2005.

Take notice that on July 20, 2005, BP Pipelines (Alaska) Inc., ConocoPhillips Transportation Alaska, Inc., ExxonMobil Pipeline, Koch Alaska Pipeline Company LLC, and Unocal Pipeline Company (The TAPS Carriers) tendered for filing a petition pursuant to sections 13(3) and 13(4) of the Interstate Commerce Act, 49 U.S.C. App. 13(3), 13(4) (1995).

The TAPS Carriers allege that the 2005 rates set by the Regulatory Commission of Alaska (RCA) for intrastate transportation on the Trans Alaska Pipeline System (TAPS) are unlawful because they create an undue preference in favor of intrastate shippers and are unjustly discriminatory against and an undue burden on interstate commerce. The TAPS Carriers ask that the Commission investigate the RCA-set TAPS intrastate rates, find those rates to be unduly preferential and unjustly discriminatory against and an undue burden on interstate commerce, and set new TAPS intrastate rates equal to (in the case of deliveries to Valdez) or comparable to (in the case of deliveries to intermediate points) the TAPS interstate rates. In addition, The TAPS Carriers seek to have the consideration of their petition consolidated with the on-going proceedings in Docket Nos. IS05–82–000, *et al.* (consolidated).

The TAPS Carriers state that copies of the petition were served on all parties listed on the official service list for the consolidated proceedings in docket Nos. IS05–82–000, *et al.*

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 email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on August 5, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4162 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–73–000]

Buffalo Gap Wind Farm, LLC; Notice of Application for Determination of Exempt Wholesale Generator Status

June 23, 2005.

On June 20, 2005, Buffalo Gap Wind Farm, LLC, (Buffalo Gap) 4542 Ruffner Street, Suite 200 San Diego, CA 92111–2239, filed with the Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Buffalo Gap states that it will engage directly or indirectly and exclusively in the business of owning and/or operating eligible facilities in the United States and selling electric energy at wholesale. Buffalo Gap indicates that it proposes to own and operate an approximately 120.6 MW wind-powered generation facility located in north central Texas, approximately 20 miles south west of Abilene in Nolan and Taylor Counties.

Any person desiring to intervene or to protest in 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 Street, NE., Washington, DC 20426.

The filing in the above proceeding is accessible in the Commission's eLibrary system. It is also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. on July 11, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4155 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–515–000]

Colorado Interstate Gas Company; Notice of Filing of Service Agreement and Tariff Sheet

July 29, 2005.

Take notice that on July 20, 2005, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, one firm transportation service agreement (FTSA) and Eleventh Revised Sheet No. 1 to become effective August 22, 2005.

CIG states that the FTSA is being submitted for the Commission's review and information and has been listed on the tendered tariff sheet as a potential non-conforming agreement.

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 August 3, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4178 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–476–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 7, 2005.

Take notice that on July 1, 2005, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Thirteenth Revised Sheet No. 395, with a proposed effective date of 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the

Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. 05–15395 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–520–000]

Eastern Shore Natural Gas Company; Notice of Penalty Sharing Report

July 29, 2005.

Take notice that on July 26, 2005, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing a report detailing the distribution of penalty revenue sharing amounts to affected buyers.

Eastern Shore states that copies of the filing have been served upon the recipients of the refund and their respective 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 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 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.

Comment Date: 5 p.m. Eastern Time August 5, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4187 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP04–248–007 and RP04–251–008]

El Paso Natural Gas Company; Notice of Compliance Filing

July 29, 2005.

Take notice that on July 25, 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 May 1, 2005:

Second Substitute Original Sheet No. 136
Second Substitute Original Sheet No. 137

EPNG states that the filing is being made in compliance with the Commission Order dated May 27, 2005, in the above listed proceeding. EPNG states that these tariff sheets are revised to suspend the Rate Schedule PAL penalty provisions when EPNG is unable to schedule PAL nominations.

EPNG states that copies of the filing were served on parties on the official service list in the above-captioned proceedings.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4173 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[EL05–132–000]

Exelon Generation Company, LLC, AmerGen Energy Company, LLC, Commonwealth Edison Company, Unicom Power Marketing, Inc., PECO, Energy Company, Exelon Energy Company, Exelon Edgar, LLC, Exelon West Medway, LLC, Exelon Wyman, LLC, Exelon New Boston, LLC, Exelon Framingham, LLC, and Exelon New England Power Marketing, L.P.; Notice of Institution of Proceeding and Refund Effective Date

July 7, 2005.

On July 5, 2005, the Commission issued an order that instituted a proceeding in Docket No. EL05–132–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, concerning the continued justness and reasonableness of the market-based rates charged by Exelon Corporation (Exelon Generation Company, LLC) and its affiliates, AmerGen Energy Company, LLC, Commonwealth Edison Company, Unicom Power Marketing, Inc., Exelon Edgar, LLC, Exelon Framingham, LLC, Exelon West Medway, LLC, Exelon Wyman, LLC, and Exelon New Boston, LLC, Exelon New England Power Marketing, L.P., PECO Energy Company, and Exelon Energy Company's. *Exelon*

Corporation, et al, 112 FERC ¶61,027 (2005).

The refund effective date in Docket No. EL05–132–000, established pursuant to section 206(b) of the FPA, will be 60 days from the date of publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. 05–15386 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project 11301–010]

Fall Line Hydro Company, Inc.; Notice Rejecting Request for Rehearing

July 29, 2005.

On July 18, 2005, Fall Line Hydro Company, Inc. filed a request for rehearing of a June 8, 2005, Commission staff order denying extension of time to commence construction for the Carters Reregulation Dam Project No. 11301. The project is located at the U.S. Army Corps of Engineers' Carters Reregulation Dam and Reservoir on the Cossawattee River near the town of Calhoun, in Murray County, Georgia.

Pursuant to section 313(a) of the Federal Power Act, 16 U.S.C. 8251(a), an aggrieved party must filed a request for rehearing within thirty days after the issuance of the Commission's Order, in this case no, later than July 8, 2005. Because the 30-day rehearing deadline is statutory based it cannot be extended and Fall Line Hydro Company, Inc.'s request for rehearing must be rejected as untimely.

This notice constitutes final agency action. Requests for rehearing by the Commission of this rejection notice may be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.712.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4164 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–519–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 29, 2005.

Take notice that on July 22, 2005, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective August 1, 2005:

Seventy-First Revised Sheet No. 8A,
Sixty-Third Revised Sheet No. 8A.01,
Sixty-Third Revised Sheet No. 8A.02,
Twenty-Third Revised Sheet No. 8A.04,
Sixty-Sixth Revised Sheet No. 8B,
Fifty-Ninth Revised Sheet No. 8B.01,
Fifteenth Revised Sheet No. 8B.02.

FGT states that the tariff sheets listed above are being filed pursuant to section 27.A.2.b of the general terms and conditions of FGT's tariff, which provides for flex adjustments to FGT's base fuel reimbursement charge percentage.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4185 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7264]

Fox River Paper Company, N.E.W. Hydro, Inc.; Notice of Authorization for Continued Project Operation

July 7, 2005.

On January 22, 2003, Fox River Paper Company and N.E.W. Hydro, Inc., licensees for the Middle Appleton Dam Project No. 7264, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 7264 is located on the Fox River in Outagamie County, Wisconsin.

The license for Project No. 7264 was issued for a period ending June 30, 2005. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 7264 is issued to Fox River Paper Company and N.E.W. Hydro, Inc. for a period effective July 1, 2005 through June 30, 2006, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 1, 2006, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Fox River Paper Company and N.E.W. Hydro, Inc. are authorized to continue operation of the Middle Appleton Dam Project No. 7264 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. 05–15394 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2194]

FPL Energy Maine Hydro LLC; Notice of Authorization for Continued Project Operation

July 7, 2005.

On June 30, 2003, FPL Energy Maine Hydro LLC, licensee for the Bar Mills Project No. 2194, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2194 is located on the Saco River in York County, Maine.

The license for Project No. 2194 was issued for a period ending June 30, 2005. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2194 is issued to FPL Energy Maine Hydro LLC for a period effective July 1, 2005 through June 30, 2006, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 1, 2006, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that FPL Energy Maine Hydro LLC is authorized to continue operation of the Bar Mills Project No. 2194 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. 05–15392 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–053]

Gulfstream Natural Gas System, L.L.C.; Notice of Negotiated Rate

July 7, 2005.

Take notice that on June 30, 2005, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 8.01r, reflecting an effective date of August 1, 2005.

Gulfstream 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 on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. 05–15387 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–440–000]

High Island Offshore System, L.L.C.; Notice of Tariff Filing

July 7, 2005.

Take notice that on July 1, 2005, High Island Offshore System, L.L.C., tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the

following tariff sheets, with an effective date of July 1, 2005:

First Revised Sheet No. 224
First Revised Sheet No. 226
First Revised Sheet No. 228

HIOS 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.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. 05–15389 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–221–006]

High Island Offshore System; Notice of Compliance Filing

July 29, 2005.

Take notice that on July 22, 2005, High Island Offshore System (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets identified below:

Effective January 24, 2005 Third Revised Sheet No. 10
Effective August 1, 2005
Eighth Revised Sheet No. 2
Second Revised Sheet No. 11
Third Revised Sheet No. 64
First Revised Sheet No. 65
Second Revised Sheet No. 67
Third Revised Sheet No. 69
First Revised Sheet No. 173A
Original Sheet No. 173B

HIOS states that copies of its filing have been mailed to each of HIOS's customers and affected regulatory commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, D.C. 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. E5–4169 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 25, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license to delete certain transmission lines.

b. *Project No:* 1971–096.

c. *Date Filed:* June 13, 2005.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Hells Canyon.

f. *Location:* The project is located on the Snake River in Ada, Adam, Boise, Gem and Washington Counties, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contacts:* Tom R. Saldin, Senior Vice President, Secretary and General Counsel, Idaho Power Company, 1221 West Idaho Street, PO Box 70, Boise, ID 83707; or Nathan F. Gardiner, Attorney, Idaho Power Company, 1221 West Idaho Street, PO Box 70, Boise, ID 83707.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Hong Tung at (202) 502–8757, or e-mail address: *hong.tung@ferc.gov*.

j. *Deadline for filing comments and or motions:* August 29, 2005.

k. *Description of Request:* The licensee requests that the following transmission lines be deleted from the license: The Oxbow-Brownlee Line, the Oxbow-Pallette Junction-Hells Canyon Line, the Pallette Junction-Imnaha Line, the Boise-Brownlee-Baker Line, the Brownlee-Boise Bench Nos. 3 and 4 Lines, and the Pallette Junction-Enterprise Line. The licensee states that none of the transmission lines identified above are used solely to transmit power from licensed projects to load centers; in addition, they are used to import power to and/or wheel power through the licensee's electric system. The licensee also states that the transmission lines would be deleted from the license, but would remain in place.

l. *Locations of Applications:* A copy of the application is available for

inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

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, .211, .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. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. 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 application. A copy of the application 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.

q. 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 at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4161 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–97–000]

MACH Gen, LLC, Millennium Power Partners, L.P., New Athens Generating Company, LLC, New Covert Generating Company, LLC, New Harquahala Generating Company, LLC; Notice Of Filing

June 23, 2005.

Take notice that on June 17, 2005, MACH Gen, LLC, (MACH Gen) Millennium Power Partners, L.P., New Athens Generating Company, LLC, New Covert Generating Company, LLC, and New Harquahala Generating Company, LLC (collectively, Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act (FPA), on behalf of themselves and the current and future owners of equity interests in MACH Gen, requesting authorization for an indirect disposition of jurisdictional facilities resulting from certain proposed transfers of ownership and/or control of equity interests in MACH Gen (the Transfers). Applicants also request certain limited waivers of the Commission's Part 33 filing requirements that are not necessary to ensure that the Transfers meet the statutory requirements of section 203 of the FPA. In addition, Applicants request that the Commission grant blanket authorization under section 203 for certain categories of future transfers of ownership and/or control of equity interests in MACH Gen.

Any person desiring to intervene or to protest in the above proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 pm Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filing in the above proceeding is accessible in the Commission's eLibrary system. It is also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive 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.

Comment Date: 5 p.m. on July 8, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4154 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES05–35–000]

MDU Resources Group, Inc.; Notice of Application

July 29, 2005.

Take notice that on July 25, 2005, MDU Resources Group, Inc. (MDU) submitted an application pursuant to

section 204 of the Federal Power Act seeking authorization to issue up to 2.6 million in additional shares of common stock, with a par value of $1.00.

MDU also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

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 on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to 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 August 19, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4160 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–517–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 29, 2005.

Take notice that on July 25, 2005, Midwestern Gas Transmission Company (Midwestern) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Seventh Revised Sheet No. 7, to become effective August 24, 2005.

Midwestern states that it is proposing to make a minor housekeeping change to its Tariff.

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. E5–4181 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–490–000]

MIGC, Inc.; Notice of Compliance Filing

July 7, 2005.

Take notice that on July 1, 2005, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No.1, Ninth Revised Sheet No. 6, to become effective August 1, 2005.

MIGC asserts that the instant tariff sheet is being submitted in compliance with section 25 of MIGC's FERC Gas Tariff, First Revised Volume No. 1, which provides for MIGC to file revised fuel retention and loss percentage factors (FL&U factors) each year.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC.

There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. 05–15396 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–518–000]

North Baja Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tairff

July 29, 2005.

Take notice that on July 26, 2005, North Baja Pipeline, LLC (NBP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective July 27, 2005:

Fourth Revised Sheet No. 6,
Second Revised Sheet No. 8,
Original Sheet No. 8A,
Original Sheet No. 8B.

NBP states that these tariff sheets are being submitted to add language to two explanatory footnotes for negotiated rates under Rate Schedule FTS–1.

NBP further states that a copy of this filing has been served on NBP'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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4183 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–126–000]

Oklahoma Municipal Power Authority v. American Electric Power Service Corporation; Notice of Institution of Proceeding and Refund Effective Date

July 26, 2005.

On July 26, 2005, the Commission issued an order that instituted a proceeding in Docket No. EL05–126–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, concerning the continued justness and reasonableness of American Electric Power Services Corporation's Network Integration Transmission Service Agreement with the Oklahoma Municipal Power Authority. *Oklahoma Municipal Power Authority* v. *American Electric Power Service Corp.*, 112 FERC ¶ 61,107 (2005).

The refund effective date in Docket No. EL05–126–000, established pursuant to section 206(b) of the FPA, will be 60 days from the date of publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4156 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1962–113]

Pacific Gas and Electric Company; Notice Dismissing Complaint

July 25, 2005.

1. On May 31, 2005, the Anglers Committee (Anglers) filed a complaint against Pacific Gas and Electric Company (PG&E), licensee for the Rock Creek-Cresta Project No. 1962, located on the North Fork Feather River in Butte and Plumas Counties, California.[1] On June 21, 2005, PG&E filed an answer to the complaint. On July 13, 2005, Anglers filed a rebuttal to PG&E's answer.

2. The Anglers contend that the Ecological Resource Committee (Committee), created by the licensee,[2] will not allow the public to participate in the meetings (other than to attend and listen) and to have access to Committee documents. The Anglers request that the Commission require PG&E to establish requirements and proceedings for Committee meetings to provide public participation in all matters and access to Committee documents.

3. The Commission's regulations provide that a complaint may be filed seeking Commission action against any person alleged to be "in contravention or violation of any statute, rule, order, or other law administered by the Commission or for any other alleged wrong over which the Commission may have jurisdiction."[3] The regulations further provide that the complaint must [c]learly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements."[4]

[1] The Commission issued PG&E a new license for the Rock Creek-Cresta Project and approved a settlement agreement resolving various project-related issues on October 24, 2001. 97 FERC ¶ 61,084 (2001).

[2] Appendix Condition No. 22 of the license required PG&E to establish the Committee in coordination with the parties to the Settlement Agreement for the purpose of assisting the licensee in the design of monitoring plans, review and evaluation of data, and preparation of adaptive management measures for implementation by the licensee as provided in the Settlement Agreement.

The Anglers previously participated in settlement discussions regarding the relicensing of the project but, as stated in their complaint, they chose not to become signatories to the Settlement Agreement because of their disagreement with certain terms and conditions in the agreement. Members of the Committee are limited to the Settlement Agreement signatories.

[3] *See* 18 CFR 385.206(a)(2005).

[4] *Id.*

4. The license does not establish Committee procedures. Nor does it require public participation in Committee matters.[5] Since the complainants do not allege that PG&E is in violation of its license, the Federal Power Act, or the Commission's regulations, the complaint is dismissed.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4165 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2630]

PacifiCorp; Notice of Authorization for Continued Project Operation

July 7, 2005.

On June 27, 2003, PacifiCorp, licensee for the Prospect Nos. 1, 2, and 4 Project No. 2630, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations. Project No. 2630 is located on the Rogue River, Middle Fork Rogue River, and Red Blanket Creek in Jackson County, Oregon.

The license for Project No. 2630 was issued for a period ending July 1, 2005. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2630 is issued to PacifiCorp for a period effective July 2, 2005 through July 1, 2006, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 2, 2006, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that PacifiCorp is authorized to continue operation of the Prospect Nos. 1, 2, and 4 Project No. 2630 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. 05–15393 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–516–000]

Pine Needle LNG Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

July 29, 2005.

Take notice that on July 22, 2005, Pine Needle LNG Company, LLC (Pine Needle) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Third Revised Sheet No. 81 and First Revised Sheet No. 82, to become effective August 22, 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 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. E5–4180 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–127–000]

PJM Interconnection, L.L.C.; Notice of Institution of Proceeding and Refund Effective Date

July 7, 2005.

On July 6, 2005, the Commission issued an order that instituted a proceeding in Docket No. EL05–127–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, concerning the continued justness and reasonableness of PJM Interconnection, L.L.C.'s previously-accepted rate filing with respect to the behind-the-meter generation netting program. *PJM Interconnection, L.L.C.*, 112 FERC ¶ 61,034 (2005).

The refund effective date in Docket No. EL05–127–000, established pursuant to section 206(b) of the FPA, will be 60 days from the date of

[5] However, any material changes in project operations during the term of the license will require a license amendment application, public notice, and a proceeding in which interested entities will have an opportunity to participate.

publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. 05–15385 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–467–000]

Questar Pipeline Company; Notice of Tariff Filing

July 7, 2005.

Take notice that on July 1, 2005, Questar Pipeline Company (Questar) tendered for filing has part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 2005:

Second Revised Sheet No. 1C
Seventh Revised Sheet No. 164
First Revised Sheet Nos. 179A and 179E
Second Revised Sheet No. 179I

Questar states that copies of this filing were served upon Questar's 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. 05–15390 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–401–002]

Questar Pipeline Company; Notice of Compliance Filing

July 29, 2005.

Take notice that on July 22, 2005, Questar Pipeline Company (Questar), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Fifth Revised Sheet No. 31, to be effective July 25, 2005.

Questar states that copies of this filing were served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4176 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–513–001]

Questar Pipeline Company; Notice of Negotated Rates

July 29, 2005.

Take notice that on July 22, 2005, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, ThirtySeventh Revised Sheet No. 7 and Ninth Revised Sheet No. 7A, with an effective date of July 22, 2005.

Questar states that this filing proposed to revise contract terms for two negotiated-rate contracts and a footnote has been rewritten for clarity.

Questar states that a copy of this filing has been served upon all parties to this proceeding, Questar's 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. E5–4188 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–363–001]

Texas Gas Transmission, LLC; Notice of Compliance Filing

July 29, 2005.

Take notice that on July 25, 2005, Texas Gas Transmission, LLC (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of July 1, 2005:

Substitute Second Revised Sheet No. 283
Substitute First Revised Sheet No. 284

Texas Gas states that the filing is made in compliance with an order issued by the Commission on June 27, 2005, in Docket Number RP05–363–000. Texas Gas also states that copies of the filing were served on parties on the official service list.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4175 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–359–025]

Transcontinental Gas Pipe Line Corporation; Notice of Negotiated Rate

July 7, 2005.

Take notice that on June 30, 2005, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with Commission a copy of the executed service agreement amendment that contains, among other things, a negotiated delivery point facilities surcharge (facilities surcharge) under Transco's Rate Schedule FT for the costs of the Rock Creek Meter Station, a new delivery point to Washington Gas Light Company. The effective date of this facilities surcharge is July 1, 2005, which is the anticipated in-service date of the Rock Creek Meter Station.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. 05–15399 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–494–000]

Trunkline LNG Company, LLC; Notice of Tariff Filing

July 7, 2005.

Take notice that on July 1, 2005, Trunkline LNG Company, LLC (TLNG) tendered a filing pursuant to section 21 of the general terms and conditions of TLNG's FERC Gas Tariff, Second Revised Volume No. 1–A.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by

the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. 05–15391 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–491–000]

Trunkline LNG Company, LLC; Notice of Proposed Changes In FERC Gas Tariff

July 7, 2005.

Take notice that on July 1, 2005, Trunkline LNG Company, LLC (TLNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Sixth Revised Sheet No. 5, to become effective August 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 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. 05–15397 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–431–000]

Willlston Basin Interstate Pipeline Company; Notice of Tariff Filing

July 7, 2005.

Take notice that on July 1, 2005, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing to become a part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective August 1, 2005:

Third Revised Sheet No. 193
Third Revised Sheet No. 193A
Thirteenth Revised Sheet No. 194
Eighth Revised Sheet No. 195
Seventh Revised Sheet No. 196
Fifth Revised Sheet No. 197
Sixth Revised Sheet No. 200
Sixth Revised Sheet No. 201
Ninth Revised Sheet No. 203
First Revised Sheet No. 207A.01

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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. 05–15388 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–394–000]

Wisconsin Power and Light Company; Notice of Filing

July 29, 2005.

Take notice that on July 22, 2005, Wisconsin Power and Light Company (WPL) filed, pursuant to section 284.224 of the Commission's Regulations, an application for a blanket certificate of public convenience and necessity authorizing it to transport natural gas in interstate commerce to the same extent and in the same manner that intrastate pipelines are authorized to engage in such activities pursuant to subpart C of part 284 of the Commission's Regulations. WPL maintains that the issuance of a blanket certificate will serve the public convenience and necessity by permitting WPL to provide interstate transportation services on behalf of South Beloit Water, Gas and Electric Company, a local distribution company that serves the natural gas market in and around South Beloit, Illinois, as well as other shippers desiring such service, without otherwise subjecting WPL to the Commission's Natural Gas Act jurisdiction.

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 August 19, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4158 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL03–40–000 and EL05–51–000 (Not consolidated)]

Wisconsin Public Service Corporation and Midwest Independent Transmission System Operator, Inc.; Notice Shortening Comment Period

July 7, 2005.

On June 29, 2005, Midwest Independent System Operator, Inc., Wisconsin Public Service Corporation and Xcel Energy Services, Inc. filed a Stipulation and Settlement Agreement (Settlement) in the above-docketed proceedings. By this notice, the period for filing comments to the June 29, 2005 Settlement is hereby shortened to and including July 8, 2005. Reply comments are due July 13, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. 05–15384 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–500–000]

Nucor-Yamato Steel Company & Nucor Steel—Arkansas v. CenterPoint Energy Gas Transmission Company; Notice of Complaint

July 7, 2005.

Take notice that on July 6, 2005 Nucor-Yamato Steel Company Inc. and Nucor Steel-Arkansas, a division of Nucor Corporation (collectively Complainants), filed a formal complaint against CenterPoint Energy Gas Transmission Company (CEGT) pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, alleging that CEGT imposed excess contract quantities (ECQ) invalidly without clear or adequate notice that complainants would be subject to such penalties, in violation of Order No. 637 and section 20, General Terms & Conditions, of CEGT's filed Gas Tariff.

Complainants certify that copies of the complaint were served on the contacts for CEGT or listed on the Commission's list of corporate officials.

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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Complainant. Respondent's answer and all interventions or protests submitted on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filing in the above proceeding is accessible in the Commission's eLibrary system. It is also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. on July 26, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. 05–15398 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–128–000]

Quest Energy, L.L.C., Complainant v. Midwest Independent Transmission System Operator, Inc., Respondent; Notice of Complaint Requesting Fast Track Processing

June 23, 2005.

Take notice that on June 22, 2005, Quest Energy, L.L.C. (Quest) filed a complaint against Midwest Independent Transmission System Operator, Inc. (MISO) pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206). Quest's complaint states that MISO violated the express terms of its tariff by: (1) Requiring customers to post Security to cover the newly-imposed SECA surcharge; and (2) requiring payment into escrow of the SECA charges if the charge is disputed pursuant to the billing dispute provisions of the MISO tariff.

Any person desiring to intervene or to protest in of the above proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Complainant. Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filing in the above proceeding is accessible in the Commission's eLibrary system. It is also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. on July 7, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4157 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 289–013–Kentucky]

Louisville Gas and Electric Company; Notice of Availability of Environmental Assessment

July 29, 2005.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for a new license for the Ohio Falls Hydroelectric Project, located on the Ohio River, in Jefferson County, Kentucky, and has prepared an Environmental Assessment (EA). In the EA, Commission's staff analyze the potential environmental effects of relicensing the project and conclude that issuing a new license for the project, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's 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 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix "Ohio Falls Hydroelectric Project No. 289" to all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. For further information, contact John Costello at (202) 502–6119.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4167 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–49–000]

Northern Natural Gas Company; Notice of Availability of the Environmental Assessment for the Proposed Bluff Creek/Tomah Expansion Project

July 7, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Northern Natural Gas Company, (Northern) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed 3.2 miles of 30-inch diameter pipeline in Lafayette County, Wisconsin at the Bluff Creek Interconnect, and increase the horsepower at the existing Chatfield compressor station.

The purpose of the proposed facilities is to enable Northern to provide a 675-pounds per square inch gauge operating pressure guarantee to Wisconsin Gas LLC at the Bluff Creek Interconnect and provide additional horsepower at the Chatfield Compressor Station to enable Northern to meet firm incremental service to Wisconsin Gas LLC on the Tomah Branchline.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal, state and local agencies, public interest groups, interested individuals, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the (Gas Branch 2), PJ11.2.
- Reference Docket No. CP05–49–000; and
- Mail your comments so that they will be received in Washington, DC on or before August 8, 2005.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Sign-up."

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 05–15382 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–U

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–91–000 and CP05–380–000]

Calhoun LNG, L.P. and Point Comfort Pipeline Company, L.P.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Calhoun LNG Terminal and Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings and Site Visit

July 7, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Calhoun LNG Terminal and Pipeline Project involving construction and operation of facilities by Calhoun LNG, L.P. and Point Comfort Pipeline Company, L.P. (collectively referred to as Calhoun Point Comfort) in Calhoun and Jackson Counties, Texas.[1] These facilities would consist of a liquefied natural gas (LNG) import terminal and storage facilities, and 27 miles of 36-inch-diameter pipeline. This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity. Please note that the scoping period will close on August 8, 2005.

Comments may be submitted in written form or presented verbally at the public meetings detailed below. Further details on how to submit written comments are provided in the public participation section of this notice. In lieu of sending written comments, you are invited to attend the public scoping meeting scheduled as follows:

July 26, 2005, 7 p.m. (cst), Bauer Community Center, 2300 N. Highway 35, Port Lavaca, Texas 77979. Telephone: (361) 552–1234.

The public scoping meeting is designed to provide state and local agencies, interested groups, affected landowners, and the general public with more detailed information and another opportunity to offer your comments on the proposed project. Interested groups and individuals are encouraged to attend the meeting and to present comments on the environmental issues they believe should be addressed in the EIS. A transcript of the meeting will be made so that your comments will be accurately recorded.

Also on July 26 2005, starting at 8 a.m., we will be conducting a visit to the proposed LNG terminal site and pipeline route. Anyone interested in participating in the site visit should meet at the Days Inn Port Lavaca at 2100 N. Hwy, Port Lavaca, Texas 77979 (phone number: 361–552–4511). Participants must provide their own transportation. For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC (3372).

This notice is being sent to affected landowners; federal, state, and local government representatives and agencies; environmental and public interest groups; Native American tribes; local libraries and newspapers; and

[1] On March 8, 2005, Calhoun LNG, L.P. filed its application with the Commission under Section 3(a) of the Natural Gas Act (NGA) and part 153 of the Commission's regulations. On June 10, 2005 Point Comfort Pipeline Company, L.P. filed its application under Section 7 of the NGA and Parts 157 and 284 of the Commission's regulations.

intervenors in this proceeding. We [2] request that state and local government representatives notify their constituents of this proposed action and encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Calhoun Point Comfort proposes to import, store, and vaporize on average about 1.0 billion cubic feet per day of LNG at its terminal facility on the southeastern shoreline of Lavaca Bay, south of Point Comfort, Texas. The proposed terminal site is bounded by Lavaca Bay to the west and south, Cox Bay to the east, and industrial facilities to the north owned by Alcoa and Formosa Plastics Corporation. The proposed pipeline, extending from the LNG terminal to its terminus southwest of Edna, Texas, would be capable of transporting about 1.0 billion cubic feet per day of imported natural gas to markets throughout the United States, via interconnections with existing intrastate and interstate pipeline systems and industrial users. Calhoun Point Comfort seeks authority to construct and operate:

- A single berthing structure along Lavaca Bay and unloading facilities equipped to unload up to 120 LNG ships per year;
- Two single containment LNG storage tanks, each with a nominal working volume of approximately 160,000 cubic meters (1,006,400 barrels equivalent);
- LNG vaporization and sendout system and ancillary equipment and buildings;
- Natural gas recovery system;
- 27 miles of 36-inch-diameter natural gas pipeline, 0.5 mile of 8- and 16-inch-diameter lateral pipeline, and appurtenances; and
- Up to 10 interconnects with existing intrastate and interstate pipelines and industrial users.

Construction of the proposed LNG terminal would also require construction of nonjurisdictional facilities, consisting of about 1.7 miles of natural gas liquids pipeline and about 0.7 mile of new overhead electric power line. These facilities are not under jurisdiction of the Commission but they will be addressed in the EIS as related nonjurisdictional facilities.

Calhoun Point Comfort would like to have the project constructed and operational prior to the 2009 winter heating season. The general location of the facilities is shown in appendix 1.[3]

Land Requirements for Construction

The proposed LNG terminal would be located on about 89 acres of land owned by the Port of Port Lavaca—Point Comfort. Onshore, permanent operation of the terminal would require the use of about 89 acres while offshore, permanent operation of the marine berthing area would require the use of about 9 acres of open water. The Calhoun County Navigation District (CCND) would augment the harbor by dredging a new turning basin at the confluence of the Point Comfort Channel and the channel to the Alcoa plant. This augmentation would encompass construction of Calhoun Point Comfort's new berthing area as well as the CCND's turning basin and would require the dredging of about 4,700,000 cubic yards of material. The material dredged during harbor augmentation would be placed within the Alcoa/Lavaca Bay Superfund Site in Lavaca Bay.

Construction of the proposed pipeline would affect a total of about 383 acres of land, including 3 acres for aboveground facilities. A 100-foot-wide nominal construction right-of-way would be used, plus additional temporary extra work spaces, and the permanent pipeline easement would be 30 feet wide. Operation would require use of about 103 acres. At the end of construction, the remaining 280 acres of land along the pipeline route would be restored to its previous condition and use. Construction of the proposed laterals would affect a total of about 5 acres of land, including 0.6 acre for aboveground facilities, while operation would require about 2 acres.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues and reasonable alternatives. With this notice, we are soliciting input from the public and interested agencies to help us focus the analysis in the EIS on the potentially significant environmental issues related to the proposed action. To ensure that your scoping comments are considered, please carefully follow the instructions in the public participation section beginning on page 5.

We are also asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to the environmental issues to formally cooperate with us in the preparation of the EIS. These agencies, especially the U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Fish and Wildlife Service, and the National Marine Fisheries Service, may choose to participate once they have evaluated the proposal relative to their responsibilities.

Our independent analysis of the proposed project will be included in a draft EIS. The draft EIS will be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, Native American tribes, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider all timely comments on the draft EIS and revise the document, as necessary, before issuing the final EIS. In addition, we will consider all comments on the final EIS when we make our recommendations to the Commission.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project under the general resource headings listed below. We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Calhoun Point Comfort. This preliminary list of issues may be changed based on your

[2] "We," "us," and "our" refer to the environmental staff of the FERC's Office of Energy Projects (OEP).

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's Web site at the "eLibrary" link or from the Commission's Public Reference, Room 2A or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to Calhoun Point Comfort.

comments and our analysis. Our preliminary list includes the following:

- Augmentation of the harbor, including dredging of the new berthing area, and placement of dredged material within the Alcoa/Lavaca Bay Superfund Site in Lavaca Bay
- Surface waterbodies, including the Navidad and Lavaca Rivers
- About 26 acres of wetlands
- State and/or federally-listed threatened and endangered species and essential fish habitat
- Consistency with coastal zone management area guidelines
- LNG ship traffic on the Port of Port Lavaca
- Archaeological sites at the LNG terminal and along the pipeline
- Air and noise quality
- Reliability and safety, including assessment of the transport, unloading, storage, and vaporization of LNG and security associated with LNG ship traffic and an LNG import terminal
- Alternative sites for the LNG terminal and pipeline route
- Cumulative impacts of the proposed project when combined with other past, present, or reasonably foreseeable future actions in the project area

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative terminal locations or pipeline routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket Nos. CP05–91–000 and CP05–380–000
- Mail your comments so that they will be received in Washington, DC on or before August 8, 2005.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account, which can be created by clicking on "Login to File" and then "New User Account." You will be asked to select the type of filing you are making. This filing is considered a "Comment on Filing."

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*)using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. To register for this service, go to*http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. 05–15383 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–389–000]

Columbia Gas Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Weaver, Medina, and Coco Storage Field Well Abandonment Project and Request for Comments on Environmental Issues

July 27, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Weaver, Medina, and Coco Storage Field Well Abandonment Project involving abandonment of facilities by Columbia Gas Transmission Corporation (Columbia) in Richland and Medina Counties, Ohio and Kanawha County, West Virginia.[1] The project facilities would consist of plugging and abandonment of six gas storage wells and related appurtenances, abandonment in place of five segments of 3- and 4-inch-diameter pipeline totaling about 7,867 feet, and abandonment by removal of ten segments of 3- and 4-inch-diameter pipeline totaling 357 feet. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Columbia provided to affected

[1] Columbia's application was filed with the Commission under section 7(b) of the Natural Gas Act and part 157 of the Commission's regulations.

landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Columbia wants to perform the following abandonment-related activities in the following gas storage fields:

Weaver gas storage field in Richland County, Ohio

- Plug and abandon the Weaver 3393 Well and abandon by removal a 23-foot-long segment of the 3-inch-diameter SL–W 3393 well pipeline and a 13-foot-long segment of 6-inch-diameter portion of the well pipeline, two blow-offs, and a 16-inch-diameter vertical drip, and install a blind plate at the tie-in valve;
- Plug and abandon the Weaver 8560 Well and abandon by removal a 9-foot-long segment of the aboveground portion of the 3-inch-diameter SL–W 8560 pipeline and a tie-in valve, a 1-inch blow-off, a 16-inch-diameter vertical drip, and about 25 feet of the buried portion the SL–W 8560 pipeline; and
- Plug and abandon the Weaver 8853 Well, abandon by removal two segments of the 3-inch-diameter aboveground SL–W 8853 pipeline totaling 30 feet, two 1-inch blow-offs, a 16-inch-diameter vertical drip, a farm tap, cut and cap the existing 3-inch-diameter well line and install a blind plate at the tie-in valve on Line SL–3390, and abandon in place about 592 feet of the 3-inch-diameter well line SL–W8853.

Medina gas storage field in Medina County, Ohio

- Plug and abandon the Medina 10087 Well, abandon by removal two 1-inch blow-offs, a 16-inch-diameter vertical drip, about 14 feet of the aboveground portion of the 4-inch-diameter SL–W 10087 pipeline, about 20 feet of aboveground 3-inch-diameter section of the same pipeline, cut and cap the existing 3-inch-diameter portion of well line and install a blind plate at the tie-in valve, and abandon in place about 442 feet of the 4-inch-diameter portion of the well line.

Coco gas storage field in Kanawha County, West Virginia

- Plug and abandon the Coco 7332 Well, abandon by removal a methanol tap, a meter building, about 100 feet of the 4-inch-diameter X52C–W 7332 pipeline, and abandon in place about 3,439 feet of the same pipeline; and
- Plug and abandon the Coco 7334 Well, abandon by removal a methanol tap, a meter building, two drip tanks, a tie-in valve, about 123 feet of the 4-inch-diameter X52C–W 7334 pipeline, and abandon in place about 2,470 feet of the same pipeline.

The location of the project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

Abandonment of the proposed facilities would require about 15.2 acres of land for removal and capping of six storage wells, removal of short segments of well pipelines, and removal of associated aboveground appurtenant facilities. Following the abandonment activities the entire 15.2 acres would be allowed to revert to previous land uses or other land uses intended by the landowners.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we[3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Endangered and threatened species.

We will not discuss impacts to the following resource areas since they are not present in the project area, or would not be affected by the proposed activities.

- Fisheries.
- Air quality and noise.
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission(s official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP05–389–000.
- Mail your comments so that they will be received in Washington, DC on or before August 29, 2005.

The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at

[2] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the "eLibrary" link or from the Commission(s Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

http://www.ferc.gov under the "Documents & Filing, e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or "intervenor". To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *http://www.ferc.gov*. Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with email addresses may be served electronically.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations. and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4177 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

July 25, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12603–000.

c. *Date filed:* July 8, 2005.

d. *Applicant:* Energy Recycling Company.

e. *Name and Location of Project:* The proposed Klamath County Pump Storage Project would be located in Klamath County, Oregon and would occupy lands administered by the Bureau of Land Management.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Douglas Spaulding, Manager, Energy Recycling Company, 1433 Utica Avenue South, Suite 162, Minneapolis, MN 55416.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12603–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Existing Facilities and Proposed Project:* The proposed project would consist of the following new facilities: (1) An upper reservoir with a maximum storage capacity of 14,300 acre-feet and a surface area of 199 acres at maximum normal water surface elevation of 5,523 feet above mean sea level (msl), impounded by two earth and rockfill embankments, 178 and 50-foot-high, respectively, with a crest elevation of 5,533 feet msl; (2) a 24-foot-diameter, 1,326-foot-long vertical shaft; (3) a 24-foot-diameter, 3,200-foot-long concrete-lined tunnel: (4) four, 12-foot-diameter, 355-foot-long, steel-lined penstocks; (5) a powerhouse with four 250-megawatt pump/turbines; (6) a 1,500-foot-long by 38-foot-wide D-shaped tailrace tunnel; (7) a lower reservoir with a maximum storage capacity of 16,900 acre-feet and an area of 405 acres at maximum water surface elevation of 4,191 feet msl, impounded by a 49-foot-high earth and rockfill embankment, with a crest elevation of 4,200 feet msl; (8) a 4-mile-long, 500-kilovolt transmission line connecting the project to Captain Jack substation; and (9) appurtenant facilities. The

project would operate as a closed system using water obtained from groundwater sources. The proposed project would have an annual generation of 1,576,800 MWh.

k. *Location of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room 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, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. 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, .211, .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.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 C.F.R. 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application 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. E5–4159 Filed 8–2–05; 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 Soliciting Comments, Motions To Intervene, and Protests

July 25, 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.

b. *Project No:* 2686–041.

c. *Date Filed:* June 24, 2005.

d. *Applicant:* Duke Power.

e. *Name of Project:* West Fork Hydroelectric Project.

f. *Location:* The proposed facility is located in Jackson County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 US.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative, Duke Power, a division of Duke Energy Corp., P.O. Box 1006, Charlotte, North Carolina 28201–1006, (704) 382–8576.

i. *FERC Contacts:* Any questions on this notice should be addressed to Ms. Shana High at (202) 502–8674, or e-mail address: *shana.high@ferc.gov*.

j. *Deadline for filing comments and or motions:* August 29, 2005.

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–2686–041) 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 application seeks Commission approval to lease 0.31 acre of project property to Glenville Masonic Lodge, Inc. to construct one cluster dock with ten boat docking locations. The proposed facility will serve the general public on Lake Glenville.

l. *Location of the Applications:* The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the "eLibrary" link. 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, .211, .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 application. 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.

q. 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 at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4163 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Surrender of License and Soliciting Comments, Motions To Intervene, and Protests

July 29, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of License.

b. *Project No.:* 2304–008.

c. *Date Filed:* July 20, 2005.

d. *Licensee:* Salt River Project Agricultural Improvement and Power District (SRP).

e. *Name of Project:* Blue Ridge Hydro (Project).

f. *Location:* On East Clear Creek, a tributary of the Little Colorado River, and the East Verde River, a tributary of the Verde River, in Coconino and Gila Counties, Arizona.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Licensee Contacts:* Joel L. Greene, Jennings, Strouss & Salmon, P.L.C., 1500 K Street, N.W., Suite 330, Washington, DC 20005, (202) 371–9889; Frederic L. Beeson, Manager, Litigation Services, Salt River Project, Mail Station PAB 341, PO Box 52025, Phoenix, Arizona 85072–2025, (602) 236–2020.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing comments and motions to intervene:* August 18, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–2304–008) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* The United States (U.S.) and the Salt River Valley Water Users' Association (Association) jointly operate and maintain the Salt River Federal Reclamation Project (Reclamation Project). The Reclamation Project includes all dams on the Salt River and the associated hydroelectric facilities regulated by the Bureau of Reclamation (BR). The application was filed to facilitate the incorporation of the Project into the Reclamation Project pursuant to section 213 of the Arizona Water Settlements Act of 2004, Pub. L. No. 108–451 (the Settlements Act). The Settlements Act provides that the Secretary of the Interior shall accept transfer of title to the project from SRP and hold title for the benefit of the Reclamation Project; that upon transfer of the title, the Commission shall have no further licensing and regulatory authority over the project; that the Association and SRP shall be responsible for the care, operation, and maintenance of the project pursuant to the contract between the U.S. and the Association, dated September 6, 1917, as amended; and that all other applicable Federal environmental laws shall continue to apply to the Project. The Project will ultimately be operated under the oversight of the BR.

l. *Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, here P–2304, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h. above.

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, .211, .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", "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 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 application. A copy of the application may be obtained by agencies directly from the Applicant. If any 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. E5–4166 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License, and Soliciting Comments, Motions To Intervene, and Protests

July 25, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 3940–015.

c. *Date Filed:* July 11, 2005.

d. *Applicants:* City of Denton, Texas (transferor), City of Garland, Texas (transferee).

e. *Name and Location of Project:* The Lewisville Dam Hydroelectric Project is located at the U.S. Army Corps of Engineers' Lewisville Dam on the Elm Fork of the Trinity River in Denton County, Texas.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r

g. *Applicant Contacts:* For the transferor: Sharon Townsend, Director of Electric Utilities, City of Denton, 901–A Texas Street, Denton, Texas 76201, (940) 349–8487.

For the transferee: Lambeth Townsend, Attorney for the City of Garland, Lloyd Gosselink Blevins Rochelle & Townsend P.C., 111 Congress Ave., Suite 1800, Austin, Texas 78701, (512) 322–5830.

h. *FERC Contact:* James Hunter at (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene:* August 29, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the Project Number on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* The Applicants seek Commission approval to transfer the license for the Lewisville Dam Project from the City of Denton to the City of Garland.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number (P–3940) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g. above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. 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, .211, .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.

n. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicants specified in the particular application.

o. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicants. 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 Applicants' representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4168 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 199–205]

South Carolina Public Service Authority; Notice of Application Accepted for filing and soliciting Motions To Intervene and Protests

July 26, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* 199–205.

c. *Date filed:* March 14, 2004.

d. *Applicant:* South Carolina Public Service Authority.

e. *Name of Project:* Santee Cooper Hydroelectric Project.

f. *Location:* On the Santee and Cooper Rivers, in Berkeley, Calhoun, Clarendon, Orangeburg, and Sumter counties, near Moncks Corner, South Carolina. The project boundary is not located within any Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* John Dulude, South Carolina Public Service Authority, One Riverwood Plaza, P.O. Box 2946101, Moncks Corner, SC 29461–2901, (843) 761–4046.

i. *FERC Contact:* Monte Terhaar, (202) 502–6035.

j. Deadline for filing motions to intervene and protests 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The existing Santee Cooper Project consists of the Santee Development: (1) Hydraulic fill 4.4 mile long, 50 foot high North Dam (2) homogeneous rolled, 2.8 mile long, 48 foot high South Dam (3) 3,358 foot spillway, powerhouse with the installed capacity of 1.92 MW; the Cooper Development (4) earth fill, 3,700 foot long, 60 foot high East Dam, (5) earth fill, 6,000 foot long, 78 foot high West Dam, (6) uncompacted fill, 29.8 mile long, 25 foot high, east, west, north dikes, (7) powerhouse with the installed capacity of 132.62 MW; and (8) appurtenant facilities. The applicant estimates that the total average annual generation would be 106, 530 megawatt hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room 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 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385 211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4170 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License, and Soliciting Comments, Motions To Intervene, and Protests

July 26, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Partial transfer of license.

b. *Project No.:* 2309–013.

c. *Date Filed:* July 15, 2005.

d. *Applicants:* PSEG Fossil LLC (PSEG Fossil), Jersey Central Power & Light Company (JCP&L), Exelon Generation Company, LLC (Exelon Generation).

e. *Name and Location of Project:* The Yards Creek Hydroelectric Project is a pumped storage project located on Yards Creek in Warren County, New Jersey.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicants' Contact:* Gary A. Morgans, Steptoe & Johnson, LLP, 1330 Connecticut Avenue, NW., Washington, DC 20036, (202) 429–6234.

h. *FERC Contact:* James Hunter at (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene:* August 29, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the Project Number on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* The Applicants seek Commission approval of a partial transfer the license from PSEG Fossil to Exelon Generation. JCP&L would remain as co-licensee.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number (P–2309) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *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, .211, .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.

n. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicants specified in the particular application.

o. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicants. 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 Applicants' representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4172 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, And Comments

July 27, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12595–000.

c. *Date filed:* May 27, 2005.

d. *Applicant:* Greybull Valley Irrigation District.

e. *Name of Project:* Upper Sunshine Project.

f. *Location:* On Greybull River, in Park County, Wyoming. The dam is own by the applicant.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. William B. Schlenker, Greybull Valley Irrigation District, P.O. Box 44, Emblem, WY 82422–0044, (307) 762–3555.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (Original and Eight copies should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12595–000) an any comments, protests, or motions filed.

k. *Description of Project:* The proposed project would consist of: (1) An existing 155-foot-high, 1,050-foot-long earthfill dam, (2) an existing impoundment having a surface area of 1,158 acres, with a storage capacity of 53,575 acre-feet and normal water surface elevation of 5,300 feet mean sea level, (3) an existing powerhouse containing a generating unit having an installed capacity of 5 megawatts, (4) a proposed 3-mile-long, 25 kilovolt transmission line, and (5) appurtenant facilities. The project would have an annual generation of 6 gigawatt-hours that would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis,

preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *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, .211, .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.

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 "e-filing" link. The Commission strongly encourages electronic filing.

s. *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. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application 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. E5–4179 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

July 27, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Competing preliminary permit.

b. *Project No:* 12600–000.

c. *Date Filed:* June 29, 2005.

d. *Applicant:* City of Ely, Iowa.

e. *Name of Project:* Red Rock Hydro Project.

f. *Location:* The proposed project would be located on the U.S. Army Corps of Engineer's (Corps) existing Red Rock Dam, on the Des Moines River in Marion County, Iowa.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contacts:* Mayor, Dale A. Stanek, City of Ely, Iowa, 1570 Rowley Street, Ely, IA 52227, (319) 848–3049 and Mr. Thomas J. Wilkinson, 1800 First Avenue NE, 200 Wells Frago Bank Building, Cedar Rapids, IA 52402, (319) 364–0171.

i. *FERC Contact:* Mr. Robert Bell, (202) 502–6062.

j. *Deadline for Filing Motions to Intervene, Protests and Comments:* 30 days from the issuance date of this notice.

All Documents (Original and Eight Copies) Should be Filed With: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12600–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 12576–000 and 12577, Date Filed: both on March 1, 2005, Notice Issued: April 5, 2005, Due Date: June 5, 2005.

l. *Description of Project:* The proposed project using the Corps' Red Rock Lake Dam and would consist of: (1) A proposed intake structure, (2) three proposed 16-foot-diameter steel penstocks, (3) a proposed powerhouse containing three generating units with a total installed capacity of 36 megawatts, (4) a proposed transmission line, and (5) appurtenant facilities. The Red Rock Hydroelectric Development Company's project would have an average annual generation of 110 gigawatt-hours.

m. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. 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, .211, .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.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application 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. E5–4182 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

July 27, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12604–000.

c. *Date Filed:* May 27, 2005.

d. *Applicant:* Greybull Valley Irrigation District.

e. *Name of Project:* Lower Sunshine Project.

f. *Location:* On Greybull River, in Park County, Wyoming. The dam is own by the applicant.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William B. Schlenker, Greybull Valley Irrigation District, P.O. Box 44, Emblem, WY 82422–0044, (307) 762–3555.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for Filing Comments, Protests, and Motions to Intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12604–000) an any comments, protests, or motions filed.

k. *Description of Project:* The proposed project would consist of; (1) An existing 178-foot-high, 1660-foot-long earthfill dam, (2) an existing impoundment having a surface area of 1,049 acres, with a storage capacity of 58,750 acre-feet and normal water surface elevation of 5,100 feet mean sea level, (3) an existing powerhouse containing two generating units having a total installed capacity of 5.50 megawatts, (4) a proposed 1,700-foot-long, 25 kilovolt transmission line, and (5) appurtenant facilities. The project would have an annual generation of 12.4 gigawatt-hours that would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. 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, .211, .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.

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 "e-filing" link. The Commission strongly encourages electronic filing.

s. 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. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application 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. E5–4186 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP04–203–000, RP05–105–000 and RP05–164–000]

Equitrans, L.P.; Notice of Informal Settlement Conference

July 29, 2005.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. (e.s.t.) on Thursday, August 4, 2005, and continuing, if necessary, on Friday, August 5, 2005, at 10 a.m. at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring a possible settlement in the above-referenced proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For additional information, please contact Lorna J. Hadlock (202 502–8737).

Magalie R. Salas,

Secretary.

[FR Doc. E5–4171 Filed 8–2–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0018; FRL–7947–6]

Agency Information Collection Activities; Continuing Collection; Submission to OMB for Review and Approval; Comment Request; Water Quality Standards Regulation (Renewal), EPA ICR Number 0988.09, OMB Control Number 2040–0049

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection for the Water Quality Standards Regulation. This ICR is scheduled to expire on August 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden.

DATES: Additional comments may be submitted on or before September 2, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OW–2003–0018, to (1) EPA online using EDOCKET (our preferred method), by email to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket (4301T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Fred Leutner, Standards and Health Protection Division, Office of Science and Technology, Mail Code 4305T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–0400; fax number: (202) 566–0409; email address: *leutner.fred@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 22, 2005 (70 *FR* 14462), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OW–2003–0018, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing

copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Water Quality Standards Regulation (Renewal).

Abstract: Section 303(c) of the Clean Water Act requires States and authorized Tribes to establish water quality standards, and to review and, if appropriate, revise their water quality standards once every three years. The Act also requires EPA to review and either approve or disapprove the new or revised standards, and to promulgate replacement Federal standards if necessary. Section 118(c)(2) of the Act specifies additional water quality standards requirements for waters of the Great Lakes system.

The Water Quality Standards Regulation governs national implementation of the water quality standards program. The Regulation consists of 40 CFR part 131, and portions of part 132 related to water quality standards, including 40 CFR 132.3, Appendix A, Appendix E, and Procedures 1 and 2 of Appendix F. The Regulation describes requirements and procedures for States and authorized Tribes to develop, review, and revise their water quality standards, and EPA procedures for reviewing and approving the water quality standards. The regulation requires the development and submission of information to EPA, including:

—Results of each jurisdiction's triennial review of its water quality standards (40 CFR 131.6 and 131.20), including any new or revised water quality standards that are adopted, and required supporting information. Water quality standards include use designations for specific water bodies; water quality criteria sufficient to protect the designated uses; and an antidegradation policy. The regulation requires that certain information be made available for public review as well.

—Information that an Indian Tribe must submit to EPA in order to determine whether a Tribe is qualified to administer the water quality standards program (40 CFR 131.8).

—Information a State or Tribe must submit if it chooses to exercise a dispute resolution mechanism for disputes between States and Tribes over water quality standards on common water bodies (40 CFR 131.7).

—Information required by 40 CFR part 132 from dischargers to waters of the Great Lakes system, including bioassay tests initiated by dischargers to support development of water quality criteria; studies and demonstrations required by the antidegradation policy for the Great Lakes System; and analyses to request variances from water quality standards. The Guidance includes additional information collections that are addressed in separate Information Collection Requests for the National Pollutant Discharge Elimination System program.

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 are listed in 40 CFR part 9 and 48 CFR chapter 15.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 988 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop; acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; 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.

Respondents/Affected Entities: State and certain Tribal governments, and water dischargers subject to certain requirements related to water quality standards in the Great Lakes system.

Estimated Number of Respondents: 2,796 (56 States and Territories, 30 Tribes, 516 major industrial and POTW dischargers, and 2,194 minor dischargers).

Frequency of Response: At least once every three years for water quality standards reviews and submissions. Once per occasion for Tribal applications to administer water quality standards; dispute resolution requests; and Great Lakes bioassay testing, variance requests, and antidegradation demonstrations.

Estimated Total Annual Hour Burden: 260,714.

Estimated Total Annual Cost: $12,063,453 , including $0 for Capital Expense, $0 for O&M, and $12,063,453 for Respondent Labor costs.

Changes in the Estimates: There is an increase of 21,938 hours over the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to adjustments in the number of tribes receiving approval to administer water programs, even though there was a small reduction in some of the Great Lakes activities.

Dated: July 25, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–15327 Filed 8–2–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0419; FRL–7947–7]

Agency Information Collection Activities; Submission to OMB; Comment Request; EPA ICR Number 0277.14; OMB Control Number 2070–0060; Application for New and Amended Pesticide Registration

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Application for New and Amended Pesticide Registration; EPA ICR Number 0277.14; OMB Control Number 2070–0060. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before September 2, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OPP–2004–0419, to (1) EPA online using EDOCKET (our preferred method), by email to *http://www.epa.gov/edocket,* or by mail to: EPA Docket Center, Environmental Protection Agency, 1200

Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cameo G. Smoot, Field and External Affairs Division, Office of Pesticide Programs, 7506C, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–5454; fax number: 703–305–5884; email address: *smoot.cameo@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. The **Federal Register** document, required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on February 9, 2005 (70 *FR* 6860). EPA received two comments on this ICR during the 60-day comment period and has addressed them in the ICR.

EPA has established a public docket for this ICR under Docket ID No. OPP–2004–0419, which is available for public viewing at the Public Information and Records Integrity Branch, Office of Pesticide Programs Docket, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is 703–305–5805. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

ICR Title: Application for New and Amended Pesticide Registration

ICR Status: This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

Abstract: This data collection program is designed to provide the Environmental Protection Agency (EPA) with necessary data to evaluate an application of a pesticide product as required under Section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

An individual or entity wanting to obtain a registration for a pesticide product must submit an application package consisting of information relating to the identity and composition of the product, proposed labeling, and supporting data (or compensation for others' data) for the product as outlined in 40 CFR part 158. The EPA bases registration decisions for pesticides on its evaluation of a battery of test data provided primarily by applicants for registration. Required studies include testing to show whether a pesticide has the potential to cause unreasonable adverse human health or environmental effects. The Agency currently collects data on physical chemistry, acute and chronic toxicology, environmental fate, ecological effects, worker exposure, residue chemistry, environmental chemistry, and product performance. Respondents to this information collection activity typically complete and submit to EPA one or more forms, in addition to the required data, with their application for registration. If EPA's evaluation of the data show that the statutory requirements of FIFRA are met, then a registration is approved. Under FIFRA, all pesticides must be registered by EPA before they may be sold or distributed in U.S. commerce.

Registrants of EPA-registered pesticide products at times become subject to regulations, such as 40 CFR part 156, or guidance that include labeling revisions. The revised labeling is submitted as an amendment to the Agency along with the completed application form (EPA Form 8570–1). Normally, data are not required or reviewed for revised labeling regulations or guidance; however, it is necessary that the revised labeling be reviewed and approved. This review is most often accomplished by a Product Manager or Team Leader to ensure that revisions are in compliance with the applicable labeling requirement or guidance.

Responses to this information collection activity are required in order to obtain or retain a benefit. 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 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to be 152,974 hours. 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.

The following is a summary of the burden estimates taken from the ICR: Respondents/Affected Entities: Pesticide and other agricultural chemical manufacturing (NAICS 325320), *e.g.*, Businesses engaged in the manufacture of pesticides.

Estimated number of respondents: 2100.

Frequency of response: On occasion.

Estimated total annual burden hours: 152,974.

Estimated total annual labor cost: $15,811,472.

Changes in the ICR since the last approval: There is no change in the hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

The only changes are to the respondent costs as reflected by the increase in labor costs adjusted to 2004 dollars, an increase of $1,603,798 dollars (from $14,208,074 to $15,811,472 dollars).

Dated: July 25, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–15328 Filed 8–2–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2004–0237; FRL–7948–3]

Animal Feeding Operations Consent Agreement and Final Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice; reopen signup period for consent agreement and final order.

SUMMARY: On January 31, 2005 (70 FR 4958), EPA announced an opportunity for animal feeding operations (AFOs) to sign a voluntary consent agreement and final order (air compliance agreement). This supplemental notice announces a reopening to the signup period for the consent agreement and final order.

DATES: The signup period is reopened until August 12, 2005.

ADDRESSES: Comments are posted on Docket ID No. OAR–2004–0237 at the Agency Web site: *http://www.epa.gov/edocket.*

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other information, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy form at the public reading room (Docket ID No. OAR–2004–0237), EPA/DC, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For information on the air compliance agreement, contact Mr. Bruce Fergusson, Special Litigation and Projects Division, Office of Enforcement and Compliance Assurance, U.S. EPA, Ariel Rios Building, Washington, DC 20460, telephone number (202) 564–1261, fax number (202) 564–0010, and electronic mail: *fergusson.bruce@epa.gov.*

For information on the monitoring study, contact Ms. Sharon Nizich, Organic Chemicals Group, Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park NC, 27711, telephone number (919) 541–2825, fax number (919) 541–3470, and electronic mail: *nizich.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION: In order to provide more time for operators of animal feeding facilities to make informed decisions about participation, EPA is reopening the signup period until August 12, 2005, for the Animal Feeding Operation Air Compliance Agreement. The Agreement addresses emissions from certain animal feeding operations, also known as AFOs. EPA will continue to reach out to the agricultural community during this time.

Dated: July 28, 2005.

Steve Fruh,

Acting Director, Emission Standards Division, Office of Air Quality Planning and Standards.

[FR Doc. 05–15431 Filed 8–2–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0213; FRL–7728–4]

Pesticide Program Dialogue Committee, Pesticide Registration Improvement Act Process Improvement Workgroup; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Pesticide Program Dialogue Committee (PPDC), Pesticide Registration Improvement Act (PRIA) Process Improvement Workgroup will hold a public meeting on September 14, 2005. An agenda for this meeting is being developed and should be posted on EPA's website in mid-August. The workgroup is developing advice and recommendations on topics related to EPA's registration process.

DATES: The meeting will be held on Tuesday, September 14, 2005 from 1 p.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at EPA's Offices at 1801 S. Bell St., Crystal Mall #2, Rm. 1126, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elizabeth Leovey, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7328; fax number: (703) 308–4776; e-mail address: *leovey.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of particular interest to persons who are concerned about implementation of the Pesticide Registration Improvement Act (PRIA), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the Federal Food, Drug, and Cosmetic Act (FFDCA). Other potentially affected entities may include but are not limited to agricultural workers and farmers; pesticide industry trade associations; environmental, consumer and farmworker groups; pesticide users and growers; pest consultants; State, local and Tribal governments; academia; public health organizations; food processors; and the public. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0213. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet

under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

The Office of Pesticide Programs (OPP) is entrusted with the responsibility of ensuring the safety of the American food supply, protection and education of those who apply or are exposed to pesticides occupationally or through use of products, and the general protection of the environment and special ecosystems from potential risks posed by pesticides.

PPDC was established under the Federal Advisory Committee Act (FACA), Public Law 92–463, in September 1995 for a 2–year term and has been renewed every 2 years since that time. PPDC provides advice and recommendations to OPP on a broad range of pesticide regulatory, policy, and program implementation issues that are associated with evaluating and reducing risks from use of pesticides. The following sectors are represented on the PPDC: Pesticide industry and trade associations; environmental/public interest and consumer groups; farm worker organizations; pesticide user, grower, and commodity groups; Federal and State/local/Tribal governments; the general public; academia; and public health organizations. Copies of the PPDC charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

III. How Can I Request to Participate in this Meeting?

This meeting will be open to the public and seating is available on a first-come basis. Persons interested in attending do not need to register in advance of the meeting. Opportunity will be provided for questions and comments by the public. Any person who wishes to file a written statement may do so before or after the meeting by giving a copy of the statement to the person listed under **FOR FURTHER INFORMATION CONTACT.** These statements will become part of the permanent record and will be available for public inspection at the address listed under Unit I.B.1.

List of Subjects

Environmental protection, Pesticides and pests

Dated: July 27, 2005.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 05–15333 Filed 8–2–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0203; FRL–7729–2]

Ethylene Oxide Risk Assessment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's human health risk assessment and related documents for the pesticide, ethylene oxide (ETO), and opens a public comment period on these documents. EPA is developing a Reregistration Eligibility Decision (RED) for ETO through the full, 6–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards. This notice opens phase 3 of the 6–phase process.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0203, must be received on or before October 3, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Susan Bartow, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603–0065; fax number: (703) 308–8041; e-mail address: *bartow.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How can I get copies of this document and other related information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2005–0203. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing

in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2005–0203. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0203. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0203.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0203. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

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

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is making available the human health risk assessment for ETO. ETO is a fumigant/sterilant used to sterilize medical or laboratory equipment, pharmaceuticals, and aseptic packaging, or to reduce microbial load on cosmetics, whole and ground spices or other seasoning materials, and artifacts, archival material or library objects. The Agency developed this risk assessment as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Sterilization/fumigation with ETO must be performed only in vacuum or gas tight chambers designed for use with ETO. It is applied by commercial applicators only; there are no residential uses of ETO. Approximately 8.2 million pounds of ETO are used annually in the United States for commercial fumigation/sterilization. Approximately 7.4 million pounds are used annually for sterilization of medical and laboratory items/equipment. ETO treatment is the principal method used to reduce bacterial levels in spices, herbs, and black walnuts. Approximately 800,000 pounds are used annually for the fumigation of herbs and spices. All other uses account for less than 1% of the total annual usage.

Regarding risks to humans from ETO alone, there are no aggregate risks of concern from acute and chronic dietary sources (food and water only). However, cancer risks for workers are of concern at the current regulatory levels established by the Occupational Safety and Health Administration (OSHA) and recommended by the National Institute of Occupational Safety and Health (NIOSH). Non-cancer worker risk is also estimated to be of concern at the OSHA levels, but not of concern at the NIOSH recommended limit. Since there are no outdoor uses of ETO, exposure to terrestrial wildlife and aquatic organisms is not expected.

The ETO reaction products, ethylene chlorohydrin and ethylene glycol, have been identified as residues of concern for dietary exposure due to persistent high levels of these compounds found after sterilization. For all supported commodities, the acute dietary exposure estimates for ethylene chlorohydrin are above the Agency's level of concern. The chronic dietary exposure estimates for both ethylene chlorohydrin and ethylene glycol are below the Agency's level of concern.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessment for ETO. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as worker exposure data, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to ETO, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA plans to review ETO through the full, 6–Phase public participation process. However, if as a result of comments received during the current Phase 3 public comment period the Agency finds that issues can be resolved without a second comment period in Phase 5, EPA may proceed directly to the end of the process and develop a risk management decision.

Comments should be limited to issues raised within the risk assessment and associated documents. Failure to comment on any such issues as part of this opportunity will not limit a commenter's opportunity to participate in any later notice and comment processes on this matter. All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for ETO. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 27, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–15219 Filed 7–28–05; 2:31 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0144; FRL–7728–7]

Notice of Receipt of a Request to Voluntarily Cancel a Certain Pesticide Registration; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA announced in the **Federal Register** of July 15, 2005, a notice of receipt of an irrevocable request by the Hartz Mountain Corporation to voluntarily cancel EPA Registration Number 2596–148. The document inadvertently omitted a sentence from the **DATES** unit and omitted the **ADDRESSES** unit. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Ann Sibold, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6502; e-mail address:*sibold.ann@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0144. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

In accordance with section 6(f)(1) of FIFRA, EPA announced in the **Federal Register** of July 15, 2005 (70 FR 41009) (FRL–7723–9), a notice of receipt of an irrevocable request by the Hartz Mountain Corporation to voluntarily cancel EPA Registration Number 2596–148. In that document, a sentence was inadvertently omitted from the **DATES** unit which provided for a 30–day public comment period. This document corrects that error and provides an **ADDRESSES** unit for the submission of comments.

The document is corrected as follows:

In FR Doc. 05–13976, on page 41009, first column, the **DATES** unit is corrected and an **ADDRESSES** unit is added to read as follows:

DATES: EPA intends to issue a cancellation order effective no earlier than October 31, 2005, for EPA Registration Number 2596–148. This request for cancellation is irrevocable. Therefore, the Agency will not consider a request for withdrawal. Comments must be received on or before September 2, 2005.

ADDRESSES: Submit your comments, identified by docket identification (ID) number OPP–2005–0144, by one of the following methods:

- *Agency Website:http://www.epa.gov/edocket/*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail*: Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2005–0144.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0144.
- *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2005–0144. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number OPP–2005–0144. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL–7181–7).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 26, 2005.

Rachael C. Holloman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 05–15331 Filed 8–2–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0173; FRL–7728–8]

Notice of Receipt of a Request for an Amendment to Delete a Use in a Certain Pesticide Registration; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA announced in the **Federal Register** of July 20, 2005, a notice of receipt of an irrevocable request for an amendment by the Hartz Mountain Corporation to delete a use for EPA Registration Number 2596–151. The document inadvertently omitted a sentence from the **DATES** unit and omitted the **ADDRESSES** unit. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Ann Sibold, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6502; e-mail address:*sibold.ann@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0173. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

In accordance with section 6(f)(1) of FIFRA, EPA announced in the **Federal Register** of July 20, 2005 (70 FR 41717) (FRL–7724–1), a notice of receipt of an irrevocable request for an amendment by the Hartz Mountain Corporation to delete a use for EPA Registration Number 2596–151. In that document, a sentence was inadvertently omitted from the **DATES** unit which provided for a 30–day public comment period. This document corrects that error and provides an **ADDRESSES** unit for the submission of comments.

The document is corrected as follows:

In FR Doc. 05–14066, on page 41718, second column, the **DATES** unit is corrected and an **ADDRESSES** unit is added to read as follows:

DATES: EPA intends to issue a cancellation order effective no earlier than October 31, 2005, for EPA Registration Number 2596–151. This request for cancellation is irrevocable. Therefore, the Agency will not consider a request for withdrawal. Comments must be received on or before September 2, 2005.

ADDRESSES: Submit your comments, identified by docket identification (ID) number OPP–2005–0173, by one of the following methods:

- *Agency Website:http://www.epa.gov/edocket/*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail*: Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2005–0173.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2005–0173.
- *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0173. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number OPP–2005–0173. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you

consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL–7181–7).

Docket: All documents in the docket are listed in the EDOCKET index at*http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 26, 2005.

Rachel C. Holloman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 05–15332 Filed 8–2–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0201; FRL–7726–4]

Cancellation of Pesticides for Non-payment of Year 2005 Registration Maintenance Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Since the amendments of October 1988, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) has required payment of an annual maintenance fee to keep pesticide registrations in effect. The fee due January 15, 2005 has gone unpaid for 831 registrations. Section 4(i)(5)(G) of FIFRA provides that the Administrator may cancel these registrations by order and without a hearing; orders to cancel all 831 of these registrations have been issued within the past few days.

FOR FURTHER INFORMATION CONTACT: For further information on the maintenance fee program in general, contact by mail: John Jamula, Office of Pesticide Programs (7504C), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (703) 305–6426; e-mail address: *jamula.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Important Information

A. Does this Apply to Me?

You may be potentially affected by this notice if you are an EPA registrant with any approved product registration(s). Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0201. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Introduction

Section 4(i)(5) of FIFRA as amended in October 1988 (Public Law 100–532), December 1991 (Public Law 102–237), and again in August 1996 (Public Law 104–170), requires that all pesticide registrants pay an annual registration maintenance fee, due by January 15 of each year, to keep their registrations in effect. This requirement applies to all registrations granted under section 3 as well as those granted under section 24(c) to meet special local needs. Registrations for which the fee is not paid are subject to cancellation by order and without a hearing.

The Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Public Law 102–237, amended FIFRA to allow the Administrator to reduce or waive maintenance fees for minor agricultural use pesticides when he determines that the fee would be likely to cause significant impact on the availability of the pesticide for the use. The Agency has waived the fee for 157 minor agricultural use registrations at the request of the registrants.

In fiscal year 2005, maintenance fees were collected in one billing cycle. The Pesticide Registration Improvement Act (PRIA) was passed by Congress in January 2004. PRIA became effective in March 2004 and authorized the Agency to collect $27 million in maintenance fees in fiscal year 2005. In late December 2004, all holders of either

section 3 registrations or section 24(c) registrations were sent lists of their active registrations, along with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain in effect, and to calculate and remit the appropriate maintenance fees. Most responses were received by the statutory deadline of January 15. A notice of intent to cancel was sent in mid-February to companies that did not respond and to companies that responded, but paid for less than all of their registrations. Since mailing the notices, EPA has maintained a toll-free inquiry number through which the questions of affected registrants have been answered.

Maintenance fees have been paid for about 15,460 section 3 registrations, or about 96 percent of the registrations on file in December. Fees have been paid for about 2,270 section 24(c) registrations, or about 83 percent of the total on file in December. Cancellations for non-payment of the maintenance fee affect about 503 Section 3 registrations and about 328 Section 24(c) registrations.

The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the canceled products until January 15, 2006, one year after the date on which the fee was due. Existing stocks already in the hands of dealers or users, however, can generally be distributed, sold or used legally until they are exhausted. Existing stocks are defined as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled and released for shipment prior to the effective date of the action.

The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed, through Special Reviews or other Agency actions. These general provisions for disposition of stocks should serve in most cases to cushion the impact of these cancellations while the market adjusts.

III. Listing of Registrations Canceled for Non-payment

Table 1 lists all of the Section 24(c)registrations, and Table 2 Lists all of the Section 3 registrations which were canceled for non-payment of the 2005 maintenance fee. These registrations have been canceled by order and without hearing. Cancellation orders were sent to affected registrants via certified mail in the past several days. The Agency is unlikely to rescind cancellation of any particular registration unless the cancellation resulted from Agency error.

Section 24(c) Registrations canceled for non-payment of the 2005 maintenance fee are shown in the following Table 1:

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE

SLN no.	Product Name
000279 AL–03–0002	Pounce 3.2 EC Insecticide
000352 AR–00–0003	Dupont Lannate LV Insecticide
000352 AR–00–0004	Dupont Lannate SP Insecticide
000100 AR–01–0002	Cyclone Concentrate/ Gramoxone Max
000279 AR–03–0002	Command 3ME Microencapsulated Herbicide
000279 AR–04–0002	Command 3ME Microencapsulated Herbicide
000279 AR–83–0020	Pounce 3.2 EC
071649 AR–98–0002	Baytex Liquid Concentrate Insecticide
000100 AZ–00–0004	Fulfill
071058 AZ–03–0001	Treflan H.F.P.
000100 AZ–03–0038	Eptam 7-E Selective Herbicide
000100 AZ–03–0009	Eptam 7-E Selective Herbicide
000264 AZ–04–0001	Phaser 3EC Insecticide
000279 AZ–84–0006	Ammo 2.5 EC Insecticide
000264 AZ–85–0007	Di-Syston 8
010163 AZ–93–0013	Gowan Endosulfan 3 EC
000279 AZ–98–0002	Pounce 3.2 EC Insecticide
000264 AZ–98–0005	Phaser 3EC Insecticide
004581 AZ–98–0009	Desicate II
000264 AZ–99–0006	Admire 2 Flowable
010163 CA–01–0010	Supracide 25W
010163 CA–01–0019	Savey 2E
010163 CA–02–0009	Savey 2E
000100 CA–02–0012	Cyclone Concentrate/ Gramoxone Max
000264 CA–76–0194	Ethrel Plant Regulator
000100 CA–77–0159	Ordram 8-E An Emulsufiable Liquid Herbicide
002935 CA–77–0396	Red-Top Malathion 8 Spray
002935 CA–82–0063	Wilbur-Ellis Malathion 8 Spray
000100 CA–84–0172	Ordram 8-E An Emulsufiable Liquid Herbicide
000100 CA–85–0053	Ordram 8-E An Emulsufiable Liquid Herbicide
060202 CA–86–0023	Pro-Gibb 4% Liquid Concentrate
004581 CA–87–0031	Des -I- Cate
062719 CA–89–0012	Goal 1.6E Herbicide
000264 CA–89–0014	Bayleton 25% Wettable Powder
060372 CA–89–0045	Vectobac-12AS
000264 CA–89–0056	Buctril Herbicide
000100 CA–90–0039	Eptam 7-E
002935 CA–91–0014	Nu-Zone 10ME
000100 CA–91–0024	Gramoxone Extra Herbicide
000100 CA–91–0036	Gramoxone Extra Herbicide
000264 CA–92–0027	Bayleton 25% Wettable Powder
008536 CA–93–0001	Methyl Bromide 99.5%
062719 CA–95–0007	Goal 1.6E Herbicide
069351 CA–95–0009	Lorsban-4E
019713 CA–97–0035	Drexel Diazinon Insecticide
002935 CA–99–0005	Cygon 400 Systemic Insecticide-Miticide
000100 CA–99–0025	Barricade 65WG Herbicide
000100 CA–99–0028	Reward Landscape and Aquatic Herbicide
000100 CO–00–0008	Dividend XL
010163 CO–01–0004	Savey 2E
000524 CO–02–0006	Roundup Herbicide
000524 CO–02–0007	Roundup Herbicide
000264 CO–94–0004	Rovral 4 Flowable Fungicide
000264 CO–99–0005	Epic DF Herbicide
061282 CT–02–0005	Ramik Brown
000241 CT–99–0001	Acrobat MZ Fungicide
000400 DE–04–0003	Acramite 50WS
000279 FL–83–0019	Pounce 3.2 EC Insecticide
060182 FL–87–0003	Avid
060182 FL–91–0011	Orthene 75 S Soluble Powder
002393 FL–92–0008	Hopkins Sevin Carbaryl Bait
062719 FL–92–0009	Lorsban 50W Insecticide In Water Soluble Packets
000241 FL–94–0004	Arsenal Herbicide
067760 FL–95–0007	Fyfanon ULV
067858 FL–97–0001	Baytex Liquid Concentrate Insecticide
063935 FL–97–0004	Dupont Escort Herbicide
061282 GA–95–0007	Ramik Brown
068573 GU–04–0002	Fosphite Fungicide
000264 HI–02–0002 ..	Provado 1.6 Flowable Insecticide
000264 HI–92–0001 ..	Nemacur 3

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
000264 HI–92–0002 ..	Nemacur 15% Granular
000264 HI–92–0003 ..	Bayleton 50% Wettable Powder Fungicide
000264 HI–96–0006 ..	Florel Plant Growth Regulator
000524 IA–03–0001 ..	Mon 78270 Herbicide
010163 ID–00–0004 ..	Savey 2E
010163 ID–01–0012 ..	Savey 2E
000264 ID–01–0014 ..	Admire 2 Flowable
000264 ID–01–0018 ..	Admire 2 Flowable
051036 ID–02–0017 ..	Endosulfan 3 EC
000524 ID–02–0023 ..	Mon 78112 Herbicide
000264 ID–02–0024 ..	Ignite 1SC Herbicide
000279 ID–04–0001 ..	Spartan Herbicide
066330 ID–04–0005 ..	Everest 70% Water Dispersible Granular Herbicide
004581 ID–87–0015 ..	Des-I-Cate
004581 ID–87–0019 ..	Des-I-Cate
061282 ID–87–0022 ..	Ramik Brown
000400 ID–95–0014 ..	Omite-Cr (Not for Use In California)
061282 ID–96–0005 ..	Ramik Green
002935 ID–97–0012 ..	Cygon 400 Systemic Insecticide-Miticide
007173 ID–98–0015 ..	Rozol Pellets
000100 ID–99–0011 ..	Tough 5 EC
000100 ID–99–0015 ..	Dividend XL
000279 IL–98–0002 ...	Furadan 4F Insecticide/nematicide
010163 IL–99–0003 ...	Imidan 70-WP Agricultural Insecticide
000279 IN–01–0002 ..	Pounce 3.2 EC Insecticide
004581 IN–80–0008 ..	Hydrothol 191
000241 IN–99–0001 ..	Acrobat MZ Fungicide
000279 KY–01–0001	Pounce 3.2 EC Insecticide
004581 LA–00–0010	Penncap-M Microencapsulated Insecticide
000264 LA–00–0017	Aztec 2.1% G
000279 LA–03–0005	Pounce 3.2 EC Insecticide
059639 LA–94–0005	Select 2EC Herbicide
062719 LA–96–0006	Tenure
062719 LA–97–0003	Recruit AG
000264 LA–97–0007	Bayleton 50% Wettable Powder
000264 LA–98–0001	Aztec 2.1% Granular
061282 MA–77–0001	Ramik Brown
059639 MA–96–0002	Orthene 75 S Soluble Powder
059639 MA–96–0003	Orthene 75 WSP (insecticide In A Water Soluble Bag)
004564 MD–00–0002	Tolcide PS200
004564 MD–04–0002	Tolcide PS200
000400 ME–79–0001	Terraclor 75% Wettable Powder
065136 ME–91–0005	Carboxide Sterilant-Fumigant Gas
000264 MI–00–0002 ..	Admire 2 Flowable
053689 MI–04–0006 ..	Rose Chafer Floral Lure
000264 MI–78–0016 ..	Monitor 4
061282 MI–84–0012 ..	Ramik Green
000264 MI–96–0010 ..	Aliette WDG Fungicide
000100 MI–99–0003 ..	Tilt Fungicide
000524 MN–02–0008	Mon 78112 Herbicide
000524 MN–03–0005	Roundup Weathermax Herbicide
066330 MN–04–0004	Everest 70% Water Dispersible Granular Herbicide
000100 MN–04–0005	Callisto
000100 MN–99–0012	Dividend XL
000279 MO–03–0001	Command 3ME Microencapsulated Herbicide
000279 MO–04–0005	Command 3ME Microencapsulated Herbicide
007173 MO–78–0001	Rozol Paraffinized Pellets
061282 MO–97–0002	Ramik Green
000264 MS–00–0013	Aztec 2.1% G
000279 MS–03–0002	Command 3ME Microencapsulated Herbicide
062719 MS–92–0010	Dursban TC
000228 MS–93–0004	Riverdale MCPA-4 Amine
000228 MS–93–0005	Riverdale Weedestroy (r) MCPA Low Volatile Ester
000279 MS–97–0008	Dragnet FT Termiticide
000264 MS–98–0006	Aztec 2.1% Granular
000279 MS–98–0011	Prevail TC Termiticide
010163 MT–00–0005	Savey 2e
000524 MT–02–0003	Roundup Herbicide
000524 MT–02–0004	Mon 78112 Herbicide
000100 MT–03–0006	Dividend XL
061282 MT–79–0022	Ramik Brown
061282 MT–86–0003	Ramik Green
000352 MT–94–0001	Dupont Velpar L Herbicide
010163 MT–96–0002	Metasystox-R Spray Concentrate
002935 MT–97–0001	Cygon 400 Systemic Insecticide-Miticide
000100 MT–99–0009	Tough 5 EC
000264 NC–82–0007	Amchem Ethrel Plant Regulator
061282 NC–92–0010	Ramik Brown
007969 NC–93–0001	Basamid Granular Soil Fumigant
019713 NC–95–0004	Drexel Dimethoate 4EC
007969 ND–00–0008	Ronilan DF Fungicide
000524 ND–01–0001	Mon 78112 Herbicide
000264 ND–01–0003	Stratego Fungicide
000524 ND–02–0011	Roundup Herbicide
066330 ND–04–0002	Everest 70% Water Dispersible Granular Herbicide
000100 ND–04–0003	Callisto Herbicide
000279 ND–85–0006	Furadan 15 G Insecticide Nematicide
000264 ND–93–0005	Sencor DF 75% Dry Flowable Herbicide
000100 ND–98–0002	Tilt Fungicide
000100 ND–99–0009	Tough 5 EC
000100 NE–01–0002	Tough 5 EC
000524 NE–02–0004	Mon 78112 Herbicide
061282 NH–76–0001	Ramik Brown
000352 NJ–03–0005	Curzate 60DF
000279 NM–84–0006	Pounce 3.2 EC Insecticide
000279 NM–86–0002	Ammo 2.5 EC Insecticide
010163 NV–00–0002	Savey 2E
000279 NV–04–0001	Spartan Herbicide
004581 NV–87–0008	Des-I-Cate
061282 NV–88–0008	Ramik Green
000100 NV–95–0002	Fusilade DX
075710 NY–04–0006	Mite Away II Formic Acid Pads
063806 NY–99–0001	Dual Magnum Herbicide
007173 OH–79–0013	Rozol Paraffinized Pellets
000279 OH–83–0002	Furadan 15 G Insecticide-Nematicide
061282 OH–84–0003	Ramik Green
000100 OH–90–0006	Gramoxone Extra Herbicide
062719 OH–97–0005	Recruit AG
000100 OH–98–0002	Tilt Fungicide
000100 OH–99–0001	Dual Magnum Herbicide
059639 OK–80–0012	Orthene 75 S Soluble Powder
000100 OR–00–0012	Orbit Fungicide
000100 OR–00–0014	Fulfill
000100 OR–00–0015	Fulfill

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
000400 OR–00–0021	Dimilin 2l
000100 OR–01–0007	Discover Herbicide
010163 OR–01–0009	Savey 2E
000100 OR–01–0011	Cyclone Concentrate/ gramoxone Max
036029 OR–01–0013	Wilco Ground Squirrel Bait
000264 OR–01–0014	Admire 2 Flowable
000264 OR–01–0031	Hoelon 3EC Herbicide
000264 OR–01–0032	Bronate Herbicide
000264 OR–02–0001	Axiom DF Herbicide
000400 OR–02–0009	Dimilin 2l
000264 OR–02–0010	Rovral (r) Brand 4 Flowable Fungicide
000264 OR–02–0013	Aliette(r) WDG Fungicide
010163 OR–02–0017	Savey 2E
000524 OR–02–0020	Mon 78112 Herbicide
000264 OR–02–0022	Ignite 1SC Herbicide
000100 OR–03–0035	Dividend XL
004581 OR–03–0036	Des-I-Cate
000279 OR–04–0024	Spartan Herbicide
000264 OR–04–0032	Admire 2 Flowable
000279 OR–04–0035	Z-Cype 0.8 EC Insecticide
061282 OR–76–0036	Ramik Brown
000400 OR–77–0013	Comite Agricultural Miticide
000400 OR–79–0034	Comite Agricultural Miticide
000100 OR–80–0100	Aatrex Nine-0
000100 OR–81–0080	Princep Caliber 90 Herbicide
000400 OR–91–0009	Omite 6E
000400 OR–91–0019	Comite Agricultural Miticide
000400 OR–94–0012	Comite Agricultural Miticide
000400 OR–94–0013	Comite Agricultural Miticide
067837 OR–94–0021	Omite-CR Agricultural Miticide
000100 OR–95–0014	Fusilade DX
019713OR–95–0032	Ida, Inc. Diuron 80W
000100 OR–96–0007	Tilt Gel Fungicide
000400 OR–97–0012	Comite Agricultural Miticide
002935 OR–97–0019	Cygon 400 Systemic Insecticide-Miticide
000100 OR–98–0013	Agri-Mek 0.15 EC Miticide/insecticide
000100 OR–98–0015	Caparol 4l Herbicide
000100 OR–99–0011	Dual Magnum Herbicide
000352 OR–99–0023	Velpar L Herbicide
000352 OR–99–0024	Velpar DF Herbicide

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
000100 OR–99–0027	Dual Magnum Herbicide
000100 OR–99–0028	Tough 5 EC
000100 OR–99–0035	Dual Magnum Herbicide
000100 OR–99–0042	Dual Magnum Herbicide
000100 OR–99–0050	Dual Magnum Herbicide
000100 OR–99–0052	Dividend XL
000352 PA–03–0007	Curzate 60DF
071711 PA–04–0002	Applaud 70WP Insect Growth Regulator
061282 PA–85–0005	Ramik Green
000264 RI–01–0001 ..	Admire 2 Flowable
000279 SC–03–0007	Pounce 3.2 EC Insecticide
007969 SC–93–0003	Basamid Granular Soil Fumigant
000264 SC–95–0002	Nemacur 3
061282 SC–96–0002	Ramik Brown
062719 SC–97–0004	Recruit AG
000524 SD–01–0006	Mon 78112 Herbicide
000100 SD–96–0002	Princep Caliber 90 Herbicide
000100 SD–96–0003	Princep 4l Herbicide
000100 TN–00–0003	Gramoxone Extra Herbicide
000100 TN–01–0001	Cyclone Concentrate/ gramoxone Max
000100 TN–01–0002	Cyclone Concentrate/ gramoxone Max
000279 TN–02–0003	Pounce 3.2 EC Insecticide
000279 TN–03–0001	Pounce 3.2 EC Insecticide
062719 TN–04–0027	Lock-On
059639 TN–93–0003	Monitor 4 Spray
000264 TN–96–0006	Monitor 4
059639 TN–98–0001	Orthene 75 S Soluble Powder
000100 TX–00–0007	Cyclone Concentrate/ gramoxone Max
000264 TX–00–0008	Aztec 2.1% G
000264 TX–01–0002	Admire 2 Flowable
051036 TX–01–0013	Micro Flo Diazinon 14G
000241 TX–01–0016	Amdro Fire Ant Insecticide
000279 TX–03–0001	Pounce 3.2 EC Insecticide
000279 TX–83–0032	Pounce 3.2 EC
000100 TX–96–0006	Fusilade Dx Herbicide
067760 TX–96–0009	Fyfanon ULV
000100 TX–96–0015	Reflex Herbicide
000264 TX–97–0002	Aztec 2.1% Granular
000100 TX–99–0001	Reward Landscape and Aquatic Herbicide

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
000100 TX–99–0008	Dual Magnum Herbicide
000100 TX–99–0009	Dual Magnum Herbicide
005481 UT–00–0005	Amvac AZA 3% EC
061282 UT–87–0003	Ramik Brown
061282 VA–85–0003	Ramik Green
000100 VA–96–0007	Gramoxone Extra Herbicide
007173 VT–76–0003	Rozol Paraffinized Pellets
061282 VT–86–0003	Ramik Green
000264 WA–00–0015	Admire 2 Flowable
000264 WA–00–0023	Phaser 3EC Insecticide
000100 WA–00–0027	Diquat Herbicide
000264 WA–00–0028	Carzol SP Miticide/ Insecticide in Water Soluble Packaging
010163 WA–01–0005	Metasystox-R Spray Concentrate
000100 WA–01–0011	Cyclone Concentrate/ Gramoxone Max
000100 WA–01–0013	Cyclone Concentrate/ Gramoxone Max
000100 WA–01–0014	Cyclone Concentrate/ Gramoxone Max
000264 WA–01–0024	Admire 2 Flowable
010163 WA–01–0027	Savey 2E
010163 WA–01–0028	Imidan 70-WP Agricultural Insecticide
051036 WA–01–0035	Endosulfan 3 EC
000352 WA–02–0005	Oust XP Herbicide
010163 WA–02–0015	Savey 2E
000524 WA–02–0020	Mon 78112 Herbicide
000524 WA–02–0023	Mon 78112 Herbicide
000264 WA–02–0024	Ignite 1SC Herbicide
069592 WA–03–0016	Serenade
000264 WA–03–0019	Admire 2 Flowable
000264 WA–03–0020	Admire 2 Flowable
000279 WA–04–0002	Spartan Herbicide
066330 WA–04–0025	Everest 70% Water Dispersible Granular Herbicide
071111 WA–04–0032	Moncut 70-DF
002393 WA–04–0035	Hopkins Zinc Phosphide Pellets
002935 WA–78–0072	Red Top Superior Spray Oil N.W.
061282 WA–86–0033	Ramik Brown
061282 WA–86–0034	Ramik Brown
004581 WA–87–0011	Des-I-Cate
004581 WA–87–0036	Des-I-Cate
019713 WA–88–0016	Drexel Dimethoate 4EC
061282 WA–92–0031	Ramik Green

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
002935 WA–92–0045	Wilbur-Ellis Diazinon 4 Spray
000264 WA–93–0020	Bayleton 50% Wettable Powder
067837 WA–94–0007	Omite-CR Agricultural Miticide
010163 WA–95–0004	Metasystox-R Spray Concentrate
000100 WA–95–0028	Fusilade DX
000100 WA–95–0029	Fusilade DX
000400 WA–97–0010	Comite Agricultural Miticide
005481 WA–97–0015	Vapam HL Soil Fumigant
002935 WA–97–0027	Cygon 400 Systemic Insecticide-Miticide
051036 WA–98–0027	Endosulfan 3 EC
051036 WA–98–0028	Endosulfan 3 EC
000100 WA–98–0031	Fusilade DX Herbicide
000100 WA–99–0006	Warrior T Insecticide
000100 WA–99–0014	Dividend XL
000100 WA–99–0020	Tough 5 EC
000279 WI–01–0009	Aim Herbicide
010163 WI–02–0002	Moncut 70-DF
059639 WI–96–0007	Orthene 75 S Soluble Powder
059639 WI–96–0008	Orthene 75 WSP (insecticide In A Water Soluble Bag)
000100 WI–98–0001	Reward Landscape and Aquatic Herbicide
007173 WV–77–0005	Rozol Paraffinized Pellets
061282 WV–84–0004	Ramik Green
010163 WY–01–0003	Savey 2E
061282 WY–88–0006	Ramik Green
000279 WY–97–0004	Capture 2 EC Insecticide/miticide
005481 WY–99–0004	Dibrom 8 Emulsive

Section 3 registrations canceled for non-payment of the 2005 maintenance fee are shown in the following table 2:

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE

Registration no.	Product Name
000015–00008	Hoffman Dog & Cat Repellent
000016–00012	Blue Dragon Garden Dust
000016–00019	Dragon 50% Malathion Insect Spray
000016–00027	Dragon 5% Garden Dust Contains Carbaryl Insecticide

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
000016–00072	Dragon Lime Sulfur Solution
000016–00076	Dragon Sevin Liquid
000016–00091	Dragon 1% Rotenone Dust
000016–00098	Dragon 10% Garden Dust Contains Carbaryl Insecticide
000016–00099	Dragon lawn & Garden 50% Wettable
000016–00111	Dragon Dipel Dust
000016–00128	Dragon Rabbit & Dog Chaser
000016–00132	Dragon Ready to Use Garden Pest Control
000016–00133	Dragon Thiodan Vegetable & Ornamental Dust
000016–00136	Dragon Wettable or Dusting Garden Sulphur
000016–00141	Dragon Thiodan Insect Spray
000016–00154	Dragon Rotenone Pyrethrin Insect Spray
000016–00158	Dragon Total Vegetation Killer Formula II
000016–00159	Dragon All Purpose Fungicide
000016–00160	Dragon Cygon 2E Systemic Insecticide
000016–00161	Dragon Horticultural Spray Oil
000016–00164	Dragon Indoor Insect Fogger
000016–00167	Dragon Total Release Fogger
000016–00168	Dragon Wasp & Hornet Killer
000016–00169	Dragon Rose & Garden Insect Killer
000016–00170	Dragon Home & Garden Insect Killer
000016–00171	Dragon Systemic Rose & Flower Care
000016–00173	Dragon .25% Permethrin RTU
000016–00176	Carbaryl 80WP (Wettable Powder)
000016–00177	Turf Protect R Granular Carbaryl Insecticide
000016–00178	Dragon Carbaryl 4L Concentrate Insecticide
000016–00179	Dragon Carbaryl 2L Concentrate Insecticide
000016–00182	Ro-Pel Flygo
000016–00183	007 Permethrin Dust
000016–00186	Dragon Carbaryl 4L Reformulating Insecticide Concentrate
000016–00187	Dexol Lawn & Garden Insect Control Granules
000099–00083	Watkins Toilet Bowl Cleanser
000100–00850	SAN 415 SC32LV
000100–00957	Action EC Herbicide
000100–00962	A-11976E Herbicide
000228–00338	XRM-5202 Premium 8000 Lawn Weed Killer

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
000228–00415	Riverdale Tipa-D 4 Herbicide
000239–02406	Orthene Systemic Insect Spray
000239–02436	Orthene Insect Spray
000239–02440	Orthene Ornamental Insect Spray
000239–02618	Ortho Atrazine Plus St. Augustine Lawn Weeder
000241–00281	Prowl MC-60 Herbicide
000241–00284	Prowl WP Herbicide
000241–00353	Contour Herbicide
000264–00341	Larvin Thiocarb Insecticide 75 WP
000264–00402	Standak Technical Aldoxycarb Pesticide
000264–00406	Larvin SC Thiodicarb Insecticide
000264–00407	Larvin 250 Thiodicarb Insecticide
000264–00413	Standak 90MC Aldoxycarb Pesticide
000264–00573	EXP 31340ATZ Herbicide
000264–00576	Icon 80 WG Insecticide
000264–00577	Icon 6.2 FS
000264–00580	Icon 6.2SC Insecticide
000264–00721	Guthion 2l Emulsifiable Insecticide
000264–00747	Turbo 8 EC Herbicide
000402–00093	San-O-Eight
000432–01125	Outdoor and Horticultural Emulsion
000432–01146	123 M.A.G.
000491–00212	Selig's Du-Kil Sp
000500–00022	Boyer Sewer Root Destroyer
000524–00318	Mon 0139 Technical Solution
000524–00437	Mon-8750 WSB
000524–00441	Mon 14420 WSB Herbicide
000524–00490	Mon-8413 Herbicide
000524–00493	Mon 58420 Herbicide
000524–00510	Mon 78102 Herbicide
000524–00513	Mon 78103 Herbicide
000534–00097	FS Atrazine 4l Herbicide
000572–00083	Rockland Horticultural Spray Oil
000572–00098	Rockland "Penn-Mist" Insecticide
000572–00209	Rockland Dog & Cat Granular Repellent
000572–00234	Rockland "H-S" Fly Spray for Horses
000572–00287	Rockland Pyrenone General Aqueous Insecticide
000572–00301	Rockland Weed and Grass Killer
000572–00308	Rockland Weed & Grass Away
000572–00336	Hormo-Root 4
000572–00337	Hormo-Root 1
000572–00349	Hormo Root B
000572–00353	C-Em-Die II
000675–00015	Lehn & Fink Instrument Germicide
000773–00067	Atroban 1% Insecticide

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
000806–00012	Avon Authentic S S S Skin So Soft Bug Guard Plus Ir3535 Insect Repel.
000806–00015	Avon SSS Skin-So-Soft Bug Guard Plus Ir3535 Ins. Rep. SPF 15 Lotion
000833–20004	Afco Chlorilizer
000935–00039	ACL 90 Pool and Spa Chlorinating Tablets, One Inch
000935–00045	Shielded Dry Chlorinating Compound 6″ Sticks
000935–00064	Towerbrom 60 Granules
000935–00067	Towerchlor 90 Tablets, One Inch
000935–00070	Towerbrom 90m, One Inch Tablets
000935–00080	Acl 90 B Chlorinating Composition
001015–00066	Douglas 57% Malathion
001083–00001	Ced-O-Flora Plant Spray
001117–00054	Nolvacide Insecticide Shampoo
001117–00061	Nolvamite
001190–00047	L.G.C.
001190–00048	P.G.C. 6
001203–00060	Foremost 4949-ES Weed-A-Way
001386–00114	Malathion Insect Spray
001386–00143	Livestock and Barn Fogging Spray
001386–00418	Py-Vona Stock Fly Spray
001386–00451	Unico 5% Sevin Dust
001386–00606	Pyrethrin Multi-Purpose Insecticide
001386–00618	Dimethoate 267ec Systemic Insecticide
001386–00623	Trifluralin 10G
001386–00630	Red Panther Garden Special
001386–00641	Dipel 110 Dust
001386–00643	Red Panther MSMA Liquid
001386–00644	Red Panther "panther Juce"
001386–00645	Red Panther Super Juce
001386–00650	Agway Livestock & Farm Spray II
001386–00655	Security Sevin Bait
001386–00656	Security Dipel Liquid Worm Spray Biological Insecticide
001386–00657	Security Brand De-Flea-Flea & Tick Spray
001386–00658	Agway Aqueous Garden Spray
001386–00662	Kleenwalk
001459–00028	Bullen Disinfectant Cleaner & Odor Counteractant
001459–00084	Activ VIII 640
001475–00042	Enoz Cedar-Ize Moth Cake
001475–00069	Enoz Cedar Scented Mildew Cake
001475–00094	Enoz Moth Blok
001475–00121	Enoz Plastic Hang-Up Moth Case

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
001475–00122	Enoz Moth & Deodorant Cakes Perfumed Refills for Hang-Up Plastic Case
001475–00126	Enoz Cedar Pine Closet Freshener
001475–00127	Lemon Scented Closet Freshener
001486–00026	Micro-Chek 25 S-711
001561–00009	Steramine 3-Q Tablets
001574–00003	Stanley Moth Cake
001574–00004	Stanley Perfumed Crystals
001719–00012	Blp Jack Tar Marine Fin V-I-P Cold Plastic Anti-Foul 473-71
001719–00015	Blp Jack Tar Marine Fin Dub-L-Cop Copper Paint Navy 16-X 473-74
001719–00040	Jack Ta Dub-L-Cop Copper Bottom Paint 473-38 Blue
001769–00104	Chem Fog Concentrate
001910–00003	Fly Repellent Gell
002212–00005	Legphene
002393–00461	F & B Tuberseptic
002792–00035	Citrus Lustr 213 with Fungicide
002792–00036	APL Lustr-256 with Fungicide
002792–00052	Decco 253 Sanitizer Concentrate
002792–00056	Deccosan 320
002792–00068	Agclor 310A
002935–00388	Diazinon 4 Spray
003008–00080	Evipol 60 SL
003095–00075	Pic Super Strong Roach Control System
003342–00095	Worm Whipper Bacillus Thuringiemsis
003522–00013	Luseaux Lu-Tabs
003573–00064	Ultra Spic and Span
003862–00124	Non-Residual Insecticide Spray
004482–00010	Q-Lab Spray Cleaner
004581–00206	Des-I-Cate
004582–00066	CPL Institutional Ajax Disinfectant Cleanser
005011–00060	Formula GH-18
005202–00023	Brogdex 597-F
005202–00024	Brogdex 598-F
005202–00026	Brogdex 594-F
005449–00010	B-Q 32 Pine Odor Disinfectant
005481–00225	Technical Lindane
005481–00415	PCNB Disulfoton Granules 6.5-6.5
005602–00192	V-34-74
005602–00200	A-41 20% DDVP Insecticide
005693–00077	Shield Total Release Fogger V
005792–00002	Cuprous Oxide
005905–00262	Diazinon 14g Granular Insecticide
005905–00418	Helena End-O-Sulfan 3 E.C. Insecticide
005905–00474	Helena Diazinon 7E
005905–00526	Diazinon 50 WP
006186–00043	D-C Disinfectant

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
006325–00020	Microfine Sulfur
006325–00021	Sunbelt Wettable Sulfur
007053–00028	Fremont 9111
007152–00017	Seaboard Jolt-It Shock Treatment
007245–00023	Sodium Hypochlorite Solution
007267–00005	Savol Shock Treatment
007350–00002	Chaska-San Disinfectant-Bactericide-Alkaline Detergent
007405–00066	214 Insect Spray
007501–00017	Gustafson Thiram-30 Fungicide
007501–00064	Evershield T Seed Protectant
007501–00068	Gustafson Flo Pro D Seed Protectant
007501–00117	Moly-T
007501–00123	Liquid Moly-Co-THI
007501–00125	Liquid Moly-THI Concentrate
007501–00181	Storcide E.C.
007969–00070	Polyram 80 WP Fungicide
008596–00029	Grain Savor
008709–00003	Algae Destroyer for Fresh Water Aquariums
008709–00004	Algae Destroyer Liquid
008709–00005	Algae Destroyer for Ponds
008709–00006	Pond Care Algae Blocker
008709–00007	Herbal Aphid Control
008730–00053	Hercon Insectape with Propoxur
008730–00059	Hercon Disrupt PTB
008959–00003	Cutrine Granular Algaecide
008996–20002	Sierra Pure Chlor 10%
009152–00020	Biodisan
009359–00001	Algaecide (10%)
009359–00025	Algaecide II (5.0%)
009359–00026	Algae Rid (2.5%)
009386–00036	Tetramet-TR
009404–00072	St. Augustine Lawn Weed Killer (40.8% Flowable Atrazine)
009404–00085	Citrus & Ornamental Insect Spray
009591–00124	Pro Kill Expel Roach and Ant Killer
009591–00169	Prokill Choice
009886–00007	Unipine S
009886–00009	Unipine NCL
010163–00074	Prokil Ziram 76 WP
010163–00090	Prokil Ziram 87.3 WP
010163–00106	Gowan Ziram 76 WDG
010163–00129	Prokil Ziram 87.3 WSB
010163–00151	Gowan Ziram 76
010163–00158	Gowan Chlorpyrifos 4E
010292–00010	Venus 106 Bowl & Porcelain Cleaner
010292–00014	Lemon Odor Disinfectant Cleaner
010292–00041	Sani Shop Root Killer
010693–00001	Quaternary Germicidal Cleaner
010772–00006	Clean Shower
010778–00002	Vaporene W-10
010906–00001	Rootout (for Killing Roots In Sewers)

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
011292–00007	Quat Sanitizer Rinse
011515–00036	Superior No.402 Weed Killer Water Soluble
011558–00016	Propionic Acid
011625–00001	Moly-Soy-A-Live Seed Protectant
011667–00005	Propionic Acid
011678–00025	Thionex Endosulfan 35 E.C.
011678–00056	Trichodex
011715–00347	Security Brand Purge 2 Lawn Weed Killer
011746–00041	Davis Kill-A-Bug S2
012455–00019	Ditrac Rat and Mouse Bait
012455–00029	Ditrac Rat and Mouse Bait Ready To Use
012455–00078	Ditrac Rat and Mouse Bait
015035–00001	Perfecto Germicide Concentrated Dental and Surgical Instrument Disinfectant
017004–00003	Pipco Dish-San
017545–00002	Cotton-Aide HC
017545–00003	Montar
019713–00412	Drexel Metolachlor Technical
021164–00008	Akta Klor 15
022950–00006	Cobra Mosquito Coils
023563–00001	Mur Kil
028293–00239	Unicorn Diazinon 14g Granular Insecticide
028293–00272	Unicorn 1.5% Granular
029909–00029	Cardinal Insecticide Repellent Spray for Horses
029909–00034	Cardinal Rid Flea and Tick Spray
030950–00008	Raticida Bait Pellets Kills Rats and Mice
033660–00036	Vln Trifluralin Technical
034282–00002	Quat Klean
034704–00430	Captan 80 WP
034704–00431	Captan 80 WDG
034704–00799	Endosulfan Technical
034797–00002	Flea + Tick Spray
034797–00019	Copper Sulfate Root Killer
034797–00045	Dionne Insecticide Spray Concentrate
034797–00049	Dionne Insecticide with Resmethrin
034797–00052	Dionne Germicidal Detergent Sanitizer
034797–00060	Dionne Horse Wipe E.C.I
034797–00061	Dionne Insecticide Spray Concentrate II
034797–00064	Dionne General Purpose Residual Spray Insecticide
034797–00068	Qualis Flea and Tick Killer Carpet Dust
034797–00069	Qualis Concentrated Pyrethrins
034797–00075	Canine Parvo Virus Disinfectant
034797–00079	Aqueous Pressurized Resmethrin Spray Insecticide 0.5%
034797–00080	Resmethrin Liquid Insecticide Spray 0.5%
034797–20203	Qualis Boric Acid Powder

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
035138–00081	Aero Lawn Granules
035917–00002	Pentapure Water Purification Disinfection Resin
036284–00003	Clearview Granular Chlorinating Concentrate
036488–00019	Ringer Japanese Beetle Bait (floral Lure)
036488–00020	Ringer Japanese Beetle Sex Attractant
036993–00002	Crystal Klear
037365–20001	AST Inc. Chlorinated Sanitizer
037428–00001	Dichloro Chlorinating Granules
037507–00002	Gibberellic Acid 5% Powder
039183–00013	Bio-Syn CR-125
039272–00004	Wepak Kreme Kleanser
040208–00004	Crack-Shot Multipurpose Insecticide Spray
041294–20001	Aqua Chlor
042052–20002	Buckman's 10% Sodium Hypochlorite Solution
042056–00011	Kernel Guard
042056–00015	TCI Mancozeb-Lindane Seed Treatment
042056–00016	TCI Mancozeb-Lindane Ready-To-Use Seed Treatment
042056–00018	TCI Captan-Diazinon Seed Treatment
042177–00016	Olympic Dy-Chlor II
042613–20001	Indo-Clor
042697–00038	Safer Brand Home Pest Insect Killer II
043917–00002	Spira Punks Mosquito Coils
043917–00009	Spira Punks Mosquito Coils II (formula I)
043922–00005	Roman Cleanser Bleach
043922–20004	Sta Bright Bleach Laundry Destainer
045443–00001	Reese Clip-On Young Tree Insulator with Insect Repellent
045600–00018	Insecta Roach Killer
045655–00001	High-Po-Chlor Bulk Sodium Hypochlorite Solution
046028–00008	CMB-2870
046183–00003	Sani Way 75
046183–00004	Sani-Way 175
046257–00001	Council-Oxford Soluble Spray Oil
046781–00009	Diacide Hd Disinfecting Solution
046851–00011	Prophene
047250–20002	Aquatech Supurr Shock Chlorinating Solution
049256–00001	Chlorine Liquified Gas Under Pressure
049517–00008	Oxy Soduim Chlorate Technical Grade
049756–00001	Liquefied Chlorine Gas Under Pressure
050096–00001	Wipex
050600–00008	Acidize DS-10
050675–00008	APM-Rope

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
050956–00004	Sask Chem 70
051036–00009	Micro Flo Atrazine 80W Herbicide
051036–00070	Micro Flo Diazinon 14G
051036–00091	Endosulfan 50W
051036–00092	Endosulfan 3 EC
051036–00093	Micro Flo Diazinon 5G AG
051036–00159	Micro Flo Atrazine 80W Herbicide
051036–00209	Endosulfan 50W Solupack
051036–00377	Triclopyr Ester 4A Rangeland
051036–00404	Picloram Acid Technical
051036–00414	Picloram K-Salt Technical
051036–00419	Picloram Tipa Technical
051354–20001	Sun Guard 15
051517–00005	Foliar Triggrr MFG
051517–00006	Soil Triggrr MFG
051946–00001	Compound X
053254–00005	Oxidan TCA Sticks
053254–00007	Oxidan TCA/T20 Tablets
053254–00009	Oxidan TCA/T500 Tablets
053254–00010	Oxidan TCA Granular Shock Treatment
053254–00011	Oxidan TCA Granular Algicide Treatment
053254–00012	Oxidan DCN/WSG Granular
053345–00011	Technical Sodium Chlorite
053345–00013	Ercopure
053575–00021	Isomate-BAW Pheromone
054135–00001	Chlorine Liquified Gas Under Pressure
055585–00001	Flamingo Mosquito Coils (with Pyrethrins) (formula 1)
055585–00003	Flamingo Mosquito Coils (with Bioallethrin) Formula 3
055714–00001	Corrosive Sodium Hypochlorite Solution
056097–00001	P.A.S.-V Insecticide
056485–00001	DI-1541
057351–20001	Brite 1500
057476–20001	Aqua Chlor
059055–00001	Duozon 100-L
059894–00005	Kwikkill
060061–00080	Alumacoat II
060066–00001	Dr. Dogkatz's Critter Chaser Shampoo
061282–00032	Hopkins Warfarin Pellets Rat and Mouse Killer
061282–00034	Hopkins Snail and Slug Pellets containing 2.75% Metaldehyde
061282–00035	Hopkins Zinc Phosphide Mouse Bait for Control of Mice In Orchards
061282–00042	Crown "Pest Rid Brand" .5% Coated Warfarin Anti-Coagulant Concentrate
061483–00007	Creosote Oil 24 CB
061807–00001	Algae Fighter 40
062207–00005	Fox-Chlor Plus
062207–00006	Fox-Chlor
062353–00002	Hy-Q-75
062353–00003	Hy-Q-75-SP

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
062451–00006	Antguard for Irrigation Systems
062644–00001	King Pine Brand Disinfectant
062719–00117	Balan LC 16.3%
063243–00005	Bio-Dynamic(r) Residential Chlorinating Cartridge
063588–00005	Bolero 10G
063761–00004	Ultra Kleen Powder for Dental Water Lines
064321–00008	Bio Kill Dust Brand Insecticide
064439–00001	Mole-Med
064439–00003	Mole Med Dry
064865–00001	Dynogen
065359–00002	Ecobrite 1 Ready-To-Use Fungicide
065434–00001	Equipment Sanitizer
065458–00004	Bactec Bt 32
065481–00001	Hi-Lex 6-40 Disinfectant-Sanitizer
065890–00002	Chlorine Liquified Gas Under Pressure
065901–00002	Mineralix Fly Control Tub
065906–00002	Roach Snax
066190–00001	Plant Pro-Tec (garlic) Units
066222–00002	Endosulfan (thionex) 50W
066222–00031	Cotoran 80w Herbicide
066222–00069	Turf! EZ
066222–00070	Alachlor Technical
066222–00071	Shroud Herbicide
066222–00078	2,4-DB Acid Technical
066306–00012	Safari Insect Repellent
066330–00014	Captan 5 Potato Seed Protectant Fungicide
066330–00015	Captan 10 Potato Seed Protectant Fungicide
066330–00019	Isotox Seed Treater (F)
066330–00021	Captan Moly Soybean Seed Protectant (2X)
066330–00025	Captan 75 Seed Protectant Fungicide
066330–00030	Captan 75WDG
066330–00032	Captan Technical
066330–00034	Captan 90 Dust Base
066433–00001	Oak Stump Farm Japanese Beetle Lure
066451–00001	Westcide 3096
066544–00001	Promac 2000SB
066544–00004	Promac 2000PB
066591–00005	Copper-Green Plus Wood Preservative
066777–00001	Gycorine
066923–00001	Insecolo
067238–00003	Keepout
067416–00001	Chlorine Liquified Gas Under Pressure
067425–00002	Ecopco D Dust Insecticide
067425–00004	Ecopco AC Contact Insecticide
067503–00004	Smite 25 WP
067517–00036	Dual Gard Insecticide Cattle Ear Tags
067589–20004	Sani-Select Warewash Sanitizer
067760–00004	Cheminova Fyfanon 8EC Insecticide
067760–00016	Fyfanon 25 WP
067760–00027	Nufos 4E-SG
067760–00041	Cythion Insecticide RTU
067898–00001	F-105 Cold Plastic Red Antifouling Mil-P-19451 B
067959–00005	Trilin HG
068158–00003	Iodine Cartridge Release System
068329–00007	Alpha 544
068329–00008	Alpha 560
068333–00001	Rush Wasp & Hornet Killer
068497–00001	Flea Away
068506–00001	Uvatek
068575–00001	Palene 610-C
068719–00003	Vita Grow Concentrated Rooting Compound
068843–00001	The Flea Terminator II
069151–00002	Steritech BD-20
069204–00001	TK-10
069840–00002	Counter Wipe
070051–00028	Azatin 4.5WP
070051–00064	Trident
070051–00082	Raven
070051–00094	Lepinox XL of
070060–00006	Aseptrol WTS-7.05
070060–00018	Aseptrol S2-Tab
070258–00001	Urnex Sani-Pure Sanitizer & Cleaner
070341–00001	A-9497b Marketed As Last Call CM
070341–00002	Last Call OFM
070341–00003	Last Call CMH & G
070341–00004	Last Call Eucosmak
070371–00001	Yippee Pet Shampoo
070465–00002	Xbinx 50W
070506–00028	Devrinol 2-E Ornamental Selective Herbicide
070508–00001	Power Herbal Disinfectant
070799–00002	Formula 219 Sure-Kil Selective Weed Killer
070799–00003	797-A State Powdered Insecticide
070799–00004	Formula 297 Algaecide
070799–00005	Formula 64-A Vaporcide
070799–00006	Formula 410 Algaecide
070799–00011	State Formula 444 Kling N' Kill
070852–00001	AGC 0.1 AG
070852–00002	AGC 0.3 AG
070852–00003	AGC 0.4 AG
070852–00004	AGC 0.05 AG
070852–00005	WJC 2002
070933–00001	MLS Fly Control Tub
070950–00001	Avachem Sucrose Octanoate Manufacturing Use Product
071082–00001	Unisept
071085–00013	Propanil 60 DF
071253–00001	Bio Bug Insect Repellent
071258–00001	455 Soluble Oil
071280–00001	Cuprous Chloride Technical
071280–00003	Migratrol R001
071280–00005	Root Right Container
071332–00001	Microsil (models 7300,7301,7302)
071332–00002	Microcarb (models 7500,7501)
071654–00003	Dupont Formulation A
071654–00004	Dupont Formulation B
071840–00004	Subtilex HB
071943–00001	Nouguard(tm)
072106–00001	Evergreen Lawn Food with Moss Control 12-2-2
072139–00001	Insta-Chlor
072451–00002	Mstrs BHFW
072451–00005	Mstrs SS
072594–00001	Doc's Clone Gel
072662–00001	Prasitex
072670–00001	Bushwhacker Fire Ant, Roach, Weevil and Termite Control
072874–00003	Towersafe
072874–00004	Surfguard
073175–00001	Bee-Gone Wasp & Hornet Killer
073406–00001	New Concept
073478–00001	Bleach Wipe
073601–00006	Millennium II
073601–00007	Millenium I
073683–00001	Kuriverter EC 03
073683–00002	Kurita F-5100
073882–00001	Acrilan Additive Chi
074160–00001	Targa Biological Larvicide Wettable Powder
074320–00002	RB-62 Chlor
074320–00004	RB-65 Hypo Chlor
074395–00002	Materia Olr Technical Pheromone
074395–00003	Materia (e)-11-Tetradecenyl Acetate Technical Pheromone
074411–00001	Technical Trypsin Modulatng Oostatic Factor (tmof)
074413–00001	Xmax Ant Killer Sweet Ant Bait Gel
074517–00002	Zydox AD 20 31.25
074602–00004	Verox-Gfp
074627–00003	Nab 2.4 ME Insecticide
074785–00001	Bio-Plant Products Ant and Roach Protection
074910–20001	Sparkhlor
075174–00001	Sis 7200
075174–00003	Sis Am 500 I
075273–00002	Victoria's Garden Outdoor Mosquito Coil Set
075291–00001	Pure Blue Primo
075338–00001	CFT Legumine
075636–00003	Coc-Sil-105
075636–00005	Coc-Sil-02
075636–00010	Type Col-Sil-105
075636–00011	Type: Col-Sil-02
079660–20001	Sodium Hypochlorite 15
079660–20002	Sodium Hypochlorite 10
079660–20003	Sodium Hypochlorite 12
079753–00002	Same Stuff
079753–00003	Heavy Stuff
080798–00001	Best FX
080867–00001	Sweet'n' Bale

IV. Public Docket

Complete lists of registrations canceled for non-payment of the maintenance fee will also be available for reference during normal business

hours in the OPP Public Docket, Room 119, Crystal Mall #2, 1801 S. Bell St., Arlington VA, and at each EPA Regional Office Product-specific status inquiries may be made by telephone by calling toll-free 1–800–444–7255.

List of Subjects

Environmental protection, fees, pesticides and pests

Dated: July 19, 2005.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 05–15145 Filed 8–2–05; 8:45 a.m.]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

July 22, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments October 3, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by email or U.S. postal mail. To submit you comments by email send them to: *PRA@fcc.gov.* To submit your comments by U.S. mail, mark it to the attention of Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1-C804, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an email to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0515.

Title: Section 43.21(c), Miscellaneous Common Carrier Annual Letter Filing Requirement.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 38.

Estimated Time Per Response: 1 hour.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 38 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Section 43.21(c) requires each miscellaneous common carrier with operating revenues in excess of the indexed threshold as defined in 47 CFR Section 32.9000 for a calendar year to file with the Chief, Wireline Competition Bureau (formerly the Common Carrier Bureau) a letter showing its operating revenues for that year and the value of its total communications plant at the end of that year. The letter must be filed no later than April 1 of the following year. The information is used by FCC staff members to regulate and monitor the telephone industry and by the public to analyze the industry. The information on revenues and total plant is compiled and published in the Commission's annual common carrier statistical publication and trends in telephone service report.

The Commission is seeking extension (no change to this information collection) in order to obtain the full three-year clearance from OMB.

OMB Control No.: 3060–0526.

Title: Density Pricing Zone Plans, Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91–141.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 17.

Estimated Time Per Response: 48 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 816 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission requires Tier 1 Local Exchange Carriers (LECs) to provide expanded opportunities for third-party interconnection with their interstate special access facilities. The LECs are permitted to establish a number of rate zones within study areas in which expanded interconnection is operational. In the Fifth Report and Order in CC Docket No. 96–262, the Commission allows price cap LECs to define the scope and number of zones within a study area. These LECs must file and obtain approval of their pricing plans which will be used by FCC staff to ensure that the rates are just, reasonable and nondiscriminatory.

The Commission is seeking extension (no change to this information collection) in order to obtain the full three-year clearance from OMB.

OMB Control No.: 3060–0770.

Title: Price Cap Performance Review for Local Exchange Carriers (LECs), CC Docket No. 94–1 (New Services).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 17.

Estimated Time Per Response: 10 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 170 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: In the Fifth Report and Order, the Commission permits price cap LECs to introduce new services on a streamlined basis without prior approval. The Commission modified the rules to eliminate the public interest showing required by Section 69.4(g) and to eliminate the new services test (except in the case of loop-based new services) required under Sections 61.49(f) and (g). These modifications eliminated the delays that existed for the introduction of new services as well as to encourage efficient investment and innovation.

The Commission no longer requires an incumbent LEC to introduce a new service by filing a waiver under Part 69 of the Commission's rules. Instead, incumbent LECs are allowed to file a petition for the new service based on a

public interest standard. After the first incumbent LEC has satisfied the public interest requirement for establishing new rate elements for a new switched access service, other incumbent price cap LECs can file petitions seeking authority to introduce identical rate elements for identical new services, and their petitions will be reviewed within ten days. If the Wireline Competition Bureau (formerly the Common Carrier Bureau) does not act within the prescribed time, authority to establish the rate elements in question are deemed granted. In the event the Bureau denies an incumbent LEC's initial petition, or a subsequent petition filed by another incumbent LEC, the petitioner must file a Part 69 waiver petition.

The Commission is seeking extension (no change to this information collection) in order to obtain the full three-year clearance from OMB.

OMB Control No.: 3060–0793.

Title: Federal-State Joint Board on Universal Service, CC Docket No. 96–45, Procedures for Self Certifying as a Rural Carrier.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit and State, local or tribal government.

Number of Respondents: 10.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 10 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: In the Tenth Report and Order, the Commission adopted proposals that carriers servicing study areas with fewer than 100,000 access lines that already have certified their rural status need not re-certify for purposes of receiving support beginning January 1, 2001 and need only file thereafter if their status changes. Further, carriers serving more than 100,000 access lines need to file rural certifications for their year 2001 status and thereafter only if their status has changed.

The Commission is seeking extension (no change to this information collection) in order to obtain the full three-year clearance from OMB.

OMB Control No.: 3060–1021.

Title: Section 25.139, NGSO FSS.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit and State, local or tribal government.

Number of Respondents: 10.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 10 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This rule section requires NGSO FSS licensees to maintain a subscriber database in a format than can be readily shared with Multichannel Video Distribution and Data Service (MVDDS) licensees for the purpose of determining compliance with the MVDDS transmitting antenna space requirement relating to qualifying existing NGSO FSS subscriber receivers set forth in 47 CFR 101.129.

The Commission is seeking extension (no change to this information collection) in order to obtain the full three-year clearance from OMB.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–15131 Filed 8–2–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 22, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information, subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 3, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by email or U.S. postal mail. To submit your comments by email send them to: *PRA@fcc.gov.* To submit your comments by U.S. mail, mark it to the attention of Leslie F. Smith, Federal Communications Commission, 445 12th Street, SW., Room 1–A804, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Leslie F. Smith at 202–418–0217.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0093.

Title: Application for Renewal of Radio Station License for Experimental Radio Service (Part 5), FCC Form 405.

Form Number: FCC Form 405.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not for profit institutions.

Number of Respondents: 243.

Estimated Time per Response: 2.25 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 546.75 hours.

Total Annual Costs: $13,365.

Privacy Impact Assessment: No impact(s).

Needs and Uses: FCC Form 405 is now being used *only* by the Experimental Radio Service to apply for renewal of radio stations licenses at the FCC. Section 307(c) of the Communications Act limits the term of radio licenses to ten years and requires that written applications be submitted for renewal. FCC Form 405 is required by 47 CFR part 5 of the Commission's rules.

The FCC Form 405 was previously shared by the Office of Engineering and Technology, the International Bureau and the Wireless Telecommunications Bureau. The Office of Engineering and Technology has made the following changes to FCC Form 405:

(1) On page 1 the title was changed from "Multipoint Distribution Service" to "Experimental Radio Service." The edition date was changed to July 2005.

(2) On page 2 all references to the Multipoint Distribution Service and WTB were removed and replaced with statements only pertaining to the Experimental Radio Service and OET. A reference to FCC Form 159 was added. The addresses and mailing instructions were amended to those used by the Experimental Licensing Branch. The edition date was changed to July 2005.

(3) On page 3 the title was changed from "Multipoint Distribution Service" to "Experimental Radio Service." Blocks 2 and 5 were deleted and the statement "Note here any further exceptions not already covered in questions 4 and 5," in block 6 was deleted. The blocks were then renumbered 1 through 5. The edition date was changed to July 2005.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–15132 Filed 8–2–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

July 22, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 2, 2005. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Leslie F. Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.* If you would like to obtain or view a copy of this new or revised information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Leslie F. Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-XXXX.

Title: Broadband Power Line Systems, ET Docket No. 04–37.

Form Number: N.A.

Type of Review: New collection.

Respondents: Business or other for-profit; Not-for-profit institutions; and State, Local or Tribal Government.

Number of Respondents: 100.

Estimated Time per Response: 0.5 hour (30 minutes); multiple responses annually.

Frequency of Response: Recordkeeping; On occasion reporting requirements, Third party disclosure.

Total Annual Burden: 2,600 hours.

Total Annual Cost: $60,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On October 14, 2004, the FCC adopted a *Report and Order,* Amendment of Part 15 regarding new requirements and measurement guidelines for Access Broadband over Power Line Systems, ET Docket No. 04–37, FCC 04–245. The *Report and Order* requires that entities operating Access BPL systems shall supply to an industry-recognized entity, information on all existing Access BPL systems and all proposed Access BPL systems for inclusion into a publicly available data base, within 30 days prior to initiation of service. The following information should be provided to the database manager: the name of the Access BPL provider; the frequencies of the Access BPL operation; the postal zip codes served by the specific Access BPL operation; the manufacturer and type of Access BPL equipment and its associated FCC ID number, or in the case of Access BPL equipment that has been subject to verification, the Trade Name and Model Number, as specified on the equipment label; the contact information, including both phone number and email address of a person at, or associated with, the BPL operator's company, to facilitate the resolution of any interference complaint; the proposed/or actual date of Access BPL operation. The Access BPL operator can begin operations once the 30-day advance notification timeframe is over, then the Access BPL operator must notify the database manager of the date of commencement of actual operations for inclusion in the database. The database manager shall be required to enter this information into the publicly accessible database within three business days of receipt.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–15133 Filed 8–2–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

July 20, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 2, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your comments by e-mail or U.S. mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail send them to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 and Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918. If you would like to obtain a copy of this revised information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0849.

Title: Commercial Availability of Navigation Devices.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 215.

Estimated Time per Response: 10 minutes to 50 hours.

Frequency of Response: On occasion reporting requirement; Every 60 days and every 90 days reporting requirements; One time reporting requirement; Third party disclosure requirement.

Total Annual Burden: 4,943 hours.

Total Annual Cost: $33,450.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Section 629 of the Communications Act of 1934, as amended, directs the Commission to assure the commercial availability of navigation devices from sources other than incumbent multichannel video programming distributors. The Commission released an *Order*, In the Matter of the Implementation of Section 304 of the Telecommunications Act of 1996—Commercial Availability of Navigation Devises, CS Docket No. 97–80, FCC 05–76 on March 17, 2005. The reporting requirements in the *Order* are imposed to ensure that progress continues to be made toward the statutory goals of Section 629. Beginning August 1, 2005 or upon Office of Management and Budget (OMB) approval, and every 60 days thereafter, the National Cable and Telecommunications Association and the Consumer Electronics Association must file joint status reports and hold joint status meetings with the Commission regarding progress in bidirectional negotiations and a software-based conditional access agreement. Beginning August 1, 2005 or upon OMB approval, and every 90 days thereafter, the six largest cable operators (Comcast. Time Warner, Cox, Charter, Adelphia and Cablevision) must file status reports on CableCARD deployment and support. The reporting requirement that the cable industry file a report on the feasibility of deploying downloadable security is effective on December 1, 2005 or upon OMB approval.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–15134 Filed 8–2–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via e-ail at *tradeanalysis@fmc.gov*. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011075–068.

Title: Central America Discussion Agreement.

Parties: APL Co. PTE Ltd.; Crowley Liner Services, Inc.; Dole Ocean Cargo Express; Great White Fleet; King Ocean Services Limited; Trinity Shipping Line, S.A.; and Seaboard Marine, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Washington, DC 20036.

Synopsis: The amendment deletes A.P. Moller-Maersk A/S as a party to the agreement effective July 24, 2005.

Agreement No.: 011426–036.

Title: West Coast of South America Discussion Agreement.

Parties: APL Co. Pte Ltd.; CMA CGM, S.A.; Compania Chilena de Navigacion Interoceanica, S.A.; Compania Sud Americana de Vapores, S.A.; CP Ships USA, LLC; Frontier Liner Services, Inc.; Hamburg-Süd KG; King Ocean Services Limited, Inc.; Mediterranean Shipping Company, S.A.; Seaboard Marine Ltd.; South Pacific Shipping Company, Ltd. (d/b/a Ecuadorian Line); and Trinity Shipping Line.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes P&O Nedlloyd B.V./P&O Nedlloyd Limited as a party to the agreement.

Agreement No.: 011918.

Title: Seaboard Marine/Frontier Lines Space Charter Agreement.

Parties: Seaboard Marine, Ltd. and Frontier Liner Services, Inc.

Filing Party: Richard R. Worwetz, III, Pricing Supervisor; Frontier Liner Services; 8600 NW 53rd Terrace, Suite 204; Miami, FL 33166.

Synopsis: The proposed agreement would authorize the parties to share vessel space in the trade between U.S. East Coast ports and ports in Colombia. The parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: July 29, 2005.

Bryant VanBrakle,

Secretary.

[FR Doc. 05–15342 Filed 8–2–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants:

G.P. Logistics, Inc., 1426 NW 82nd Avenue, Miami, FL 33122. *Officers:* Byron E. Keeler, President (Qualifying Individual) Luis Rugeles, Vice President.

Transworld Line International, Inc.,

dba Transworld Line, 13 Bridge Street, Metuchen, NJ 08840. *Officers:* Shawn Mak, Director (Qualifying Individual) Huang Yu Lin, President.

2090 Quisqueya Shipping, Inc., 2090 Amsterdam Avenue, New York, NY 10032. *Officer:* Porfirio Munoz, President (Qualifying Individual).

Prime Freight Forwarders, Inc., 29278 Union City Blvd., Union City, CA 94507. *Officers:* Rajendra Lal, Corporate Secretary (Qualifying Individual) Rohit Sikka, Vice President.

CHK Freight Inc., 10 Whitehall Road, E. Brunswick, NJ 08816. *Officers:* Chin Hsien Kao, Vice President (Qualifying Individual) Shih Ju Lee, President.

Embarque El Malecon, Inc., 441 E. 180th Street, Bronx, NY 10457. *Officer:* Felix Brito, President (Qualifying Individual).

Stevens Global Logistics, Inc. dba Stevens, Global Freight Services, 704 Hindry Avenue, Inglewood, CA 90301. *Officers:* Thomas Petrizzio, CEO (Qualifying Individual) Larry Coyle, President.

TX Freight, Inc., 13250 Don Julian Road, La Puente, CA 91746. *Officer:* Shi Qing Tsou, CEO (Qualifying Individual).

J.G River Shipping, 948 Columbus Avenue, New York, NY 10025. Juan Garcia Sole Proprietor.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant:

Union Cargo, Inc., 8750 NW 101 Street, Medley, FL 33178. *Officer:* Maria V. Bartsch, Gen. Manager (Qualifying Individual) Maria De Cardona, President.

Darpex Import & Export Corp., 5543 NW 72nd Avenue, Miami, FL 33166. *Officer:* Dario Pereyra, President (Qualifying Individual).

Tarratrans, LLC, 123 South Avenue, 3rd Floor, Westfield, NJ 07090. *Officer:* Vincent Mongno, Director (Qualifying Individual).

Atlantic Coast Trading, Inc., 3563 NW 82nd Avenue, Miami, FL 33122. *Officers:* Araceli Arteaga, President (Qualifying Individual) Vincente Valcarpe, Vice President.

MHX International LLC, 300 David Lane, Roselle, IL 60172. *Officers:* Maria R. Coble, Active Partner Homer H. Coble, Active Partner (Qualifying Individuals).

GAAB International Logistics, Inc., 5539 NW 72nd Avenue, Miami, FL 33166. *Officers:* Juan Abreu, Vice President (Qualifying Individual) Maria Abreu, President.

E C F Freight Forwarding Corp dba E C F, dba Freight Forwarding, 170 Preston Street, Ridgefield Park, NJ 07660. *Officer:* Angela C. Gonzalez, President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Customs Clearance International, Inc., 880 Apollo Street, #334, El Segundo, CA 90245. *Officers:* William Robert Wratschko, Vice President (Qualifying Individual) John Max Schepers, President.

Relco Inc., 15247 32nd Avenue South, SeaTac, WA 98188. *Officers:* Clifford N. Buisan, Vice President (Qualifying Individual) Michael Benjaminson, President.

A.J. Keeler U.S.A. Incorporated, 4605 Barranca Parkway, #101C, Irvine, CA 92604–1726. *Officers:* Bryan B. Law, CEO (Qualifying Individual) Diane E. Wright, Secretary.

Cargo Logistics LLC, 45 Sycamore Avenue, Suite 934, Charleston, SC 29407. *Officer:* Chadwick Rundle, President (Qualifying Individual).

Dated: July 29, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–15350 Filed 8–2–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act). Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 22, 2005.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. NCB Financial, Las Vegas, Nevada; to become a bank holding company by acquiring 100 percent of Nevada Commerce Bank, Las Vegas, Nevada.

Board of Governors of the Federal Reserve System, July 22, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–14880 Filed 8–2–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank

holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 30, 2005.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Bank of America Corporation, Charlotte, North Carolina; to acquire 100 percent of the voting shares of MBNA Corporation, Wilmington, Delaware, and thereby indirectly acquire MBNA America Bank, National Association, Wilmington, Delaware, and MBNA America (Delaware), N.A., Wilmington, Delaware. In connection with the proposal Bank of America Corporation has applied to acquire 19.9 percent of the voting shares of MBNA Corporation, Wilmington, Delaware, in certain circumstances.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Young Partners, L.P. and Young Corporation, and Citizens Bancshares Company, all of Chillicothe, Missouri, to directly and indirectly acquire shares of Clayco Banc Corporation, Claycomo, Missouri and thereby indirectly acquire share of CSB Bank, Claycomo, Missouri.

Board of Governors of the Federal Reserve System, July 28, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–15269 Filed 8–2–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

TIME AND DATE: 12 p.m., Monday, August 8, 2005.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 29, 2005.

Robert dev. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–15378 Filed 7–29–05; 4:47 pm]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 9 a.m. (EDT), August 15, 2005.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open (Telephonic).

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the July 18, 2005, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: August 1, 2005.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 05–15475 Filed 8–1–05; 4:12 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

President's Malaria Initiative

Announcement Type: New.

Funding Opportunity Number: AA197.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates: Application Deadline: September 2, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under sections 307 and 317(k)(2) of the Public Health Service Act, [42 U.S.C. sections 242l and 247b(k)(2)], as amended.

Purpose: The purpose of the program is to support malaria prevention and control and relevant ancillary activities (*e.g.*, baseline evaluation, strategy development, training, monitoring and program evaluation) in the countries included in President Bush's initiative to fight malaria in Africa.

On June 30, 2005, the President pledged to increase U.S. Government funding of malaria prevention and treatment by more than $1 billion over five years. The President made this commitment through the G–8 process as the U.S. contribution to a larger international effort needed to reduce malaria deaths, and called on other donors, foundations, private, public, and voluntary organizations to match U.S. commitments by providing $1.2 billion annually in additional funding by 2008.

The President's commitment will more than triple the current U.S. funding of malaria prevention and treatment programs in Africa, and is in addition to the $200 million each year the United States spends today on malaria prevention, treatment, and research. It will increase U.S. funding for malaria to more than $500 million annually. The current U.S. Government malaria budget for Fiscal Year (FY) 2005 is $213.6 million, and of that amount the operating budget of the U.S. Department of Health and Human Services (HHS) provides $102.4 million, or nearly half of that amount. The U.S. Government is also currently supporting malaria control and prevention through the Global Fund to Fight AIDS, Tuberculosis and Malaria, which has so far been the largest vehicle for U.S. Government assistance to anti-malaria activities; the Global Fund has invested over $1 billion in malaria and prevention control activities over two years, roughly one-third underwritten by the U.S. contribution to the Global Fund. These additional resources will complement those of the Global Fund and the World Bank's malaria program.

The President will launch the initiative first in three countries: Angola, Tanzania and Uganda. (Uganda and Tanzania are also countries under the President's Emergency Plan for AIDS Relief), and will add public-private partnerships in Equatorial Guinea and Zambia in FY 2006. Over the next several years, the initiative could expand, with other partner involvement, to a maximum of 25

countries. An inter-agency group selected the first countries according to an agreed set of criteria, including significant burden of malaria; national policies and practices for malaria control consistent with international guidelines; country capacity to achieve large-scale impact; other donor involvement; U.S. Government on-ground presence; performance in other malaria programs, including the Global Fund; and demonstrated political will by national government leadership to mount a comprehensive effort to control malaria.

The goal of the President's initiative is to accomplish the following after three years of full implementation:

- Reduce malaria deaths in each of the target countries by 50 percent;
- Achieve 85 percent coverage of proven malaria prevention, control and treatment interventions among high-risk groups, particularly children and pregnant women;
- Procure directly drugs and other commodities and provide training and technical assistance needed to achieve these objectives.

Specific interventions will include the following:

- Expanding access to long-lasting insecticide treated bed nets and indoor household residual spraying with approved insecticides to greatly reduce the transmission of malaria.
- Providing effective treatment of malaria through the prompt use of new artemisinin combination therapies, now internationally accepted as the treatment of choice against malaria. Provision of these drugs will be available through public- and private-sector outlets in target countries and supported by information and education campaigns to improve access and delivery of care.
- Providing effective, internationally agreed priority interventions for addressing malaria in pregnancy, such as preventive treatment of pregnant women; more than 30 million African women who live in malaria-endemic areas become pregnant each year and are at risk for malaria infection, which contributes to low birth weight and deaths among infants.

Please see *http://www.whitehouse.gov/news/releases/2005/06/20050630–8.html* for more information on the President's announcement. This program addresses the "Healthy People 2010" focus area of Immunization and Infectious Diseases.

Measurable outcomes of the program will be in alignment with the numerical goals of the President's Malaria Initiative and the following performance goal for the National Center for Infectious Diseases (NCID) within the Centers for Disease Control (CDC) and Prevention of the U.S. Department of Health and Human Services (HHS): Protect Americans from infectious diseases.

This announcement is only for non-research activities supported by HHS/CDC as part of the President's malaria initiative. If an applicant proposes research, HHS/CDC will not review the application. For the definition of "research," please see the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm.*

Activities: Awardee activities for this program are as follows:

- The applicants and their partner(s) in the malaria-endemic countries must:

—Enhance local capacity for implementing methods that will reduce malaria transmission and the morbidity and mortality from malaria infection in Angola, Equatorial Guinea, Tanzania, Uganda, or Zambia. Applicants, in collaboration with the national governments and non-governmental partners, including faith-based organizations, must base their activities on the assessments made U.S. Government interagency teams in each of the targeted countries of the President's Malaria Initiative (if available prior to the application due date), and plan to implement, in collaboration with a partner organization in the host country, the priority malaria prevention activities identified through the U.S. Government analysis.

- Priority program areas are listed below, and are examples of activities that would be appropriate to propose under this announcement. The applicant should not duplicate existing efforts. Based on their competitive advantage and proven field experience, applicants may propose to undertake activities in one or more of the priority program areas in a defined population area that will contribute to the accomplishment of the numerical Emergency Plan targets outlined above. For each of these activities, the grantee will give priority to evidence-based, yet culturally adapted, innovative approaches. Details and example activities for each appear in the attachments, as posted with this announcement on the HHS/*CDC Grants and Cooperative Agreements Web site page:*

- Public health capacity-building for governments or institutions so as to contribute to malaria prevention and control. (Attachment 1, as posted with this announcement on the HHS/*CDC Grants and Cooperative Agreements Web site page).*

—Increasing the public's access to effective antimalarial drugs and appropriate management of malaria illness to reduce malaria-associated mortality or the severity and duration of malaria illness. (Attachment 2, as posted with this announcement on the HHS/*CDC Grants and Cooperative Agreements Web site page).*

—Reducing exposure to malaria, particularly among young children and pregnant women, through the use of proven malaria-control interventions, which should include the provision of long-lasting insecticide-treated nets and indoor household residual insecticide spraying. (Attachment 3, as posted with this announcement on the HHS/*CDC Grants and Cooperative Agreements Web site page).*

—Preventing malaria and its adverse consequences during pregnancy. (Attachment 4, as posted with this announcement on the HHS/*CDC Grants and Cooperative Agreements Web site page).*

—Linking activities described here with related HIV care and other social services, and promoting coordination at all levels, including through bodies such as village, district, regional and national malaria coordination committees and networks of faith-based organizations.

—Program evaluation, particularly assessment of progress against the numerical goals of the President's Malaria Initiative. (Attachments 5 and 6, as posted with this announcement on the HHS/*CDC Grants and Cooperative Agreements Web site page).*

- Attend and participate in an annual meeting of grantee representatives and the in-country management of the President's Malaria Initiative to present, discuss, and evaluate program activities.

Administration

The winning applicants must comply with all HHS management requirements for meeting participation and progress and financial reporting for this cooperative agreement. (See HHS Activities and Reporting sections below for details.) The winning applicants must also comply with all policy directives established by the interagency Malaria Coordinator, housed at the U.S. Agency for International Development.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS Activities for this program are as follows:

- Organize an orientation meeting with the grantees to brief them on applicable expectations, regulations and key management requirements for the U.S. Government, HHS, and the President's Malaria Initiative, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the staff of the interagency Malaria Coordinator.
- Review and approve the process used by the grantees to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the annual review and approval of country plans for the President's Malaria Initiative, managed by the interagency Malaria Coordinator.
- Provide consultation and assistance with training curricula and materials, as necessary and appropriate for in-country training programs.
- Provide consultation and assistance on methods for treatment of malaria, enhancing local capacity to increase use of insecticide-treated bed nets and indoor household residual insecticide spraying, and/or prevention of malaria and its adverse consequences during pregnancy.
- Provide consultation on program evaluation design.
- Review and approve grantees' annual work plan and detailed budget, as part of the annual review and approval of country plans for the President's Malaria Initiative, managed by the interagency Malaria Coordinator.
- Review and approve grantees' monitoring and evaluation plans, including for compliance with the strategic information guidance established by the interagency Malaria Coordinator.
- Meet on a monthly basis with grantees to assess monthly expenditures in relation to approved work plan, and modify plans as necessary.
- Participate in an annual meeting of grantee representatives to present, discuss, and evaluate program activities.

II. Award Information

Type of Award: Cooperative Agreement.

HHS involvement in this program appears in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Current Fiscal Year Funding: $600,000.

Approximate Total Project Period Funding: $1,800,000 (This amount is an estimate, and is subject to availability of funds. This includes direct or indirect costs.).

Approximate Number of Awards: Four.

Approximate Average Award: $150,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Individual Award Range: None.

Ceiling of Individual Award Range: $250,000 (This ceiling is for the first 12-month budget period. This is for total costs, which would include indirect costs.)

Anticipated Award Date: September 15, 2005.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, HHS' commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government, through annual review and approval of country plans for the President's Malaria Initiative, managed by the interagency Malaria Coordinator.

III. Eligibility Information

III.1. Eligible applicants

Eligible applicants that can apply for this funding opportunity are listed below:

- Public, non-profit organizations
- Private, non-profit organizations
- Universities
- Colleges
- Research institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribal organizations
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

A Bona Fide Agent is an agency/organization identified by a State as eligible to submit an application under the State eligibility in lieu of a State application. If applying as a bona fide agent of a State or local government, an applicant must provide a letter of endorsement from the State or local government concerned as documentation of its status as bona fide agent. Please place this documentation behind the first page of the application form.

While both U.S.-based and organizations indigenous to Angola, Equatorial Guinea, Tanzania, Uganda, or Zambia are eligible to apply, we will give preference to well-established organizations indigenous to those countries mentioned above, legally incorporated in those countries, that have well-developed management and financial control systems and established malaria activities that reach to rural areas of those countries.

Preference will also go to applicants with demonstrated experience in working with their identified indigenous country partner(s) on malaria prevention and control activities.

III.2. Cost-Sharing or Matching

Matching funds are not required for this program. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to achieving the numerical goals of the President's Malaria Initiative.

III.3. Other

If applicants request funding greater than the ceiling of the award range, HHS/CDC will consider the application non-responsive, and it will not enter into the review process. HHS/CDC will notify the applicant that the application did not meet the submission requirements.

Special Requirements: If the application is incomplete or non-responsive to the requirements listed in this section, it will not enter into the review process. We will notify the applicant that the application did not meet submission requirements.

- We will consider late applications non-responsive. See section "IV.3. Submission Dates and Times" for more information on deadlines.
- This program is not designed or intended to support research, therefore this cooperative agreement will not support any research.
- **Note:** Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds that constitute an award, grant, or loan.
- Applicants must show an established relationship with indigenous partner organization(s) in the country/countries they propose for their project by submitting a letter, on the partner's (or partners') letterhead, of

support that shows an established relationship with indigenous partner organization(s) in the country/countries the applicant proposes for the project.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

Electronic Submission: HHS/CDC strongly encourages applicants to submit the application electronically by using the forms and instructions posted for this announcement on *http://www.Grants.gov*, the official Federal agency-wide E-grant Web site. Only applicants who apply on-line are permitted to forego paper copy submission of all application forms.

Paper Submission: Application forms and instructions are available on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If access to the Internet is not available, or if there is difficulty accessing the forms on-line, contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at 770–488–2700, and we can mail the application forms to you.

IV.2. Content and Form of Submission

Application: Applicants must submit a project narrative the application forms, in the following format:

- Maximum number of pages: 25. If your narrative exceeds the page limit, we will only review the pages that are within the page limit.
- Font size: 12-point, unreduced
- Single-spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- All pages of the application numbered sequentially from page 1 (Application Face Page) to the end of the application, including charts, figures, tables, and appendices.
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way

The narrative should address activities the applicant proposes to conduct over the entire project period, and must include the following items in the order listed:

- Background and Need
- Objectives
- Plan
- Methods
- Performance Methods
- Timeline
- Staff
- Budget Justification (the budget justification will be counted in the stated page limit)
- Evidence that the applicant has notified the appropriate agency in the government of the partner country/countries of the application
- Applicants must show an established relationship with partner organization(s) in the country they propose for their project. Applicants must include after the face page of the application a letter with the indigenous partner's (partners') letterhead that provides a brief description of the past and anticipated collaboration between the applicant and the partner organization(s) in the host country/countries must be included. Applicants must also include evidence (*e.g.* a letter) that they have notified the appropriate agency or Ministry of Health (MOH) in the partner country/countries of their intention to apply.

Applicants may include additional information included in the application appendices. The appendices will not count toward the narrative page limit. This additional information includes the following:

- *Curricula Vitaes*
- Résumés
- Organizational Charts
- Letters of Support
- Country Malaria Plan

The agency or organization is required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the HHS/CDC Web site at: *http://www.cdc.gov/od/pgo/funding/grantmain.htm.* If the application form does not have a DUNS number field, please write the DUNS number at the top of the first page of the application, and/or include the DUNS number in the application cover letter.

Additional requirements that might require submittal of additional documentation with the application are found in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date: September 2, 2005.

Explanation of Deadlines: Applications must be received in the HHS/CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

Applicants may submit applications electronically at *www.grants.gov.* Applications completed on-line through Grants.gov are considered formally submitted when the applicant organization's Authorizing Official electronically submits the application to *http://www.grants.gov.* HHS/CDC will consider electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If applicants submit material electronically through Grants.gov (*http://www.grants.gov*), the application will be electronically time/date stamped, which will serve as receipt of submission. Applicants will receive an e-mail notice of receipt when HHS/CDC receives the application.

If applicants submit material by the United States Postal Service or commercial delivery service, the applicant must ensure the carrier will be able to guarantee delivery of the application by the closing date and time. If HHS/CDC receives the application after closing date because of one of the following: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, the applicant will have the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as having been received by the deadline.

If applicants submit material in hard copy, HHS/CDC will not notify the applicant upon receipt of the submission. If questions arise on the receipt of the application, the applicant should first contact the carrier. Applicants with further questions should please contact the PGO–TIM staff at (770) 488–2700. The applicant should wait two to three days after the submission deadline before calling. This will allow time for HHS/CDC to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If the submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify the applicant if the application did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

The application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed Federal assistance applications. Contact the state single point-of-contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on the state's process. Visit the following Web address to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which applicants must take into account while writing their budgets, are as follows:

- Funds may not support research.
- Reimbursement of pre-award costs is not allowed.
- Grantees may expend funds for reasonable program purposes, including personnel, travel, supplies, and services. Grantees may purchase equipment if deemed necessary to accomplish program objectives; however, grantees must make any purchases through a transparent and competitive process, after having requested and received prior approval by HHS/CDC officials in writing.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.
- The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required.)
- Applicants shall state all requests for funds contained in the budget in U.S. dollars. After making an award, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- You must obtain annual audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS/CDC.
- HHS/CDC can require a fiscal Recipient Capability Assessment, prior to or post award, to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

If requesting indirect costs in the budget, a copy of the indirect cost rate agreement is required. If the indirect cost rate is a provisional rate, the agreement should be less than 12 months old.

Applicants can find guidance for completing the budget on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address: Electronic Submission: HHS/CDC strongly encourages applicants to submit applications electronically at *http://www.Grants.gov.* Applicants can download the application package from *http://www.Grants.gov.* Applicants are able to complete it off-line, and then upload and submit the application via the Grants.gov Web site. We will not accept e-mail submissions. Applicants that have technical difficulties in Grants.gov can reach custumer service by E-mail at *http://www.grants.gov/CustomerSupport* or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m., Eastern Time, Monday through Friday.

HHS/CDC recommends that submittal of the application to Grants.gov should be early to resolve any unanticipated difficulties prior to the deadline. Applicants may also submit a back-up paper submission of the application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. Applicants must clearly mark the paper submission: "BACK-UP FOR ELECTRONIC SUBMISSION." The paper submission must conform to all requirements for non-electronic submissions. If HHS/CDC receives both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommend applicants submit the grant application by using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, *etc.*). If applicants do not have access to Microsoft Office products, they may submit a PDF file. Applicants can find directions for creating PDF files on the Grants.gov Web site. Use of file formats other than Microsoft Office or PDF may make the file unreadable for our staff.

OR

Paper Submission: Applicants should submit the original and two hard copies of the application by mail or express delivery service to: Technical Information Management-RFA#AA197, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application, and they will be an element of evaluation. HHS/CDC will evaluate the application against the following criteria:

1. Plan of Operation (45 Points)

a. Do the key personnel have the ability and program skills to develop and carry out the proposed activities, including by undertaking those activities in the appropriate local languages?

b. Is there good evidence to show the applicant and malaria-endemic partner(s) have conducted a collaborative review of the priority needs for malaria in the malaria-endemic country/countries?

c. Do the proposed objectives match the priority issues and interventions of the President's Malaria Initiative?

d. Are the proposed methods reasonable? Will they accomplish the program goals? Is the proposed plan reasonable? Does it address major project components in both the applicant and malaria-endemic country/countries (i.e., leadership, staffing, administrative coordination, planning, and measurement activities)? Does the timetable incorporate the major numerical milestones of the President's Malaria Initiative and have a coherent plan to meet those targets?

e. Is the plan consistent with malaria prevention best practices and the

announced priorities of the President's Malaria Initiative?

f. If the applicant proposes capacity-building for public health activities in malaria, do the planned activities relate to capacity improvements that will help achieve the numerical goals of the President's Malaria Initiative in the partner country/countries?

2. Collaborative Arrangement(s) (25 Points)

a. Does the collaboration between the applicant and partner organization(s) in the partner country/countries reflect an effective working relationship? Will the collaboration enable implementation of the proposed activities and serve to achieve the numerical goals of the President's Malaria Initiative?

b. Does the collaboration include the organization(s) responsible for policy and implementation of malaria prevention and control in the target area (e.g., Ministry of Health and/or district office)?

c. Are there formal letters of support from appropriate groups (universities, non-governmental organizations, *etc.*) within the malaria-endemic country that demonstrate the appropriate and necessary cooperation to support malaria prevention and control programs?

3. Background and Need (15 Points)

a. Does the proposal define and provide evidence that malaria in the partner malaria-endemic country/countries is well-established as an important cause of morbidity and mortality across the country/countries?

b. Is it clear what the existing malaria control program is and what its prevention and control strategies are?

c. Does the application clearly describe the existing surveillance, monitoring and evaluation methods and capability?

d. Does the application clearly describe the gaps and priorities in malaria prevention and control implementation?

4. Evaluation Plan (15 Points)

a. Does the application include a reasonable detailed plan for monitoring the implementation of the activities and evaluating the extent to which the proposed activities strengthen local and national capacity for malaria prevention and control?

b. Does the monitoring and evaluation plan build on existing monitoring and evaluation systems in the project area? Will it be able to demonstrate progress towards the objectives and numerical targets of the President's Malaria Initiative?

5. Budget (Not Scored)

Is the budget detailed, clear, justified, and does it describe in-kind or other project support? Is it consistent with the proposed program activities and the President's Malaria Initiative?

V.2. Review and Selection Process

The Procurement and Grants Office (PGO) will review applications for completeness, staff, and HHS/CDC/NCID will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. We will notify applicants that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above. The objective review panel will be composed of HHS/CDC employees outside of the funding division.

HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

Anticipated Award Date: September 15, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS. An authorized Grants Management Officer will sign the NoA and mail it to the recipient fiscal officer identified in the application. Unsuccessful applicants will receive notification by mail of the results of the application review.

VI.2. Administrative and National Policy Requirements

Successful applicants must comply with the administrative requirements outlined in 45 CFR Part 74 and Part 92 as appropriate. The following additional requirements apply to this project:

AR–7 Executive Order 12372
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status
AR–23 States and Faith-Based Organizations

Applicants may find additional information on these requirements on the HHS/CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

Applicants must include an additional Certifications form from the PHS5161–1 application in the Grants.gov electronic submission only. Applicants should refer to *http://www.cdc.gov/od/pgo/funding/PHS5161-1-Certificates.pdf.* Once applicants have filled out the form, they should attach it to the Grants.gov submission as Other Attachments Form.

VI.3. Reporting Requirements

The applicant must provide HHS/CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as the application for continuation, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness, including progress against the specific numerical targets of the President's Malaria Initiative.

f. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final performance reports, no more than 90 days after the end of the project period.

The grantee must mail these reports to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

HHS encourages inquiries concerning this announcement.

For general questions, please contact the following office: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, please contact the following: Christi Murray, Project Officer, National Center

for Infectious Diseases, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, 4770 Buford Highway, Mailstop F–22, Atlanta, GA 300341. Telephone: 770–488–3601. E-mail: *cxm6@cdc.gov*.

For financial, grants management, or budget assistance, please contact the following: Jeff Napier, Grants Management Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–2614. E-mail: *jln1@cdc.gov*.

VIII. Other Information

Other HHS funding opportunity announcements can be found on the HHS/CDC web site, Internet address: *http://www.cdc.gov* (Click on "Funding," then "Grants and Cooperative Agreements"), and on the HHS Office of Global Health Affairs Web site, Internet address: *http://www.globalhealth.gov* (Click on "What's new," then "Funding Opportunities.").

Dated: July 28, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05–15271 Filed 8–2–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0290]

Agency Information Collection Activities; Proposed Collection; Comment Request; Importer's Entry Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection provisions for the Importer's Entry Notice.

DATES: Submit written or electronic comments on the collection of information by October 3, 2005.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, rm. 1061, 5630 Fishers Lane, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Importer's Entry Notice (OMB Control Number 0910–0046)—Extension

Section 801 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381) charges FDA with the following responsibilities: (1) Ensuring that foreign-origin FDA-regulated foods, drugs, cosmetics, medical devices, and radiological health products offered for import into the United States meet the same requirements of the act as do domestic products; and (2) preventing shipments from entering the country if they are not in compliance.

The information collected by FDA consists of the following: (1) Product code, an alpha-numeric series of characters that identifies each product FDA regulates; (2) FDA country of origin, the country where the FDA-registered or FDA-responsible firm is located; (3) FDA manufacturer, the party who manufactured, grew, assembled, or otherwise processed the goods (if more than one, the last party who substantially transformed the product); (4) shipper, the party responsible for packing, consolidating, or arranging the shipment of goods to their final destinations; (5) quantity and value of the shipment; and (6) if appropriate, affirmation of compliance, a code that conveys specific FDA information, such as registration number, foreign government certification, etc. This information is collected electronically by the entry filer via the U.S. Customs Service's Automated Commercial System at he same time he/she files an entry for import with the U.S. Custom Service. FDA uses this information to make admissibility decisions about FDA-regulated products offered for import into the United States.

The annual reporting burden is derived from the basic processes and procedures used in fiscal year (FY) 1995. The total number of entries submitted to the automated system in FY 2004 was 6,626,827. The total number of entries less the disclaimer entries will represent the total FDA products entered into the automated system. A total of 53 percent of all entries entered into the automated system were entries dealing with FDA-regulated products. The number of respondents is a count of filers who submit entry data for foreign-origin FDA-regulated products. The estimated reporting burden is based on information obtained by FDA contacting some potential respondents. Disclaimer entries are not FDA commodities.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Section of the Act	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
801	3,406	1,089	3,709,134	.14	519,279

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 27, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–15371 Filed 8–2–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0564]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Temporary Marketing Permit Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of July 26, 2005 (70 FR 43159). The document announced Office of Management Budget approval for State petitions for exemption from preemption. The document was published with an incorrect title and an incorrect docket number. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In FR Doc. 05–14697, appearing on page 43159 in the **Federal Register** of Tuesday, July 26, 2005, the following corrections are made:

1. On page 43159, in the third column, in the heading of the document, "[Docket No. 2004N–0565]" is corrected to read "[Docket No. 2004N–0564]".

2. On page 43159, in the third column, in the heading of the document, "Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; State Petitions for Exemption From Preemption" is corrected to read "Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Temporary Marketing Permit Applications".

3. On page 43159, in the third column, in the **SUMMARY** section of the document, beginning in the fourth line, "State Petitions for Exemption From Preemption" is corrected to read "Temporary Marketing Permit Applications".

Dated: July 27, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–15369 Filed 8–2–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0299]

Authorization of Emergency Use of Anthrax Vaccine Adsorbed for Prevention of Inhalation Anthrax by Individuals at Heightened Risk of Exposure Due to Attack With Anthrax; Extension; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an extension of the Emergency Use Authorization (EUA) (the Authorization) for Anthrax Vaccine Adsorbed (AVA), issued on January 27, 2005, for prevention of inhalation anthrax for individuals between 18 and 65 years of age who are deemed by the Department of Defense (DoD) to be at heightened risk of exposure due to attack with anthrax. The FDA Commissioner is extending the term of this Authorization on the request of DoD.

DATES: The extension of the Authorization was effective as of July 22, 2005.

ADDRESSES: Submit written requests for single copies of the extension of the Authorization to the Office of Counterterrorism Policy and Planning (HF–29), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the Authorization may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorization.

FOR FURTHER INFORMATION CONTACT: Boris D. Lushniak, Office of Counterterrorism Policy and Planning (HF–29), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4067.

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360bbb–3), as amended by the Project BioShield Act of 2004 (Public Law 108–276), allows the FDA Commissioner, by delegation from the Secretary of Health and Human Services (the Secretary), to authorize the use of an unapproved medical product or an unapproved use of an approved medical product during a declared emergency involving a heightened risk of attack on the public or U.S. military forces. As a result of an October 27, 2004, order by the U.S. District Court for the District of Columbia, the use of AVA by DoD for the prevention of inhalation anthrax is deemed an unapproved use of an approved product for purposes of section 564(a)(2) of the act.

On December 10, 2004, under section 564(b)(1)(B) of the act, the Deputy Secretary of Defense determined that there is a significant potential for a military emergency involving a heightened risk to U.S. military forces of attack with anthrax. On December 22, 2004, DoD requested an EUA for AVA for protection against inhalation anthrax. DoD asked for a 6-month authorization and indicated that, if necessary, it might ask for an extension of the duration of the EUA.

Under section 564(b) of the act, and on the basis of the Deputy Secretary of Defense's determination of a significant potential for a military emergency, on January 14, 2005, the Secretary of Health and Human Services, Tommy G. Thompson, declared an emergency justifying the authorization of the emergency use of AVA. Notice of the determination of the Deputy Secretary of Defense and the declaration of the Secretary of Health and Human Services

was published in the **Federal Register** of February 2, 2005 (70 FR 5450).

On January 27, 2005, after consulting with the National Institutes of Health (NIH) and the Centers for Disease Control and Prevention (CDC), and after concluding that the criteria for issuance of an authorization under section 564(c) of the act were met, the FDA Commissioner authorized the emergency use of AVA for prevention of inhalation anthrax for individuals between 18 and 65 years of age who are deemed by DoD to be at heightened risk of exposure due to attack with anthrax. As requested, the Authorization was effective for 6 months from the date of issuance on January 27, 2005. Notice of the Authorization was published in the **Federal Register** of February 2, 2005 (70 FR 5452).

II. Request for Extension

On July 11, 2005, DoD requested an extension of the Authorization and stated that the information presented in its December 22, 2004, request for an EUA for AVA is still accurate.

III. Electronic Access

An electronic version of this notice is available on the Internet at *http://www.fda.gov/ohrms/dockets/default.htm.*

IV. Extension of the Authorization

Having confirmed that the declaration of emergency issued under section 564(b)(1) of the act currently remains in effect and having concluded that the criteria for issuance of the Authorization under section 564(c) of the act continue to be met, the FDA Commissioner, on July 22, 2005, granted DoD's request for an extension of the Authorization for the emergency use of AVA for prevention of inhalation anthrax. This EUA will be effective for the duration of the declaration of emergency issued on January 14, 2005.

The letter granting the extension follows:

William Winkenwerder, Jr., M.D.
Assistant Secretary of Defense for Health Affairs
The Pentagon
Washington, D.C. 20301–1200
Re: Request for Extension of the Emergency Use Authorization for the Armed Forces Pending Re-determination on the Licensed Use of Anthrax Vaccine Adsorbed for Protection Against Inhalational Anthrax
Dear Dr. Winkenwerder:

This is in response to your letter of July 11, 2005, requesting an extension of the above-referenced Emergency Use Authorization (EUA), which was issued on January 27, 2005,[1] pursuant to section 564 of the Federal Food, Drug, and Cosmetic Act (the Act), 21 U.S.C. § 360bbb–3.[2] You requested an extension of the EUA "for such time as necessary pending the upcoming FDA re-determination of the licensed use of AVA for protection against inhalational anthrax."

The declaration of emergency[3] justifying the EUA for AVA remains in effect. The Secretary of Health and Human Services, Tommy G. Thompson, issued this declaration of emergency on January 14, 2005.[4] Pursuant to section 564(b)(2)(A)(ii) of the Act, the declaration of emergency will terminate by expiration on January 14, 2006, which is the end of the one year period that began on the date that the declaration was made.[5]

Having confirmed that the declaration of emergency, issued under section 564(b)(1) of the Act, currently remains in effect and having concluded that the criteria for issuance of this authorization under section 564(c) of the Act continue to be met, I am granting your request to extend the authorization for the emergency use of AVA for prevention of inhalation anthrax.[6] The extension of the EUA is for the duration of the existing declaration of emergency,[7] subject to the conditions established herein. These conditions shall be the same as those that currently apply to the EUA for AVA, issued on January 27, 2005.

I. Background

AVA was first licensed by the National Institutes of Health (NIH) in November 1970.[8] Upon the delegation of vaccine regulation to FDA in 1972, FDA undertook a comprehensive review of the safety, effectiveness, and labeling of all vaccines licensed prior to July 1, 1972.[9] Under this review, independent advisory panels evaluated the safety and effectiveness data of vaccines to ensure that they met appropriate standards. The advisory panel that reviewed AVA concluded that it is safe, effective, and not misbranded, and FDA issued a proposal to adopt the panel's recommendation (the Bacterial Vaccines and Toxoids Efficacy Review).[10]

In March 2003, six plaintiffs, known as John and Jane Doe 1 through 6, filed suit in the United States District Court for the District of Columbia (the Court) seeking the Court to enjoin the Anthrax Vaccine Immunization Program (AVIP) of the Department of Defense (DoD) and to declare AVA an investigational drug when used for protection against inhalation anthrax. On December 22, 2003, the Court issued a preliminary injunction barring inoculations under the AVIP in the absence of informed consent or a Presidential waiver of the informed consent requirement.

In the **Federal Register** of January 5, 2004,[11] FDA published a final rule and final order (January 2004 final rule and final order) in response to the report and recommendations of the independent advisory panel that reviewed the safety and effectiveness data pertaining to AVA. Following FDA's issuance of the final rule and final order, the Court lifted the preliminary injunction on January 7, 2004, except as it applied to the six Doe plaintiffs.

On October 27, 2004, the Court issued a memorandum opinion vacating and remanding the January 2004 final rule and final order to FDA for reconsideration, following an appropriate notice and comment period. The Court also enjoined operation of the AVIP for inoculation using AVA to prevent inhalation anthrax. On December 29, 2004, FDA published a proposed rule and proposed order reopening the comment period on the Bacterial Vaccine and Toxoids Efficacy Review for 90 days.[12] As a result of the Court's order of October 27, 2004, the use of AVA by DoD for the prevention of inhalation anthrax under the AVIP is deemed an unapproved use of an approved product for purposes of section 564(a)(2) of the Act. But for the Court's order, FDA would not consider the use of AVA for inhalation anthrax to be an unapproved use.

On December 10, 2004, pursuant to section 564(b)(1)(B) of the Act, the Deputy Secretary of Defense determined that there is a significant potential for a military emergency involving a heightened risk to U.S. military forces of attack with anthrax.[13] On December 22, 2005, you requested an EUA to use AVA for protection against inhalation anthrax. You requested an authorization for a period of six months, pending completion of FDA's Bacterial Vaccine and Toxoids Efficacy Review.[14] You also indicated that, if necessary, you might ask for an extension of the duration of the EUA.

On January 14, 2005, pursuant to section 564(b) of the Act, and on the basis of the Deputy Secretary of Defense's determination

[1] Notice of the issuance of the EUA for AVA was published in the **Federal Register** on February 2, 2005 (70 Fed. Reg. 5452).

[2] The Secretary of Health and Human Services (HHS) has delegated the authority to issue an EUA under section 564 of the Act to the Commissioner of Food and Drugs.

[3] Notice of the HHS Secretary's declaration of emergency and of the Deputy Secretary of Defense's determination of military emergency under section 564(b)(1) of the Act was published in the **Federal Register** on February 2, 2005 (70 Fed. Reg. 5450).

[4] The declaration of emergency was not issued on January 10, 2005, as is stated in your letter of July 11, 2005.

[5] It is possible, under section 564(b)(2) of the Act, that the declaration of emergency may terminate or be renewed prior to its expiration.

[6] The terms "inhalation anthrax" and "inhalational anthrax" are used interchangeably.

[7] The EUA may be revoked, pursuant to section 564(g) of the Act, prior to the termination of the declaration of emergency if the criteria for issuance of the authorization are no longer met or other circumstances make revocation appropriate to protect the public health or safety.

[8] Biological products are licensed under section 351 of the Public Health Service Act, 42 U.S.C. § 262.

[9] *See* 21 C.F.R. § 601.25.

[10] Biological Products; Bacterial Vaccines and Toxoids; Implementation of Efficacy Review, 50 Fed. Reg. 51002 (Dec. 13, 1985).

[11] Biological Products; Bacterial Vaccines and Toxoids; Implementation of Efficacy Review, 69 Fed. Reg. 255 (Jan. 5, 2004).

[12] Biological Products; Bacterial Vaccines and Toxoids; Implementation of Efficacy Review; Proposed Rule and Proposed Order, 69 Fed. Reg. 78281 (Dec. 29, 2004).

[13] *See supra* note 3.

[14] *See supra* note 12.

of a significant potential for a military emergency, the Secretary of Health and Human Services, Tommy G. Thompson, declared an emergency justifying the authorization of the emergency use of AVA.[15] On January 27, 2005, after consulting with the NIH and the Centers for Disease Control and Prevention (CDC), and after concluding that the criteria for issuance of an authorization under section 564(c) of the Act were met, I authorized the emergency use of AVA for prevention of inhalation anthrax, subject to conditions of authorization set out in the authorization.[16]

II. Criteria for Issuance of Authorization

The January 14, 2005, declaration of emergency by the Secretary of Health and Human Services remains in effect. After consultation with NIH and CDC, I have concluded that the use of AVA to prevent inhalation anthrax continues to meet the criteria for issuance of an authorization under section 564(c) of the Act, because I have concluded that:

(1) anthrax (*Bacillus anthracis*) can cause a serious or life-threatening disease or condition;

(2) based on the totality of scientific evidence available to FDA, AVA is effective in preventing inhalation anthrax; therefore, it is reasonable to believe that AVA may be effective in preventing inhalation anthrax pursuant to section 564(c)(2)(A) of the Act; and that the known and potential benefits of AVA, when used to prevent inhalation anthrax, outweigh the known and potential risks of the product; and

(3) there is no adequate, approved, and available alternative to AVA for preventing inhalation anthrax.[17]

Specifically, I have concluded, pursuant to section 564(c)(1) of the Act, that anthrax (*Bacillus anthracis*) can cause inhalation anthrax, which is a serious or life-threatening disease or condition. FDA incorporates by reference the information concerning inhalation anthrax contained in Section II, p. 3, of the authorization issued on January 27, 2005. 70 Fed. Reg. 5454 (February 2, 2005).

I have concluded that, based on the totality of scientific evidence available to FDA,[18] including data from at least one well-controlled field study, AVA is effective in preventing inhalation anthrax; therefore, it is reasonable to believe that AVA may be effective in preventing inhalation anthrax pursuant to section 564(c)(2)(A) of the Act. In addition, pursuant to section 564(c)(2)(B) of the Act, I have concluded that it is reasonable to believe that the known and potential benefits of AVA outweigh the known and potential risks of the product. The available scientific evidence that supports these conclusions includes data and information described in Section II of the authorization issued on January 27, 2005,[19] which is hereby incorporated by reference.

I have concluded, pursuant to section 564(c)(3) of the Act, that there is no adequate, approved, and available alternative to AVA for preventing inhalation anthrax. No other drugs are approved for the prevention (pre-exposure) of anthrax infection. Antibiotics are effective against the germinated form of *Bacillus anthracis*, but are not effective against the spore form of the organism. Although antibiotics are available to treat anthrax infection, their effectiveness is limited, in part due to delays from the time of exposure to the initiation of treatment. Delays in the treatment of exposed persons are possible, considering the potential scenarios of exposure, and the difficulties that exist in identifying anthrax as the etiology of illness.

III. Scope of Authorization

Pursuant to section 564(d)(1) of the Act, this authorization continues to be limited to the use of AVA for the prevention of inhalation anthrax for individuals between 18 and 65 years of age who are deemed by DoD to be at heightened risk of exposure due to attack with anthrax.

I have concluded, pursuant to section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of AVA, when used to prevent inhalation anthrax, outweigh the known and potential risks of the product for the population described above.

I have concluded, pursuant to section 564(d)(3) of the Act, based on the totality of available scientific evidence reviewed by FDA,[20] that AVA is effective in preventing inhalation anthrax, and therefore, it is reasonable to believe that AVA may be effective in preventing inhalation anthrax pursuant to section 564(c)(2)(A) of the Act.

Accordingly, I have concluded that AVA, when used for preventing inhalation anthrax, meets the standards set forth in section 564(c) of the Act.

FDA understands that DoD recognizes that the current AVA license describes an immunization schedule consisting of six doses. Certain details of DoD's December 22, 2004, EUA request are not specifically addressed in the package insert, however. DoD notes that for some personnel, the vaccination schedule was unavoidably disrupted, and DoD intends for such personnel to resume vaccinations at the point in the dosing schedule where they left off, for individuals eligible under the EUA. While this practice is not addressed in the package insert, the practice is consistent with the general recommendations of the Advisory Committee on Immunization Practices. When it is impracticable to provide a dose on a specific date recommended by the schedule, DoD intends to provide the vaccine dose as soon as practicable thereafter. Based on the totality of the scientific evidence available to FDA, it is reasonable to believe that such administration of AVA may be effective in preventing inhalation anthrax. Furthermore, the known and potential benefits of AVA, when used to prevent inhalation anthrax in the manner described above, outweigh the known and potential risks of the product. DoD also acknowledges that during the course of the EUA, the risk status of individuals initially eligible for vaccination under the EUA may change (e.g., changes in deployment or other circumstances). In such cases, DoD must determine whether such individuals continue to be at heightened risk of exposure due to attack with anthrax, and therefore, whether they continue to be eligible for vaccination with AVA under this EUA.

The use of AVA under this EUA must be consistent with and not contrary to the conditions of authorization set forth below. Subject to the foregoing limitations and under the circumstances set forth in the Deputy Secretary of Defense's determination of military emergency, AVA may be administered for the prevention of inhalation anthrax to individuals determined by DoD to be at heightened risk of exposure due to attack with anthrax.

IV. Conditions of Authorization

Pursuant to section 564 of the Act, I am establishing the following conditions on this authorization:

Conditions Designed to Ensure that Health Care Providers or Authorized Dispensers Administering the Product Are Informed. DoD will conduct an educational and information program under appropriate conditions designed to ensure that health care providers or authorized dispensers administering AVA under this authorization are informed of the following:

(1) that FDA has authorized the emergency use of AVA for preventing inhalation anthrax;

(2) that significant known and potential benefits and risks exist with the emergency use of AVA, and that the extent to which such benefits and risks exist is unknown; and

(3) that alternatives to AVA are available, and that there are benefits and risks.

With respect to condition (2), above, relating to provision of the significant known and potential benefits and risks of the emergency use of AVA, DoD will ensure that the manufacturer's package insert is available to all health care providers or authorized dispensers who administer AVA. DoD will also provide to all such health care providers or authorized dispensers the same information provided to potential vaccine recipients described immediately below.

Conditions Designed to Ensure that Individuals to Whom the Product is Administered Are Informed. DoD will conduct an educational and information program under appropriate conditions designed to ensure that individuals to whom AVA is administered are informed of:

(1) the fact that FDA has authorized the emergency use of AVA for preventing inhalation anthrax;

(2) the significant known and potential benefits and risks of the emergency use of AVA, and of the extent to which such benefits and risks are unknown; and

(3) the option to accept or refuse administration of AVA; of the consequences,

[15] *See supra* note 3.

[16] *See supra* note 1.

[17] No other criteria of issuance have been prescribed by regulation under section 564(c)(4) of the Act.

[18] The available scientific evidence includes FDA's review of adverse event reports concerning AVA submitted to the Vaccine Adverse Event Reporting System

[19] 70 Fed. Reg. 5454 (February 2, 2005).

[20] The scientific evidence available to the Agency includes studies referred to in Section II above.

if any, of refusing administration of the product; and of the alternatives to AVA that are available, and of their benefits and risks.

With respect to condition (3), above, relating to the option to accept or refuse administration of AVA, the AVIP will be revised to give personnel the option to refuse vaccination. Individuals who refuse anthrax vaccination will not be punished. Refusal may not be grounds for any disciplinary action under the Uniform Code of Military Justice. Refusal may not be grounds for any adverse personnel action. Nor would either military or civilian personnel be considered non-deployable or processed for separation based on refusal of anthrax vaccination. There may be no penalty or loss of entitlement for refusing anthrax vaccination.

This information shall read in the trifold brochure provided to potential vaccine recipients as follows:

You may refuse anthrax vaccination under the EUA, and you will not be punished. No disciplinary action or adverse personnel action will be taken. You will not be processed for separation, and you will still be deployable. There will be no penalty or loss of entitlement for refusing anthrax vaccination.

The trifold brochure provided to potential vaccine recipients also shall state the following:

On October 27, 2004, the U.S. District Court for the District of Columbia issued an Order declaring unlawful and prohibiting mandatory anthrax vaccinations to protect against inhalation anthrax, pending further FDA action. The Court's injunction means you have the right to refuse to take the vaccine without fear of retaliation. A copy of the Court's Order and Opinion is available at *www.anthrax.mil* or from the vaccination clinic.

Other information, as outlined in your request of December 22, 2004, is not a condition of this EUA, but may be provided, including: That unvaccinated people are more vulnerable to lethal anthrax infection; morbidity or mortality due to anthrax could threaten the lives of others in the unit who depend on each other; and anthrax infections could jeopardize the success of the mission. Individuals subject to the vaccination program may be informed that their military and civilian leaders strongly recommend anthrax vaccination, but such individuals may not be forced to be vaccinated. In addition, the January 27, 2005, authorization notes that the issue of mandatory vaccination will be reconsidered by DoD after FDA completes its administrative process.[21]

As a condition of this authorization, DoD will provide to each potential AVA recipient, prior to vaccination, information that meets the requirements set forth above. Based on a review of DoD's trifold brochure, dated April 5, 2005,[22] I have concluded that this brochure continues to meet such requirements. DoD will obtain FDA's prior approval of any revision to the trifold brochure.

Conditions for the Monitoring and Reporting of Adverse Events Associated with the Emergency Use of AVA. DoD will, as a condition of this authorization, actively encourage health care providers or authorized dispensers and vaccine recipients to report adverse events to the Vaccine Adverse Events Reporting System (VAERS). In addition, we understand that DoD will conduct systematic monitoring of the health of recipients of AVA, e.g., cohort studies using the Defense Medical Surveillance System databases of active-duty military personnel; such monitoring is not a condition of this authorization.

Conditions Concerning Recordkeeping and Reporting, Including Records Access by FDA. DoD will, as a condition of authorization, record in individual medical records, including electronic immunization tracking systems, the names of individual recipients of AVA and the dates of vaccination. DoD will provide FDA access to such records.

Advertising and Promotional Descriptive Printed Matter. FDA has the authority, under section 564(e)(4) of the Act, to establish conditions on advertisements and other promotional descriptive printed matter that relate to the emergency use of AVA under this authorization. As a condition of this EUA, all advertising and promotional descriptive printed matter relating to the use of AVA shall be consistent with the trifold as well as the standards and requirements set forth in this authorization.

V. **Duration of Authorization**

This EUA will be effective for the duration of the declaration of emergency issued by Secretary of Health and Human Services, Tommy G. Thompson, on January 14, 2005. The EUA will cease to be effective when the declaration of emergency is terminated under section 564(b)(2) of the Act or the EUA is revoked under section 564(g) of the Act.

Thank you in advance for your continued cooperation in implementing this EUA.

Sincerely,

Lester M. Crawford, D.V.M., Ph.D.

Commissioner of Food and Drugs

Dated: July 27, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–15233 Filed 7–28–05; 2:51 pm]

BILLING CODE 4160–01–S

[21] *See* Section I of this authorization.

[22] FDA approved a revision to the trifold brochure on February 15, 2005, and on April 6, 2005.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0355]

Critical Path Initiative; Developing Prevention Therapies; Planning of Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Request for Comments.

SUMMARY: The Food and Drug Administration (FDA) is planning a 2-day workshop to explore approaches and potential obstacles to developing drugs, disease biomarkers, medical devices, and vaccines to prevent or reduce the risk of illness. The agency plans to hold the workshop as part of its Critical Path Initiative. Speakers at the workshop will be asked to discuss the challenges in developing chemoprevention therapies (i.e., prevention therapies other than lifestyle changes, dietary supplements, or dietary choices that could reduce the risk of certain illnesses such as cancer, diabetes, and obesity). Because prevention of illness is widely recognized to be an important goal and the possible scope of this workshop is very broad, FDA welcomes comments related to the scope of this workshop.

DATES: Submit written or electronic comments by November 1, 2005. General comments are welcome at any time.

ADDRESSES: The FDA invites you to submit written comments on the proposed scope of the workshop. Please submit comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Nancy Stanisic, Center for Drug Evaluation and Research (HFD–05), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852, 301–827–1660, FAX: 301–443–9718, e-mail: *Stanisicn@cder.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The development of methods to prevent disease has been the single, most effective advance in healthcare in the past century, particularly in developed countries. The widespread ravages of smallpox, infantile diarrhea, plague, cholera, typhoid, and polio are gone from the United States.

The challenge that lies ahead is to prevent the diseases that still ravage our population, including: Heart disease, cancer, diabetes, Alzheimer's disease, and others. In recent decades, substantial effort has been made in the chemoprevention or early intervention for some of the top killers in the United States, notably cardiovascular disease and some cancers. Examples of effective preventive interventions include the aggressive treatment of hypertension to reduce the risk of stroke, statins to lower cholesterol and decrease the risk of a myocardial infarction, the use of low-dose aspirin and beta blockers to prevent death in patients after a myocardial infarction, tamoxifen to reduce the risk of recurrent breast

cancer, aggressive control of blood glucose to reduce the long-term consequences of diabetes, and flu and pneumonia vaccination programs to reduce morbidity and mortality.

Significant advances have also been made in the early identification of healthy individuals at risk of developing disease. Examples of predictors include genetic markers, such as BRCA 1 and 2 for malignancy; pap tests for identification of patients at risk for cervical cancer; genetic alpha–1–antitrypsin deficiency for lung disease; colonoscopy to identify polyps that predict an increased risk of colon cancer; and family history, obesity, and ethnicity for type II diabetes mellitus. Ongoing work in genomics and proteomics promises to identify additional markers to predict specific health risks and potential targets for intervention.

Although markers have been identified, candidate therapies require prospective testing in clinical trials. The design and conduct of chemoprevention trials offer substantial challenges. For example, in the Women's Health Initiative, we learned that the epidemiologic study results of the use of conjugated estrogens to prevent heart disease could not be replicated in the randomized, double-blind clinical trial setting. The Celebrex trial gives another example that prevention studies, in this case polyp prevention trials, must be of sufficient duration to ensure that the risks of long-term use of drugs are captured. These risks may be unexpected and the Data Safety Monitoring Boards need to pay careful attention as signals arise.

II. FDA Critical Path

On March 16, 2004, FDA published its Critical Path report,[1] aimed at identifying potential problems and solutions to ensure that breakthroughs in medical science can be efficiently translated to safe, effective, and available medical products. In the report, FDA underscored the importance of FDA collaboration with academic researchers, product developers, patient groups, and other stakeholders to make the critical path more predictable and less costly. This workshop and any activities that result from the workshop are part of that broad effort.

III. Topics Related to Planning the Public Workshop

Because the range of potential topics that could be discussed at such a workshop is so wide, we are seeking the public's input on what key topics should be addressed at this initial meeting.

Although the prefix "chemo-" is often used in relation to treatments for cancer, we are using the term "chemoprevention" in this notice to describe prevention therapies other than lifestyle changes, dietary supplements, or dietary choices that could reduce the risk of certain illnesses. We welcome comments on the use of the term "chemoprevention."

What follows is a list of topics and questions we have identified for possible discussion at the workshop. We welcome comment on whether these topics and questions are appropriate for discussion at a workshop on chemoprevention therapies? Are there other related issues that should be discussed at the workshop? What are they? Currently, we envision a 2-day workshop, with the first day devoted to identifying hurdles and challenges in designing and implementing chemoprevention studies from a broad perspective. The second day may consist of breakout sessions devoted to specific diseases or disease categories. We welcome input on the format for the 2-day workshop.

Does the following list of questions reflect the kinds of questions we should try to answer at a 2-day workshop on chemoprevention therapies? What questions would you be interested in having answered? In addition to the following topics, what other topics should be included in the scope of the meeting?

1. What have our successes been so far, and what lessons have we learned from past experience with regard to the development of the following preventive therapies:
   a. Vaccines
   b. Cardiovascular disease
   c. Cancer
   i Breast
   ii Colon polyps
2. Which diseases are the most promising with regard to development of chemoprevention therapies?
3. What options are available now for identifying populations at risk for those diseases?
   a. Screening
   b. Genomics
   c. Other
4. What techniques are available for assessing the risks and benefits of new therapies in prevention?
5. How much risk from the candidate therapy is acceptable?
6. Are there specific regulatory concerns in developing chemopreventions (e.g., Long trials, safety and efficacy issues, registries)? And what steps can FDA take to facilitate development in this area, such as the following?
   a. Mechanisms to streamline the regulatory process
   b. Mechanisms to facilitate the scientific process and clinical trials
   i. To better and more efficiently answer questions regarding product efficacy
   ii. To better and more efficiently answer questions regarding product safety
7. What are some of the obstacles facing manufacturers who wish to develop new or existing compounds for chemoprevention? For example, are there specific industry perspectives that need to be considered?
8. What patient perspectives are important to consider?

We have proposed the following topics and questions for discussion on the second day during breakout sessions. Are these appropriate? What other issues would you be interested in discussing at these breakout sessions?

1. Cancer prevention issues
   a. What characteristics of particular cancers make prevention promising?
   b. What characteristics from epidemiologic, early trials, or other models make particular drugs promising?
   c. What trial design issues should be addressed (e.g., endpoints, surrogates, population, adverse event data collection)?
   d. Are there obstacles to marketing prevention drugs?
2. Cardiovascular prevention issues
   a. What characteristics of cardiovascular disease make prevention promising?
   b. What characteristics from epidemiologic, early trials, or other models make particular drugs promising?
   c. What trial design issues should be addressed (e.g., endpoints, surrogates, population, adverse event data collection)?
   d. Are there obstacles to marketing prevention drugs?
3. Cerebrovascular prevention issues
   a. What characteristics of cerebrovascular disease make prevention promising?
   b. What characteristics from epidemiologic, early trials, or other models make particular drugs promising?
   c. What trial design issues should be addressed (e.g., endpoints, surrogates, population, adverse event data collection)?
   d. Are there obstacles to marketing prevention drugs?
4. What other conditions should be discussed?

[1] For the complete report, see *http://www.fda.gov/oc/initiatives/criticalpath.*

IV. Submission of Comments

Interested persons may submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**). Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. You can also view received comments on the Internet at *http://www.fda.gov/ohrms/dockets/dockets/dockets.htm*

Dated: July 28, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–15282 Filed 8–2–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

National Mammography Quality Assurance Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: National Mammography Quality Assurance Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 26 and 27, 2005, from 9 a.m. to 6 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Charles Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512397. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss the following issues:

(1) Regulatory and nonregulatory mechanisms to enhance mammography quality while reducing the regulatory and inspection burden on facilities;

(2) Recommendations made by the Institute of Medicine regarding the current Mammography Quality Standards Act (MQSA) program, interventional mammography, and nonmammographic breast imaging procedures; and

(3) All relevant guidance documents issued since the last meeting.

The committee will also receive updates on recently approved alternative standards, voluntary stereotactic accreditation programs, and the radiological health program. MQSA regulations and guidance documents are available to the public on the Internet at *http://www.fda.gov/cdrh/mammography*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 5, 2005. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10:30 a.m. on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 5, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shirley Meeks at 240–276–0450, ext. 105, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 27, 2005.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 05–15373 Filed 8–2–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-Day Proposed Information Collection: Indian Health Service Loan Repayment Program

SUMMARY: The Department of Health and Human Services, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested date can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Indian Health Service (IHS) is providing a 60-day advance opportunity for public comment on a proposed extension of current information collection activity to be submitted to the Office of Management and Budget for review.

Proposed Collection: Title: 0917–0014, "Indian Health Service Loan Repayment Program." *Type of Information Collection Request:* Extension, without revision, of currently approved information collection, 0917–0014, "Indian Health Service Loan Repayment Program." *Form Number:* None. *Forms:* The IHS Loan Repayment Program Information Booklet contains the instructions and the application formats. *Need and Use of Information Collection:* The IHS Loan Repayment Program (LRP) identifies health professionals with pre-existing financial obligations for education expenses that meet program criteria and who are qualified and willing to serve at, often remote, IHS health care facilities. Under the program, eligible health professionals sign a contract under which the IHS agrees to repay part or all of their indebtedness for professional training education. In exchange, the health professionals agree to serve for a specified period of time in IHS health care facilities. Eligible health professionals that wish to apply must submit an application to participate in the program. The application requests personal, demographic and educational training information, including information on the educational loans of

the individual for which repayment is being requested (i.e., date, amount, account number, purpose of each loan, interest rate, the current balance, etc.). The data collected is needed and used to evaluate applicant eligibility; rank and prioritize applicants by speciality; assign applicants to IHS health care facilities; determine payment amounts and schedules for paying the lending institutions; and to provide data and statistics for program management review and analysis. *Affected Public:* Individuals and households. *Type of Respondents:* Individuals. The table below provides the estimated burden hours for this information collection:

ESTIMATED BURDEN HOURS

Data collection instrument	Estimated number of respondents	Responses per respondent	Average burden hour per response *	Total annual burden hrs.
Section I	425	1	0.25 (15 mins)	106.25
Section II	425	1	0.50 (30 mins)	212.5
Section III	425	4	0.25 (15 mins)	425
Contract	425	1	0.334 (20 mins)	141.95
Affidavit	425	1	0.167 (10 mins)	70.97
Lender Certificate	1700	1	0.25 (15 mins)	425.0

* For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests For Further Information: Send your written comments and requests for more information on the proposed collection or requests to obtain a copy of the data collection instrument(s) and instructions to: Mrs. Chris Rouleau, IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852–1601, call non-toll free (301) 443–5938, send via facsimile to (301) 443–2316, or send your e-mail requests, comments, and return address to: *crouleau@hqe.ihs.gov.*

Comment Due Date: Your comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: July 28, 2005.

Charles W. Grim,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 05–15279 Filed 8–2–05; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-Day Proposed Information Collection: Final Rule To Implement Title V of the Tribal Self-Governance Amendments of 2000

SUMMARY: The Department of Health and Human Services (DHHS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Indian Health Service (IHS) is providing a 60-day advance opportunity for public comment on a proposed extension of current information collection activity to be submitted to the Office of Management and Budget for review.

Proposed Collection: Title: 0917–0026, "Final Rule to Implement Title V of the Tribal Self-Governance Amendments of 2000". *Type of Information Collection Request:* Extension, without revision, of currently approved information collection, 0917–0026, "Final Rule to Implement Title V of the Tribal Self-Governance Amendments of 2000". *Form Number:* None. *Forms:* None. *Need and Use of Information Collection:* The "Tribal Self-Governance Amendments of 2000", Pub. L. 106–206 (the act), repeals Title III of the Indian Self-Determination Act, Pub. L. 93–638, as amended, (ISDA) and enacts Title V that established a permanent Self-Governance program within DHHS. Thus, Indian and Alaska Native Tribes are now able to compact for the operation, control, and redesign of various IHS activities on a permanent basis. The final rule has been negotiated among representatives of Self-Governance and non-Self-Governance Tribes and the DHHS. The final rule included provision governing how DHHS/IHS carries out its responsibility to Indian Tribes under the Act and how Indian Tribes carry out their responsibilities under the Act. As required by section 517(b) of the Act, the Department has developed this final rule with active Tribal participation of Indian Tribes, inter-Tribal consortia, Tribal organizations and individual Tribal members, using the guidance of the Negotiated Rulemaking Act, 5 U.S.C. 561 *et seq.* Health status reporting requirements will be negotiated on an individual Tribal basis and included in individual compacts of funding agreements. Response to the data collection continues to be voluntary; however, submission of the data is essential to participation in the Tribal Self-Governance process. Self-Governance Tribes have the option of participating in a voluntary national uniform data collection effort with the IHS. The department is seeking

continued OMB approval of the collection of information identified in the following sections of regulations: subpart C—Selection of Tribes for Participation in Self-Governance, subpart D and E—Compact and Funding Agreement, subpart N—Construction Projects, and Subpart P—Appeals. *Affected Public:* Individual Tribes. *Type of Respondents:* Tribal representatives.

The table below provides the estimated burden hours for this information collection:

TABLE.—ESTIMATED ANNUAL BURDEN HOURS

CFR Section	Est. No. of respondents	Responses per respondent	Avg. burden hour per response	Total annual burden Hrs.
Subpart C—Eligibility criteria	50	1	10.0	500
Subpart D—Self-governance compact and Subpart E—Funding agreement	50	1	34.0	1,700
Subpart N—Construction	30	1	40	1,200
Subpart P—Appeals	8	1	40	320
Total Annual Burden				3,720

There are no Capital Costs, Operating costs and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests for Further Information: Send your written comments and requests for more information on the proposed collection or requests to obtain a copy of the data collection instrument(s) and instructions to: Mrs. Chris Rouleau, IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852–1601, call non-toll free (301) 443–5938, send via facsimile to (301) 443–2316, or send your e-mail requests, comments, and return address to: *crouleau@hqe.ihs.gov.*

Comment Due Date: your comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: July 28, 2005.

Charles W. Grim,

Assistant Surgeon General Director, Indian Health Service.

[FR Doc. 05–15280 Filed 8–2–05; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Training Tomorrow's Scientists: Linking Minorities and Mentors Through the Web

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of Behavioral and Social Sciences Research (OBSSR), the National Institutes of Health (NIH) has submitted to the Office of management and Budget (OMB) a request for review and approval of the information collection listed below. This Proposed information collection was previously published in the **Federal Register** on January 11, 2005, page 1898 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health 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.

Proposed Collection: Title: Training Tomorrow's Scientists: Linking Minorities and Mentors Through the Web. *Type of Information Collection Request:* Revision, OMB control number 0925–0475, Expiration Date 3/31/2005. *Need and Use of Information Collection:* This Web site allows federally-funded researchers supported by any of the 27 Institutes and Centers of the NIH to submit an electronic form describing his or her research areas, as well as interests in mentoring minority students or junior faculty. The researcher's description is posted on the Web site for searching by interested minority applicants. Minority students or junior faculty search the Web site to identify researchers with whom they would like to work. The research projects in the database are located all over the country and involve cutting edge research activities by scientists funded through the Institutes and Centers of the NIH. These research projects range from studies of children to research on older adults, from laboratory research to field research, from social research to a combination of biological and behavioral research. Applicants conduct an electronic search using categories such as research areas of interest, desired geographic location of the researcher, and their level of education. The primary objective of the program is to ensure that, in the coming decades, a concentration of minority researchers will be available to address behavioral and social factors important in improving the public health and eliminating racial disparities. Increasing the number of minority scientists in the U.S. will expand our currently limited knowledge about the epidemiology and treatment of diseases in minority population. *Frequency of Response:* On occasion. *Affected Public:* Individuals or households. *Type of Respondents:* Students, Post-doctorals, Junior Faculty, and Principal Investigators. The annual reporting burden is as follows: *Estimated Number of Respondents:* 400; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 10 minutes; and *Estimated Total Annual Burden Hours Requested:* 148. There is no annualized

cost to respondents. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

ANNUAL BURDEN HOURS FOR RESPONDENTS

Type of respondents	Estimated No. of respondents	Frequency of response	Activity	Average time per response	Estimated annual burden hours
NIH-Funded Behavioral Researchers.	50	1	Peruse Site	.168	8
	20	1	Complete Form	.5	10
High School Students	50	1	Peruse Site	.25	12
	5	1	Complete Form	.74	4
College Students	70	1	Peruse Site	.25	17
	15	1	Complete Form	.668	10
Graduate Students	100	1	Peruse Site	.25	25
	25	1	Complete Form	.5845	15
Post-doctoral Fellows	65	1	Peruse Site	.25	16
	20	1	Complete Form	.5	10
Junior Faculty	65	1	Peruse Site	.25	16
	10	1	Complete Form	.5	5
Total per year	400				148

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility: (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Dana Sampson, Program Analyst, OBSSR, OD, NIH Building 1, Room 256, 1 Center Drive, Bethesda, MD 20892, or call non-toll-free number (301) 402–1146 or E-mail your request, including your address to: *SampsonD@od.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: July 27, 2005.

LaVerne Stringfield,

Acting Executive Officer, Office of the Director, National Institutes of Health.

[FR Doc. 05–15239 Filed 8–2–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Method With Increased Yield for Production of Polysaccharide-Protein Conjugate Vaccines Using Hydrazide Chemistry

Che-Hung Robert Lee and Carl Frasch (FDA).

U.S. Provisional Application No. 60/493,389 filed 06 Aug 2003 (HHS Reference No. E–301–2003/0–US–01);

PCT Application No. PCT/US04/25477 filed 06 Aug 2004 (HHS Reference No. E–301–2003/0–PCT–02);

PCT Application No. PCT/US04/26431 filed 06 Aug 2004 (HHS Reference No. E–301–2003/1–PCT–01).

Licensing Contact: Peter Soukas; 301/435–4646; *soukasp@mail.nih.gov.*

Current methods for synthesis and manufacturing of polysaccharide-protein conjugate vaccines employ conjugation reactions with low efficiency (about twenty percent). This means that up to eighty percent of the added activated polysaccharide (PS) is lost. In addition, inclusion of a chromatographic process for purification of the conjugates from unconjugated PS is required.

The present invention utilizes the characteristic chemical property of hydrazide groups on one reactant to react with aldehyde groups or cyanate esters on the other reactant with an improved conjugate yield of at least sixty percent. With this conjugation efficiency the leftover unconjugated protein and polysaccharide would not need to be removed and thus the purification process of the conjugate product can be limited to diafiltration to

remove the by-products of small molecules. The new conjugation reaction can be carried out within one or two days with reactant concentrations between 1 and 25 mg/mL at PS/protein ratios from 1:2 to 3:1, at temperatures between 4 and 40 degrees Centigrade, and in a pH range of 5.5 to 7.4, optimal conditions varying from PS to PS.

Therefore, this invention can reduce the cost of conjugate vaccine manufacture.

Modulators of Nuclear Hormone Receptor Activity: Novel Compounds, Diverse Applications for Infectious Diseases, Including Anthrax (B. anthracis)

E.M. Sternberg (NIMH), J.I. Webster (NIMH), L. H. Tonelli (NIMH), S. H. Leppla (NIAID), and M. Maóyeri (NIAID).

U.S. Provisional Application No. 60/416,222 filed 04 Oct 2002 (HHS Reference No. E–247–2002/0–US–01);

U.S. Provisional Application No. 60/419,454 filed 18 Oct 2002 (HHS Reference No. E–348–2003/0–US–01);

PCT Application No. PCT/US03/31406 filed 03 Oct 2003 (HHS Reference No. E–247–2002/1–PCT–01);

U.S. Patent Application No. 10/530,254 filed 04 Apr 2005 (HHS Reference No. E–247–2002/1–US–02).

Licensing Contact: Peter Soukas; 301/435–4646; *soukasp@mail.nih.gov.*

Technology summary and benefits: Nuclear hormones such as glucocorticoids dampen inflammatory responses, and thus provide protection to mammals against inflammatory disease and septic shock. The Anthrax lethal factor represses nuclear hormone receptor activity, and thus may contribute to the infectious agent causing even more damage to the host. This observation can be exploited to find new means of studying and interfering with the normal function of nuclear hormone receptors. Scientists at NIH have shown that under the appropriate conditions, these molecules can be used to modulate the activity of various nuclear hormone receptors. Identifying useful agents that modify these important receptors can provide relief in several human disorders such as inflammation, autoimmune disorders, arthritis, malignancies, shock and hypertension.

Long-term potential applications: This invention provides novel agents that can interfere with the action of nuclear hormone receptors. It is well known that malfunction or overdrive of these receptors can lead to a number of diseases such as enhanced inflammation; worse sequelae of infection including shock; diabetes; hypertension and steroid resistance. Hence a means of controlling or fine-tuning the activity of these receptors can be of great benefit. Current means of affecting steroid receptor activity are accompanied by undesirable side-effects. Since the conditions for which these treatments are sought tend to be chronic, there is a critical need for safer drugs that will have manageable side-effects.

Uniqueness or innovativeness of technology: The observation that the lethal factor from Anthrax has a striking effect on the activity of nuclear hormone receptors opens up new routes to controlling their activity. The means of action of this repressor is sufficiently different from known modulators of hormone receptors (*i.e.* the classical antagonists). For instance, the repression of receptor activity is non-competitive, and does not affect hormone binding or DNA binding. Also, the efficacy of nuclear hormone receptor repression by Anthrax lethal factor is sufficiently high that the pharmacological effect of this molecule is seen at vanishingly small concentrations. Taken together, these attributes may satisfy some of the golden rules of drug development such as the uniqueness or novelty of the agent's structure, a low threshold for activity, high level of sophistication and knowledge in the field of enquiry, and the leeway to further refine the molecule by rational means.

Stage of Development: In vitro studies have been completed, and a limited number of animal studies have been carried out.

Methods and Compositions for Production and Purification of Recombinant Staphylococcal Enterotoxin B (rSEB)

Daniel Coffman, Steven Giardina, Jianwei Zhu (NCI).

U.S. Provisional Application No. 60/328,017 filed 09 Oct 2001 (HHS Reference No. E–075–2001/0–US–01);

PCT Application No. PCT/US02/31114 filed 27 Sep 2002 (HHS Reference No. E–075–2001/0–PCT–01);

U.S. Patent Application No. 10/492,105 filed 08 Apr 2004 (HHS Reference No. E–075–2001/0–US–02).

Licensing Contact: Peter Soukas; 301/435–4646; *soukasp@mail.nih.gov.*

This invention claims processes and compositions for fermentation, recovery, and purification of recombinant bacterial superantigens (rSAgs), exemplified by a recombinant staphylococcal enterotoxin B SEB (rSEB) protein mutated for use in administration to a mammalian recipient. This process generates an economically viable quantity of rSEB vaccine protein meeting FDA parenteral drug specifications. The purification methods generally involve multiple steps including hydrophobic interaction chromatography (HIC), buffer exchange (desalting), and cation exchange. The final product of the purification is a highly purified rSAg composition satisfying clinical safety criteria and is immunogenic and protective against lethal aerosol challenge in a murine model. The methods and compositions claimed in the patent application provide possible therapeutics and prophylactics for diseases caused by bacterial SAgs, such as food poisoning, bacterial arthritis and other autoimmune disorders, toxic shock syndrome, and the potential use of SAg biowarfare agents.

Method for Determining Sensitivity to a Bacteriophage

Carl R. Merril (NIMH), Sankar Adhya (NCI), Dean M. Scholl (NIMH).

U.S. Provisional Application No. 60/351,458 filed 23 Jan 2002 (HHS Reference No. E–318–2000/0–US–01);

PCT Application No. PCT/US03/02179 filed 23 Jan 2003 (HHS Reference No. E–318–2000/0–PCT–02);

U.S. Patent Application No. 10/498,428 filed 10 Jun 2004 (HHS Reference No. E–318–2000/0–US–03).

Licensing Contact: Peter Soukas; 301/435–4646; *soukasp@mail.nih.gov.*

Traditionally, chemical antibiotics have been used to treat a variety of bacterial infections. However, bacterial resistance to current antibiotics is an increasingly serious problem in human and veterinary health as well as agriculture. Many experts believe that strains of disease-causing bacteria resistant to all common antibiotics will arise in the next ten to twenty years. Bacteriophages offer a promising therapeutic alternative to antibiotics for these antibiotic resistant bacteria. There are also situations in which bacteriophage may be more suitable than antibiotics to treat infections caused by against antibiotic-sensitive bacteria. Bacteriophages are highly host-specific, thus determining whether a phage would be therapeutically useful against a particular bacterium or strain of bacteria is very important but can be a time-consuming and labor-intensive process.

The current invention claims a method for selecting a therapeutic bacteriophage that would be effective against a particular disease-causing bacteria, comprising a number of bacteriophages containing reporter nucleic acids capable of being expressed

when the bacteriophage infects a bacterial cell. These bacteriophages are separately contacted with a sample contaminated by a bacterium. Expression of the reporter is then detected, indicating which bacteriophage has infected a bacterial cell and is thus a potential therapeutic phage against the particular bacteria. Also claimed in the application are kits allowing for the rapid identification of potentially therapeutic bacteriophages.

Bacteriophage Having Multiple Host Range

Carl Merril (NIMH), Sankar Adhya (NCI), Dean Scholl (NIMH).

U.S. Provisional Application No. 60/220,987 filed 25 Jul 2000 (HHS Reference No. E–257–2000/0–US–01);

PCT Application No. PCT/US01/22390 filed 25 Jul 2001 (HHS Reference No. E–257–2000/0–PCT–02);

U.S. Patent Application No. 10/350,256 filed 21 Jan 2003 (HHS Reference No. E–257–2000/0–US–03).

Licensing Contact: Peter Soukas; 301/435–4646; *soukasp@mail.nih.gov.*

Recently, there has been a renewed interest in the use of phages to treat bacterial infections. The inventors have discovered FK1–5, a highly lytic, non-lysogenic, stable bacteriophage with the ability to kill bacteria rapidly, making it a good candidate for phage therapy. The designation FK1–5 denotes the phage's ability to infect E. coli strains that contain the K1 polysaccharide in their outer capsule as well as E. coli strains that contain the K5 polysaccharide in their outer capsule. Sequence analysis of the tail proteins of phage FK1–5 by the inventors has shown that they are arranged in a cassette structure, suggesting that the host range of phages can be broadened to other K antigens, and even possibly other species of bacteria by recombinant techniques. FK1–5 has a particular advantage because it recognizes and attaches to the structures that confer virulence to bacteria. The inventors' demonstration that a phage can contain multiple tail proteins that expand its host range is useful for generating phage with broad-spectrum antibacterial properties for the treatment of infectious diseases. The inventors have completed in vitro studies on this phage. Furthermore, because of the possibility of engineering the expression of recombinant tail proteins, gene transfer to organisms that are not normally infected by phages is also contemplated by the invention.

CC Chemokine Receptor 5 DNA, New Animal Models and Therapeutic Agents for HIV Infection

C. Combadiere, Y. Feng, E.A. Berger, G. Alkahatib, P.M. Murphy, C.C. Broder, P.E. Kennedy (NIAID).

U.S. Provisional Application No. 60/018,508 filed 28 May 1996 (HHS Reference No. E–090–1996/0–US–01);

U.S. Patent Application No. 08/864,458 filed 28 May 1997 (HHS Reference No. E–090–1996/0–US–04);

U.S. Patent Application No. 10/439,845 filed 15 May 2003 (HHS Reference No. E–090–1996/0–US–05);

U.S. Patent Application No. 10/700,313 filed 31 Oct 2003 (HHS Reference No. E–090–1996/0–US–06);

U.S. Patent Application No. 10/846,185 filed 14 May 2004 (HHS Reference No. E–090–1996/0–US–07);

PCT Application No. PCT/US97/09586 filed 28 May 1997 (HHS Reference No. E–090–1996/0–PCT–02);

European Patent Application No. 97929777.7 filed 28 May 1997 (HHS Reference No. E–090–1996/0–EP–03).

Licensing Contact: Peter Soukas; 301/435–4646; *soukasp@mail.nih.gov.*

Chemokine receptors are expressed by many cells, including lymphoid cells, and function to mediate cell trafficking and localization. CC chemokine receptor 5 (CCR5) is a seven-transmembrane, G protein-coupled receptor (GPCR) which regulates trafficking and effector functions of memory/effector T-lymphocytes, macrophages, and immature dendritic cells. Chemokine binding to CCR5 leads to cellular activation through pertussis toxin-sensitive heterotrimeric G proteins as well as G protein-independent signalling pathways. Like many other GPCR, CCR5 is regulated by agonist-dependent processes which involve G protein coupled receptor kinase (GRK)-dependent phosphorylation, beta-arrestin-mediated desensitization and internalization.

Human CCR5 also functions as the main coreceptor for the fusion and entry of many strains of human immunodeficiency virus (HIV–1, HIV–2). HIV–1 transmission almost invariably involves such CCR5-specific variants (designated R5); individuals lacking functional CCR5 (by virtue of homozygosity for a defective CCR5 allele) are almost completely resistant to HIV–1 infection. Specific blocking of CCR5 (*e.g.* with chemokine ligands, anti-CCR5 antibodies, CCR5-blocking low MW inhibitors, *etc.*) inhibits entry/infection of target cells by R5 HIV strains. Cells expressing CCR5 and CD4 are useful for screening for agents that inhibit HIV by binding to CCR5. Such agents represent potential new approaches to block HIV transmission and to treat infected people. A small animal expressing both human CCR5 along with human CD4 supports entry of HIV into target cells, a necessary hurdle that must be overcome for development of a small animal model (*e.g.* transgenic mouse, rat, rabbit, mink) to study HIV infection and its inhibition.

The invention embodies the CCR5 genetic sequence, cell lines and transgenic mice, the cells of which coexpress human CD4 and CCR5, and which may represent valuable tools for the study of HIV infection and for screening anti-HIV agents. The invention also embodies anti-CCR5 agents that block HIV env-mediated membrane fusion associated with HIV entry into human CD4-positive target cells or between HIV-infected cells and uninfected human CD4-positive target cells.

This technology was reported in Alkhatib *et al.*, "CC CKR5: a RANTES, MIP–1alpha, MIP–1beta receptor as a fusion cofactor for macrophage-tropic HIV–1," Science 272:1955–1958 (1996). The technology is available for exclusive or nonexclusive licensing.

Dated: July 19, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–15347 Filed 8–2–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the

Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A32 Monoclonal Antibody Fusion Protein for Use as HIV Inhibitors and Vaccines

Dimiter S. Dimitrov and Mei-yun Zhang (NCI).

U.S. Provisional Application No. 60/618,820 filed 14 Oct 2004 (HHS Reference No. E–302–2004/0–US–01).

Licensing Contact: Sally Hu; 301/435–5606; *hus@mail.nih.gov*.

The invention provides composition claims of a fusion protein, which comprises an antigen binding portion of a human antibody called A32 and one of the following: (a) An antigen-binding portion of a second antibody that binds to an epitope of an envelope protein (*i.e.*, gp120) of a human immunodeficiency virus (HIV) that is exposed upon the HIV binding to a CD4 receptor, (b) an immunogenic portion of an envelope protein of a HIV such as gp120, or (c) a soluble CD4 (sCD4) polypeptide capable of binding to HIV. The invention also provides the method claims to use the above fusion proteins as inhibitors of HIV infection and those containing gp120 such as A32–gp120 as vaccine immunogens for the treatment and prevention of HIV. Further development of the fusion proteins may yield novel therapies and methods in the prevention of mother-to-child transmission of HIV, treatment of accidental exposure to HIV, and chronic infection in patients with resistance to current therapies.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Plasmid and Viral Vectors Expressing a Microtubule-Directed Fluorescent Fusion Protein for Cellular Imaging

Dr. Michael J. Iadarola *et al.* (NIDCR). HHS Reference No. E–153–1999/0—Research Tool.

Licensing Contact: Marlene Shinn-Astor; 301/435–4426; *shinnm@mail.nih.gov*.

This technology is a fluorescent protein for discrete tracing of intra- and intercellular connections and for sorting and isolation of cells. This recombinantly engineered protein can be expressed from viral vectors for use in living animals and in ex vivo situations involving primary cultured cells or from a plasmid for use in cell lines. The new protein consists of a fusion between the tau protein, which binds to microtubules, and enhanced green fluorescent protein (tau-eGFP). When cloned into adenovirus, the contrast can be used for transducing primary cultures for ex vivo gene therapy and for use as an anterograde tracer in brain circuit analysis. These uses can be a valuable research tool to help scientists find out how the brain works, investigate Alzheimer's disease, and to identify specific cells for treating disease via cell transplantation.

Dated: July 19, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–15348 Filed 8–2–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the President's Cancer Panel.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), title 5 U.S.C., as amended, because the premature disclosure of information and the discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: August 25, 2005.

Open: August 25, 2005, 8 a.m. to 2:30 p.m.

Agenda: Cancer Survivorship: Treatment Records, Follow-up, and HIPPA.

Place: The Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC 20037.

Closed. August 25, 2005, 3 p.m. to 5 p.m.

Agenda: The Panel will discuss the treatment records and follow-up care plans.

Place: The Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC 20037.

Contact Person: Abby Sandler, Ph.D., Executive Secretary, National Cancer Institute, National Institutes of Health, Building 6116, Room 212, 6116 Executive Boulevard, Bethesda, MD 20892. (301) 451–9399.

Any interested person may file written comments with the committee by forwarding the comments to the Contact Person listed on this notice. The comments should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's Home page: *http://deainfo.nci.nih.gov/advisory/pcp/pcp.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: July 26, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15243 Filed 8–2–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Genetics of Alaska Natives.

Date: August 16, 2005.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7214, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Valerie L. Prenger, PhD, Health Scientist Administrator, Review Branch, Room 7214, Division of Extramural Affairs, National Heart, Lung, and Blood Institutes, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924. (301) 435–0270. *prengerv@nhlbi.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS.)

Dated: July 27, 2005.

Anthony M. Coelho, Jr.,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15244 Filed 8–2–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel Screening Assay Development for SCD.

Date: August 12, 2005.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Rockville, MD 20852. (Telephone conference call.)

Contact Person: Ken D. Nakamura, PhD, Scientific Review Administrator.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 26, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15240 Filed 8–2–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract and proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 CC (48)—SBIR Contract Applicaiton.

Date: August 10, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, 1070, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Mahadev Murthy, PhD, MBA, Scientific Review Administrator, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, MSC 9304, Room 3037, Bethesda, MD 20892–9304. (301) 443–0800. *mmurthy@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 CC (49)—SBIR Contract Application.

Date: August 12, 2005.

Time: 10:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, 1070, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Mahadev Murthy, PhD, MBA, Scientific Review Administrator, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, MSC 9304, Room 3037, Bethesda, MD 20892–9304. (301) 443–0800. *mmurthy@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol Research Center Grants, National Institutes of Health, HHS.)

Dated: July 26, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15241 Filed 8–2–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(b)(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: September 13–14, 2005.

Open: September 13, 2005, 1 p.m. to 5 p.m.

Agenda: Discussion of Program Policies and Issues.

Place: National Institutes of Health, Building 31, Room 10, 31 Center Drive, Bethesda, MD 20892.

Closed: September 14, 2005, 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Mary E. Kerr, FAAN, RN, PhD, Deputy Director, National Institute of Nursing, National Institutes of Health, 31 Center Drive, Room 5B–05, Bethesda, MD 20892–2178. 301/496–8230. *kerrme@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's Home page: *http://www.nih.gov/ninr/a_advisory.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: July 27, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15245 Filed 8–2–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Services Applications II.

Date: August 3, 2005.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marina Broitman, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, (301) 402–8152, *mbroitma@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 27, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15247 Filed 8–2–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Structure of Beta-lactam Resistance Regulators.

Date: August 5, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).

Contact Person: Joseph D. Mosca, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892. (301) 435–2344, *moscajos@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bacterial Virulence.

Date: August 9, 2005.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).

Contact Person: Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892. (301) 435–1050, *freundr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Site-Specific Recombination.

Date: August 10, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).

Contact Person: Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892. (301) 435–1050, *freundr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Role of Enhancers Regulating Renin Gene Expression.

Date: August 19, 2005.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892. (301) 435–1210. *chaudhaa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, TB Treatment and Granuloma Biology.

Date: August 22, 2005.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Melody Mills, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892. (301) 435–0903. *millsm@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine;

93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 26, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15242 Filed 8–2–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special emphasis Panel, Member Conflict: Tumor Cell Biology and Microenvironment.

Date: August 2, 2005.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804. Bethesda, MD 20892. (301) 435–1767. *gubanics@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hyperaccelerated Award/Mechanisms in Immunomodulation Trials.

Date: August 2, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive. Bethesda, MD 20892. (Telephone conference call).

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892. (301) 435–1767. *edwardss@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Dermatological Sciences Special Emphasis Panel.

Date: August 8, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive. Bethesda, MD 20892. (Telephone conference call).

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892. (301) 594–6376. *ansaria@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Entamoeba Metabolism and Virulence.

Date: August 16, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Joseph D. Mosca, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892. (301) 435–2344, *moscajos@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Coxiella Pathogenesis.

Date: August 19, 2005.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Melody Mills, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892. (301) 435–0903, *millsm@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 27, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15246 Filed 8–2–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Adaphostin as a Novel Cancer Therapy

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in:

1. E–013–1998/0–US–01, "Disubstituted Lavendustin A Analogs and Pharmaceutical Compositions Comprising the Analogs", by Venkatachala Narayanan, Edward Sausville, Kaur Gurmeet, Varma Ravi, application number 60/076,330 (filed February 27, 1998);

2. E–013–1998/0–PCT–02, "Disubstituted Lavendustin A Analogs and Pharmaceutical Compositions Comprising the Analogs", by Venkatachala Narayanan, Edward Sausville, Kaur Gurmeet, Varma Ravi, application number PCT/US99/04002 (filed February 24, 1999);

3. E–013–1998/0–EP–03, "Disubstituted Lavendustin A Analogs and Pharmaceutical Compositions Comprising the Analogs", by Venkatachala Narayanan, Edward Sausville, Kaur Gurmeet, Varma Ravi, application number 99910987.9 (filed February 24, 1999);

4. E–013–1998/0–JP–04, "Disubstituted Lavendustin A Analogs and Pharmaceutical Compositions Comprising the Analogs", by Venkatachala Narayanan, Edward Sausville, Kaur Gurmeet, Varma Ravi, application number 2000–533395 (filed February 24, 1999);

5. E–013–1998/0–AU–05, "Disubstituted Lavendustin A Analogs and Pharmaceutical Compositions Comprising the Analogs", by Venkatachala Narayanan, Edward Sausville, Kaur Gurmeet, Varma Ravi, patent number 760046 (filed February 24, 1999);

6. E–013–1998/0–CA–06, "Disubstituted Lavendustin A Analogs and Pharmaceutical Compositions Comprising the Analogs", by Venkatachala Narayanan, Edward Sausville, Kaur Gurmeet, Varma Ravi, application number 60/076,330 (filed February 24, 1999);

7. E–013–1998/0–US–07, "Disubstituted Lavendustin A Analogs and Pharmaceutical Compositions Comprising the Analogs", by Venkatachala Narayanan, Edward Sausville, Kaur Gurmeet, Varma Ravi, application number 09/623,000 (filed February 24, 1999);

8. E–013–1998/0–EP–08, "Disubstituted Lavendustin A Analogs and Pharmaceutical Compositions Comprising the Analogs", by Venkatachala Narayanan, Edward Sausville, Kaur Gurmeet, Varma Ravi, application number 03009396.7 (filed February 24, 1999);

to Ascenta Therapeutics, Inc, which is located in San Diego, CA. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to human therapeutics for cancer.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before October 3, 2005 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: John Stansberry, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5236; Facsimile: (301) 402–0220; E-mail: *stansbej@mail.nih.gov*.

SUPPLEMENTARY INFORMATION: The patent applications for this technology contain composition of matter claims and method claims for treating proliferative diseases. The technology describes tyrphostins, which are a class of small molecules that were designed to act as tyrosine kinase inhibitors. One of these compounds, adaphostin (NSC 680410), was originally identified as an inhibitor of p210Bcr/abl kinase and a potent inducer of myeloid cell death in $p210^{Bcr/abl}$ -positive K562 cells *in vitro*. Recent studies report that adaphostin can induce cell death in Bcr/abl-negative leukemia cells, including B-cell chronic lymphocytic leukemia. Additional studies have demonstrated that this agent might induce cell death through elevation of reactive oxygen species (ROS) or down-regulation of VEGF rather than inhibition of $p210^{Bcr/abl}$. Moreover, adaphostin in combination with other anti-cancer agents induces apoptosis in CLL–B cells.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 26, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–15349 Filed 8–2–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Treatment of Inflammatory Diseases Using Ghrelin

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the invention embodied in U.S. provisional patent application, S/N 60/569,819 filed May 11, 2004, entitled "Methods for Inhibiting Proinflammatory Cytokine Expression Using Ghrelin" and converted to PCT on May 11, 2005 (E–016–2004/0–PCT–02), [Inventors: Vishwa D. Dixit, Dennis D. Taub, Eric Schaffer, and Dzung Nguyen (NIA)], to Gastrotech Pharma (hereafter Gastrotech), having a place of business in Copenhagen, Denmark. The patent rights in these inventions have been assigned to the United States of America.

DATES: Only written comments and/or application for a license, which are received by the NIH Office of Technology Transfer on or before October 3, 2005 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Sally Hu, Ph.D., M.B.A., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Email: *hus@mail.nih.gov*; Telephone: (301) 435–5606; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: E–016–2004/0–US–01 provides methods for treating inflammation by inhibiting pro-inflammatory cytokine expression using Ghrelin, or a fragment thereof. Inflammation could be caused by a variety of viral, bacterial, fungal, or parasitic infections. The invention also provides methods for treating loss of appetite, and sepsis. Ghrelin, a naturally occurring peptide hormone was shown to be the ligand for growth hormone secretagogue receptor (GHS–R), and is mainly produced by the epithelial cells in the stomach. Ghrelin exerts many important actions in the body, including stimulation of growth hormone secretion, induction of appetite, and regulation of energy expenditure. Ghrelin directly controls human growth hormone and insulin growth factor expression by human immune cells. The inventors showed that Ghrelin exerts anti-inflammatory effects by inhibiting the secretion of acute and chronic cytokines, including IL-1, IL-6, TNF-α, IFN-γ, IL-12, chemokines, and CSF in vitro and in vivo mouse models of sepsis and inflammation. This invention can be useful for treatment of various inflammatory disorders, including inflammatory bowel disease, Crohn's disease, rheumatoid arthritis, multiple sclerosis, atherosclerosis, endotoxemia, and graft-versus-host disease. It can also be used as a treatment for loss of appetite and sepsis.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to the use of Ghrelin as a novel drug to treat a range of inflammatory diseases.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments

and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 19, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–15343 Filed 8–2–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive License: Therapeutics for the Treatment of Kidney Cancer and Thyroid Neoplasms

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), announces that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in

1. E–199–2002/0–US–01, "Treatment Method and Therapeutic Agent of Kidney Cancer", by Susan Bates, and Yoshinori Naoe, Pat. Application No. 60/369,868 (filing date April 5, 2002);
2. E–199–2002/0–PCT–02, "Treatment Method and Therapeutic Agent of Kidney Cancer", by Susan Bates, and Yoshinori Naoe, Pat. Application No. PCT/US03/03823 (filing date March 27, 2003);
3. E–199–2002/0–US–04, "Depsipeptide for Therapy of Kidney Cancer", by Susan Bates, and Yoshinori Naoe, Pat. Application No. 10/508,958 (filing date October 5, 2004);
4. E–199–2002/0–JP–08, "Depsipeptide for Therapy of Kidney Cancer", by Susan Bates, and Yoshinori Naoe, Pat. Application No. 20003581847 (filing date October 5, 2004);
5. E–199–2002/0–EP–05, "Depsipeptide for Therapy of Kidney Cancer", by Susan Bates, and Yoshinori Naoe, Pat Application No.037155033–2107 (filing date October 8, 2004);
6. E–286–2000/0–US–01, "Histone Deacetylase Inhibitors in Diagnosis and Treatment of Thyroid Neoplasms", by Tito Fojo and Susan Bates, Pat. Application No. 60/260,733 (filing date January 10, 2001);
7. E–286–2000/0–US–02, "Histone Deacetylase Inhibitors in Diagnosis and Treatment of Thyroid Neoplasms", by Tito Fojo and Susan Bates, Pat. Application No. PCT/US02/0714 (filing date January 9, 2001);
8. E–286–2000/0–EP–03, "Histone Deacetylase Inhibitors in Diagnosis and Treatment of Thyroid Neoplasms", by Tito Fojo and Susan Bates, Pat. Application No. 02718823.4 (filing date January 9, 2001);
9. E–286–2000/0–AU–04, "Histone Deacetylase Inhibitors in Diagnosis and Treatment of Thyroid Neoplasms", by Tito Fojo and Susan Bates, Pat. Application No. 2002249938 (filing date January 9, 2001);
10. E–286–2000/0–CA–04, "Histone Deacetylase Inhibitors in Diagnosis and Treatment of Thyroid Neoplasms", by Tito Fojo and Susan Bates, Pat. Application No. 2434269 (filing date January 9, 2001);
11. E–286–2000/0–US–07, "Histone Deacetylase Inhibitors in Diagnosis and Treatment of Thyroid Neoplasms", by Tito Fojo and Susan Bates, Pat. Application No. 10/250,320 (filing date June 26, 2003);
12. E–286–2000/0–JP–05, "Histone Deacetylase Inhibitors in Diagnosis and Treatment of Thyroid Neoplasms", by Tito Fojo and Susan Bates, Pat. Application No. 2002–556736 (filing date July 10, 2003)

to Gloucester Pharmaceticals, having a place of business in Cambridge, MA. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to therapeutics for the treatment of Kidney Cancer and Thyroid Neoplasms.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before October 3, 2005 will be considered.

ADDRESSES: Requests for copies of the patent and/or patent applications, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: John Stansberrry, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5236; Facsimile: (301) 402–0220; E-mail: *stansbej@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The inventions describe methods of treating kidney cancer and thyroid neoplasms with FK228, which is a histone deacetylase (HDAC) inhibitor. FK228 is currently in Phase II clinical trials, and has been shown to inhibit histone deacetylation, a process instrumental in the regulation of gene expression. FK228 modulates cell cycle arrest and can promote differentiation and apoptosis. To date, FK228 has been administered to more than 300 patients and has shown promising clinical activity in Phase II trials for patients with cutaneous T-cell lymphoma (CTCL). Clinical responses have also been observed in Phase II studies in peripheral T-cell lymphoma, renal cell carcinoma (RCC) and hormone refractory prostate cancer (HRPC).

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 26, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–15345 Filed 8–2–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive License: Anti-Cancer Vaccines

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1)(i), announces that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent

Application No. 60/498,238, filed August 26, 2003, entitled "Anti-cancer Vaccines" (E–179–2004/0–US–01); U.S. Patent Application No. 10/926,852, filed August 26, 2004, entitled "Anti-cancer Vaccines" (E–179–2004/0–US–03); and PCT Application No. PCT/US04/27790, filed August 26, 2004, entitled "Anti-cancer Vaccines" (E–179–2004/0–PCT–02), to Vaccine Company, having a place of business in Carmel-by-the-Sea, California. The patent rights in these inventions have been assigned to the United States of America and MD Anderson Cancer Center (Part of the University of Texas System).

The prospective exclusive license territory may be worldwide, and the field of use may be limited to development and sale of diagnostic and pharmaceutical products useful in diagnosis and treatment of myeloid neoplasms.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before October 3, 2005 will be considered.

ADDRESSES: Requests for copies of the patent and/or patent applications, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Mojdeh Bahar, J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–2950; Facsimile: (301) 402–0220; E-mail: *baharm@od.nih.gov*.

SUPPLEMENTARY INFORMATION: This technology is directed to the use of tumor-associated HLA-restricted antigens (peptides from proteinase-3 or myeloperoxidase) as vaccines for treating or preventing cancer, autoimmune diseases and transplant rejection. The technology is more specifically directed to the use of peptides, such as PR1, derived from proteinase-3 (a myeloid tissue-restricted protein) as vaccine to elicit PR1-specific cytotoxic T lymphocytes. The technology encompasses the use of PR1 and other peptides in the treatment of acute and chronic myelogenous leukemia (AML & CML), and myelodysplastic syndrome. Such treatment could result in prolonged remissions or cure in patients who are otherwise refractive to treatment.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 26, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–15344 Filed 8–2–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1597–DR]

North Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–1597–DR), dated July 22, 2005, and related determinations.

DATES: Effective July 22, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 22, 2005, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of North Dakota, resulting from severe storms, flooding, and ground saturation beginning on June 1, 2005, through July 7, 2005, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas; Hazard Mitigation throughout the State; and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Anthony Russell, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Dakota to have been affected adversely by this declared major disaster:

Benson, Bottineau, Cavalier, Dickey, Grand Forks, Griggs, Kidder, LaMoure, McHenry, Nelson, Pierce, Ramsey, Richland, Sargent, Sioux, Stark, Steele, Traill, Walsh, and Ward Counties, and the Turtle Mountain Indian Reservation, and the portion of the Standing Rock Indian Reservation which lies within the State of North Dakota for Public Assistance.

All counties and Indian Reservations in the State of North Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–15237 Filed 8–2–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1596–DR]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1596–DR), dated July 22, 2005, and related determinations.

EFFECTIVE DATE: July 22, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 22, 2005, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of South Dakota, resulting from a severe storm on June 7–8, 2005, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas; Hazard Mitigation throughout the State; and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Michael Karl, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Dakota to have been affected adversely by this declared major disaster:

Corson, Faulk, Hyde, Potter, Spink, Stanley, and Sully Counties for Public Assistance.

All counties within the State of South Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–15235 Filed 8–2–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1596–DR]

South Dakota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Dakota (FEMA–1596–DR), dated July 22, 2005, and related determinations.

DATES: Effective July 25, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Carlos Mitchell, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Michael Karl as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–15238 Filed 8–2–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS)

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting.

Name: Federal Interagency Committee on Emergency Medical Services (FICEMS).

Date of Meeting: September 1, 2005.

Place: 10th Floor, MacCracken Conference Room, Federal Aviation Administration Building, 800 Independence Avenue, SW., Washington, DC 20553.

Times: 10:30 a.m.—Main FICEMS Meeting; 1 p.m.—FICEMS Ambulance Safety Subcommittee.

Proposed Agenda: Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Safety Subcommittee and Counter-terrorism Subcommittee report; Action Items review; presentation of member agency reports; and reports of other interested parties.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. *See* the Response and Security Procedures below. For those driving, public parking is available for approximately $14.00 for a full day (3 hours or longer). The closest METRO station to the FAA building is L'Enfant Plaza (Orange, Blue, Green, and Yellow lines), Exit onto Seventh Street (towards The National Mall) and walk two blocks to the main entrance of the FAA building which is located at Seventh Street and Independence Avenue, SW.

Response Procedures: Committee Members and members of the general public who plan to attend the meeting should contact Ms. Patti Roman, on or before Tuesday, August 30, 2005, via mail at NATEK Incorporated, 21355 Ridgetop Circle, Suite 200, Dulles, Virginia 20166–8503, or by telephone at (703) 674–0190, or via facsimile at (703) 674–0195, or via e-mail at *proman@natekinc.com.* This is necessary to be able to create and provide a current roster of visitors to NHTSA Security per directives.

Security Procedures: Increased security controls and surveillance are in effect at the FAA Building/NHTSA facilities. All visitors must have a valid picture identification card and their vehicles will be subject to search by Security personnel. All visitors will be issued a visitor pass which must be worn at all times while in the facility. Please allow adequate time before the meeting to complete the security process.

Conference Call Capabilities: If you are not able to attend in person, a toll free number has been set up for teleconferencing. The toll free number will be available from 10 a.m. until 4 p.m. Members should call in around 10:30 a.m. The number is 1–800–320–4330. The FICEMS conference code is "885721#."

FICEMS Meeting Minutes: Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on December 2, 2005. The minutes will also be posted on the United States Fire Administration Web site at *http://www.usfa.fema.gov/fire-service/ems/ficems.shtm* within 30 days after their approval at the December 2, 2005, FICEMS, Committee Meeting.

Dated: July 25, 2005.

R. David Paulison,

U.S. Fire Administrator, Director of the Preparedness Division.

[FR Doc. 05–15236 Filed 8–2–05; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–38]

Notice of Submission of Proposed Information Collection to OMB; Management Reviews of Multifamily Projects

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.

This management review information collection under OMB control number 2502–0178 combines with that previously collected under control number 2502–0259 from 36 Mortgagees of Co-Insured Projects. This single collection will now be used for both unsubsidized and subsidized projects.

DATES: *Comments Due Date:* September 2, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name 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 and at HUD's website at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

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: Management Reviews of Multifamily Projects.

OMB Approval Number: 2502–0178.

Form Numbers: 9834.

Description of the Need for the Information and Its Proposed Use: The information collected from project owners and/or management agents is to evaluate the quality of project management; determine the causes of project problems; devise corrective actions to stabilize projects and prevent defaults, and to ensure that fraud, waste and mismanagement do not exist. This information also supports enforcement actions when owners fail to implement corrective actions.

This information collection under OMB control number 2502–0178 combines with that previously collected under 2502–0259 and collected from 36 Mortgagees of Co-Insured Projects. This single collection will now be used for both unsubsidized and subsidized projects.

After review of public comments submitted following the previous notice, the burden estimate has been further revised.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	25,584	25,620		8		204,960

Total Estimated Burden Hours: 204,960.

Status: Revision of an existing collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 28, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E5–4131 Filed 8–2–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Sent to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; 1018–0127; Horseshoe Crab (*Limulus polyphemus*) Tagging Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) plan to send the collection of information described below to OMB for approval under the provisions of the Paperwork Reduction Act. Information collected through the horseshoe crab tagging program will aid in managing and protecting this species.

DATES: You must submit comments on or before October 3, 2005.

ADDRESSES: Send comments on the information collection requirements to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203 (mail); *Hope_Grey@fws.gov* (e-mail); or (703) 358–2269 (fax).

FOR FURTHER INFORMATION CONTACT: To request a copy of the proposed information collection requirements, related forms, or explanatory material, contact Hope Grey, Information Collection Clearance Officer, at the addresses above or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have the opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). On June 10, 2005, OMB approved our emergency request for information collection associated with the horseshoe crab tagging program. The supporting statement for our emergency request is available online at *http://www.fws.gov/pdm/0127SupCurrent.pdf*. The OMB control number for this collection is 1018–0127, which expires on November 30, 2005. We plan to request that OMB approve this information collection for a 3-year term. Federal agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Horseshoe crabs are among the world's oldest creatures. This evolutionary survivor has been used by people for centuries. It plays an important role in the ecology of the coastal ecosystem, while over time also providing the opportunity for commercial, recreational, medical, scientific, and educational uses.

In 1998, the Atlantic States Marine Fisheries Commission (ASMFC), a management organization with representatives from each State on the Atlantic Coast, developed a horseshoe crab management plan. The ASMFC plan and its subsequent addenda established mandatory State-by-State harvest quotas, and created the 1,500 square mile Carl N. Shuster, Jr. Horseshoe Crab Sanctuary off the mouth of Delaware Bay. Active management and innovative techniques used by fishermen to conserve bait have successfully reduced commercial horseshoe crab landings in recent years. Conch and eel fishermen have been using bait bags in their traps, so they can only use a portion of one crab per trap, compared to using a whole crab in each trap. The bait bags have reduced the demand for bait by 50 to 75 percent in recent years.

Although restrictive measures have been taken in recent years, populations are not showing immediate increases. Because horseshoe crabs do not breed until they reach 9 or more years of age, it may take some time before the population measurably increases. Recently a Horseshoe Crab Cooperative Tagging Program was established to monitor this species. Horseshoe crabs are tagged and released by cooperating Federal and State agencies, universities, and biomedical companies. Agencies that tag and release horseshoe crabs will complete the Horseshoe Crab Tagging Release Form (FWS Form 3–2311) and provide the following data to the Service: organization name, contact person name, tag number, sex of crab, prosomal width, capture site, latitude, longitude, waterbody, State, and date.

Through public participants who recover tagged crabs, we plan to collect the following information using FWS Form 3–2310 (Horseshoe Crab Recapture Report): tag number, whether or not tag was removed, whether or not the tag was circular or square, condition of crab, date captured/found, crab fate, finder type, capture method, capture location, reporter information, and comments. If the public participant who reports the tagged crab requests information, we will send data pertaining to the tagging program, and tag and release information on the horseshoe crab he/she found or captured. The information collected is stored at the Maryland Fishery Resources Office, Fish and Wildlife Service, and used to evaluate migratory patterns, survival, and abundance of horseshoe crabs.

Title: Horseshoe Crab Tag Tagging Program.

OMB Control Number: 1018–0127.

Form Number: FWS Forms 3–2310 and 3–2311.

Frequency: When horseshoe crabs are tagged and when horseshoe crabs are found or captured.

Description of Respondents: Tagging agencies include Federal and State agencies, universities, and biomedical companies. Members of the general public provide recapture information.

Total Annual Responses: Approximately 1,510.

Total Annual Burden Hours: 980 hours.

We invite comments concerning this submission on: (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden of collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents.

Dated: June 29, 2005.

Hope G. Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 05–15304 Filed 8–2–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal To Be Sent to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act (PRA); 1018–0109; Federal Aid Grant Application Booklet

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The Fish and Wildlife Service (We) will send a request to OMB to renew approval for the collection of information described below under the provisions of the Paperwork Reduction Act of 1995. This information collection covers the following types of grant programs: Sport Fish Restoration, Wildlife Restoration, Coastal Wetland Restoration, Clean Vessel, Boating Infrastructure, and Partnerships for Wildlife and Endangered Species.

DATES: You must submit comments on or before October 3, 2005.

ADDRESSES: Send your comments on the information collection to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203 (mail); *hope_grey@fws.gov* (e-mail); or (703) 358–2269 (fax).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requirements or explanatory information, contact Hope Grey, Information Collection Clearance Officer, at the above addresses or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Federal Aid Grant Application Booklet offers the public information on how to apply for certain Federal grants. This information collection is authorized by the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777l), Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669i), Partnerships for Wildlife Act (16 U.S.C. 3741), and the Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. 3954). We collect information relevant to eligibility, substantiality, relative value, and budget information from applicants in order to make awards of grants under these programs. We also collect financial and performance information to track costs and accomplishments of these grant programs. We need the information collected to support the grant work of our Division of Federal Assistance. In this renewal request, we plan to make minimal changes to the booklet to make it easier for the public to understand and use. The current OMB control number for this information collection is 1018–0109, and the OMB approval for this collection expires on October 31, 2004. We are requesting a 3-year term of approval for this information collection activity.

Title: Federal Aid Grant Application Booklet.

OMB Control Number: 1018–0109.

Frequency of Collection: Annually.

Description of Respondents: The 50 U.S. States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Indian tribal governments, and not-for-profit institutions.

Annual Burden Estimates:

Name	Completion time per grant	Total annual number of responses	Total annual burden hours
Initial Proposal	80 hours	4,000	320,000
Amendment	2 hours	1,750	3,500
Totals		5,750	323,500

We invite comments on: (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility; (2) the accuracy of the agency's estimates of burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: June 29, 2005.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 05–15305 Filed 8–2–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Comprehensive Conservation Plan, Finding of No Significant Impact, and Summary for Sacramento River National Wildlife Refuge, Tehama, Butte, Glenn and Colusa Counties, CA

AGENCY: Fish and Wildlife Service.

ACTION: Notice of availability.

SUMMARY: The Sacramento River National Wildlife Refuge Final Comprehensive Conservation Plan (CCP), Finding of No Significant Impact (FONSI), and Summary are available for distribution. The CCP, prepared pursuant to the National Wildlife Refuge System Administration Act as amended, and in accordance with the National Environmental Policy Act of 1969, describes how the Service will manage the Refuge for the next 15 years. The compatibility determinations for hunting, fishing, wildlife observation and photography, environmental education and interpretation, research, camping and recreational boating, farming, grazing and mosquito control are also available with the CCP.

DATES: The Final CCP and FONSI are available now. The FONSI was signed on March 21, 2005. Implementation of the CCP will begin immediately.

ADDRESSES: Copies of the Final CCP, FONSI, and Summary may be obtained by writing to the U.S. Fish and Wildlife Service, Attn: Jackie Ferrier, Refuge Planner, Sacramento National Wildlife Refuge Complex, 752 County Road 99W, Willows, California 95988. Copies of these documents may be viewed at this address. The Final CCP, FONSI and Summary are also available online for

viewing and downloading at *http://pacific.fws.gov/planning* or *http://sacramentovalleyrefuges.fws.gov*.

FOR INFORMATION CONTACT: Jackie Ferrier, Refuge Planner, Sacramento National Wildlife Refuge Complex, 752 County Road 99W, Willows, California 95988; telephone 530–934–2801; fax 530–934–7814.

SUPPLEMENTARY INFORMATION:

Background

The Refuge was established in 1989 by the authority provided under the Endangered Species Act of 1973, the Fish and Wildlife Act of 1956, and the Emergency Wetlands Resources Act of 1986, using funds made available through the Land and Water Conservation Fund Act of 1965. Sacramento River Refuge is part of the Sacramento National Wildlife Refuge Complex located in the Sacramento Valley of north-central California. The Refuge is located along both banks of the Sacramento River between Red Bluff and Princeton, California, in Glenn, Butte, and Tehama Counties. The 10,304-acre Refuge is managed to maintain, enhance and restore habitats for threatened and endangered species, migratory birds, anadromous fish and native fish, wildlife, and plants.

The availability of the Draft CCP and Environmental Assessment (EA) for a 45-day public review and comment period was published in the **Federal Register** on Tuesday, June 29, 2004, in volume 69, number 124. The Draft CCP/EA identified and evaluated three alternatives for managing the Refuge for the next 15 years. Alternative A was the no-action alternative which described current Refuge management activities. Alternative B, the selected alternative, will continue to emphasize restoration for migratory birds and threatened and endangered species. The Refuge will be open for wildlife dependent public uses and management programs will be expanded. Alternative C would accelerate habitat restoration and maximize public use and is similar to Alternative B except the agricultural program would end immediately and hunting would be allowed on larger percentage of the Refuge.

The Service received 1,187 comment letters on the Draft CCP and EA. The comments were incorporated into the CCP when appropriate, and are otherwise addressed in an appendix to the CCP. Alternative B was selected for implementation and is the basis for the Final CCP.

Under Alternative B, the focus of the Refuge will be to continue to restore and maintain riparian habitat for threatened and endangered species, migratory birds, anadromous and native fish, wildlife, and plants. The Refuge will use active and passive management practices to achieve and maintain full restoration/enhancement of all units (5,855 acres) where appropriate, as funding becomes available. The agricultural program will be phased out as restoration funding becomes available. Under Alternative B, the Service will improve and expand visitor services with a focus on a balance of priority public use opportunities distributed throughout the entire Refuge. New visitor services projects under this alternative include: developing interpretive kiosks, creating a new refuge brochure, and constructing walking trails and parking facilities on vehicle accessible units. Hunting opportunities will increase under Alternative B. Approximately 52 percent of the Refuge will be opened to hunting dove, waterfowl, coot, common moorhen, pheasant, quail, snipe, turkey, and deer. Hunting will be limited to shotgun or archery only. Twenty-three riverbank miles and seasonally submerged areas will be opened to sport fishing consistent with State regulations. Camping will be allowed on gravels bars below the ordinary high water mark.

This alternative was selected for implementation because it includes needed improvements in migratory bird and special status species management and makes an important contribution to regional biodiversity. It also provides a balanced mix of compatible wildlife-dependant recreation opportunities to meet the growing demand in the region. Implementation of this alternative will require additional staff and funding.

Dated: July 27, 2005.

Steve Thompson,

Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 05–15281 Filed 8–2–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by September 2, 2005.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: John D. Teeter, Hickory, NC, PRT–104056.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Gino A. Harrison, Newberg, OR, PRT–105859.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: August S. Haugen, Springfield, OR, PRT–105804.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Craig S. Phillips, Tomball, TX, PRT–106368.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus*

pygargus) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Nicholas D. Cortezi, Towson, MD, PRT–106446.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Grant R. Gilbert, Houston, TX, PRT–106618.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Feld Entertainment, Vienna, VA, PRT–106086, 105000, 104999.

The applicant requests permits to export and re-import three captive-born Asian elephants (*Elephas maximus*), Rudy, Angelica, and Gunther, to worldwide locations for the purpose of enhancement of the species through conservation education. This notification covers activities to be conducted by the applicant over a five-year period and the import of any potential progeny born while overseas.

Applicant: Hawthorn Corporation, Grayslake, IL, PRT–058658, 058659, 058660, 058661, 058662, 058663, 058664, 058665, 058666, 058667, 058668, 058669, 058670, 058672, 058679, 058680, 058681, 058682, 058683, 058685, 058686, 058687, 058734, 058735, 058736, 058737, 058738, 058739, 058745, 058747, 058748, 058750, 058751, 058752, 058753, 058758, 058759, 058762, 058780, 059163, and 777744.

The applicant requests permits to export 41 captive-born tigers (*Panthera tigris*) to worldwide locations for the purpose of enhancement of the species through conservation education. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The applications were submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: The Marine Mammal Center, Sausalito, CA, PRT–101713

The applicant requests a permit to rescue, provide medical treatment (including routine sampling for diagnostic & treatment purposes), rehabilitate and, if feasible, release rehabilitated Southern sea otters (*Enhydra lutris nereis*) to the wild for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a five-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Charles W. Lewensten, Edina, MN, PRT–104141.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Terry L. Shupe, Anchorage, AK, PRT–105668.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Dated: July 15, 2005.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–15306 Filed 8–2–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
066158, 066159, 097785,	Thomas Productions	70 FR 15118, March 24, 2005	May 17, 2005.

ENDANGERED SPECIES—Continued

Permit number	Applicant	Receipt of application Federal Register notice	Permit issuance date
097786, 097787. 097784	Thomas Productions	70 FR 15118, March 24, 2005	May 24, 2005.

Dated: July 15, 2005.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–15307 Filed 8–2–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Scoping Meetings and Intent To Prepare an Environmental Assessment for the Proposed Designation of a Nonessential Experimental Population of Rio Grande Silvery Minnow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are providing this notice to advise the public that a draft environmental assessment will be prepared, pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, in conjunction with a proposed rule to establish, under section 10(j) of the Endangered Species Act of 1973, as amended (Act), a Nonessential Experimental Population (NEP) of Rio Grande silvery minnow (*Hybognathus amarus*) (silvery minnow) in the Rio Grande River in Big Bend National Park and the Rio Grande Wild and Scenic River in Texas. We will hold three public informational sessions and scoping meetings (*see* **DATES** and **ADDRESSES** sections).

Through this notice and the public scoping meetings, we are seeking comments or suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning the scope of the environmental analysis, including the alternatives that should be analyzed.

DATES: Comments must be submitted directly to the Service (*see* **ADDRESSES** section) on or before September 19, 2005, or at any of the three scoping meetings to be held in August 2005.

We will hold public informational sessions followed by scoping meetings at the following dates and times:

1. September 20, 2005: Sanderson, TX. Informational session: 5:30 p.m. Scoping meeting: 7 p.m.
2. September 21, 2005: Alpine, TX. Informational session: 5:30 p.m. Scoping meeting: 7 p.m.
3. September 22, 2005: Presidio, TX. Informational session: 5:30 p.m. Scoping meeting 7 p.m.

ADDRESSES:

Meetings

The public informational sessions and scoping meetings will be held at the following locations:

1. Sanderson, TX: Sanderson Community Meeting Hall, 108 Hackberry Street, Sanderson, TX 79848.
2. Alpine, TX: Sul Ross State University, Gallego Center, Room 129, East Highway 90, Alpine, TX 79832.
3. Presidio, TX: Presidio Activity Center, 1400 East O'Reilly Street, Presidio, TX 79845.

Information, comments, or questions related to preparation of the draft environmental assessment and the NEPA process should be submitted to Joy Nicholopoulos, State Administrator, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, New Mexico, 87113. Written comments may also be sent by facsimile to (505) 346–2542 or by e-mail to *R2FWE_AL@fws.gov*. For directions on how to submit electronic filing of comments, see the "Public Comments Solicited" section.

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process, preparation of the draft environmental assessment, or the development of a proposed rule designating a NEP may be directed to Jennifer Parody at telephone number (505) 761–4710. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend for our draft environmental assessment (EA) to consider reasonable alternatives for the establishment of a NEP of silvery minnow. We also wish to ensure that any proposed rulemaking to establish a NEP effectively evaluates all potential issues and impacts. Therefore, we are seeking comments and suggestions on the following issues for consideration in the preparation of the draft EA and the proposed rule concerning a NEP for the silvery minnow. This list is not intended to be all inclusive and comments on any other pertinent issues are welcome.

Issues related to the scope of the NEP:

(a) The reasons why any particular area of the Rio Grande River from Little Box Canyon downstream of Ft. Quitman, Hudspeth County, TX, through Big Bend National Park and the Rio Grande Wild and Scenic River, to Amistad Dam and the Railroad Bridge at Diablo East, Amistad Reservoir and the Pecos River from its confluence with Independence Creek to its confluence with the Rio Grande should or should not be included in a NEP designation.

(b) Information on the distribution and quality of habitat for the silvery minnow, land or water use practices, and current or planned activities in areas that may be affected by a designation of a NEP.

Issues related to evaluation of the environmental impacts:

The general question on which we are seeking comments is the identification of direct, indirect, beneficial, and adverse effects caused by the establishment of a NEP of silvery minnow. In addressing this question, you may wish to consider the following issues:

(a) Impacts on floodplains, wetlands, wild and scenic rivers, or ecologically sensitive areas;

(b) Impacts on park lands and cultural or historic resources;

(c) Impacts on human health and safety;

(d) Impacts on air, soil, and water;

(e) Impacts on prime agricultural lands;

(f) Impacts to other endangered or threatened species;

(g) Disproportionately high and adverse impacts on minority and low-income populations;

(h) Any other potential or socioeconomic effects; and

(i) Any potential conflicts with other Federal, State, local, or Tribal environmental laws or requirements.

We seek comment from Federal, State, local, or Tribal government agencies; the scientific or business community; landowners; or any other interested party. To promulgate a proposed rule and to determine whether to prepare a finding of no significant impact or an environmental impact statement, we will take into consideration all comments and any additional information received. All comments, including names and addresses, will become part of the supporting record.

If you wish to provide comments and/or information, you may submit your comments and materials by any one of several methods (*see* **ADDRESSES**). Comments submitted electronically should be in the body of the e-mail message itself or attached as a text file (ASCII), and should not use special characters or encryption. Please also include "Attn: Silvery Minnow NEPA Scoping," your full name, and your return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our New Mexico Ecological Services Field Office (*see* **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home addresses, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at New Mexico Ecological Services Field Office in Albuquerque, New Mexico (*see* **ADDRESSES**).

We will give separate notice of the availability of the draft EA when completed, so that interested and affected people may comment on the draft and have input into the final decision.

Background

This species was historically one of the most abundant and widespread fishes in the Rio Grande Basin, occurring from Española, NM, to the Gulf of Mexico (Bestgen and Platania 1991). It was also found in the Pecos River, a major tributary of the Rio Grande, from Santa Rosa, NM, downstream to its confluence with the Rio Grande (Pflieger 1980). The silvery minnow is extirpated from the Pecos River and also from the Rio Grande downstream of Elephant Butte Reservoir and upstream of Cochiti Reservoir (Bestgen and Platania 1991). The current distribution of the silvery minnow is limited to the Rio Grande River between Cochiti Dam and Elephant Butte Reservoir, which amounts to only about 5 percent of its historic range. Throughout much of its historic range, the decline of the silvery minnow has been attributed to modification of the flow regime (hydrological pattern of flows that vary seasonally in magnitude and duration, depending on annual precipitation patterns such as runoff from snowmelt), channel drying, reservoirs and dams, stream channelization, and perhaps both interactions with non-native fish and decreasing water quality (Cook *et al.* 1992; Bestgen and Platania 1991; Service 1999; Buhl 2002). Development of agriculture and the growth of cities within the historic range of the silvery minnow resulted in a decrease in the quality of river water caused by municipal and agricultural runoff (*i.e.*, sewage and pesticides) that may have also adversely affected the range and distribution of the silvery minnow.

The various life history stages of the silvery minnow require shallow waters with a sandy and silty substrate that is generally associated with a meandering river that includes sidebars, oxbows, and backwaters (C. Hoagstrom, pers. comm. 2001; Bestgen and Platania 1991; Platania 1991). Although the silvery minnow is a hearty fish, capable of withstanding many of the natural stresses of the desert aquatic environment, most individual silvery minnows live only one year (Bestgen and Platania 1991). Thus, a successful annual spawn is key to the survival of the species (Platania and Hoagstrom 1996; Service 1999; Dudley and Platania 2001, 2002). More information about the life history and decline of the silvery minnow can be found in the final designation of critical habitat for the species (February 19, 2003; 68 FR 8088) and in the Rio Grande Silvery Minnow Recovery Plan (Service 1999).

Recovery Efforts

We published the final rule to list the silvery minnow on July 20, 1994 (59 FR 36988). Restoring an endangered or threatened species to the point where it is recovered is a primary goal of our endangered species program. Thus, on July 1, 1994, the Recovery Team was established by us pursuant to section 4(f)(2) of the Act (16 U.S.C. 1531 *et. seq.*) and our cooperative policy on recovery plan participation, a policy intended to involve stakeholders in recovery planning (July 1, 1994; 59 FR 34272). Stakeholder involvement in the development of recovery plans helps minimize the social and economic impacts that could be associated with recovery of endangered species and facilitates implementation of recovery objectives. Numerous individuals, agencies, and affected parties were involved in the development of the Recovery Plan or otherwise provided assistance and review (Service 1999). On July 8, 1999, we finalized the Recovery Plan (Service 1999). Efforts are currently underway to update the Recovery Plan.

The Recovery Plan recommends recovery goals for the silvery minnow, as well as procedures to better understand the biology of the species. The primary objective of the Recovery Plan is to delist the silvery minnow. The primary goals that are designed to achieve this are to: (1) Stabilize and enhance populations of silvery minnow and its habitat in the middle Rio Grande valley; and (2) reestablish the silvery minnow in at least three other areas of its historic range (Service 1999). The silvery minnow's range has been so greatly restricted that the species is extremely vulnerable to catastrophic events, such as a prolonged period of low or no flow (*i.e.*, the loss of all surface water) (Dudley and Platania 2001). Reestablishment of silvery minnow into other areas of its historic range will assist in the species' recovery and long-term survival in part because it is unlikely that any single event would simultaneously eliminate the silvery minnow from three geographic areas (Service 1999).

The final designation of critical habitat for the silvery minnow was published on February 19, 2003 (68 FR 8088). In the process of designating critical habitat, we determined that a river reach of the Rio Grande in Big Bend National Park and the Rio Grande Wild and Scenic River to the Terrell/Val Verde County line, TX, is essential to the conservation of the silvery minnow; however, this area was not proposed for critical habitat designation, as explained

in the proposed (June 6, 2002; 67 FR 39206) and final rules. Since the silvery minnow is extirpated from this area and natural repopulation is not possible without human assistance, we believe an experimental population is the appropriate tool to achieve this recovery objective. Our conservation strategy for the silvery minnow is to establish populations within its historic range under section 10(j) of the Act, which could include all or portions of this stream reach (February 19, 2003; 68 FR 8088).

The continuing presence of other members of the pelagic spawning guild (*e.g.*, species with semibuoyant eggs, like the silvery minnow, such as the speckled chub and Rio Grande shiner) are evidence that the Rio Grande through the Big Bend National Park and Rio Grande Wild and Scenic River areas may support reestablishment of silvery minnow (Platania 1990; IBWC 1994). Moreover, water quality in this reach, as compared to that of the reach upstream of the Park, is greatly improved as a result of the many freshwater springs in the area (MacKay 1993; R. Skiles, pers. comm. 2001; IBWC 1994). This area, which is protected and managed by the National Park Service, currently supports a relatively stable hydrologic regime (R. Skiles, pers. comm. 2001).

In accordance with the Recovery Plan, we have initiated a captive propagation program for the silvery minnow (Service 1999). We currently have silvery minnows housed at: (1) the Service's Dexter National Fish Hatchery and Technology Center, (2) the City of Albuquerque's Biological Park, and (3) the New Mexico State University. Progeny of these fish are being used to augment the middle Rio Grande silvery minnow population, but could also be used in future augmentation or reestablishment programs for the silvery minnow in other river reaches (J. Remshardt, New Mexico Fishery Resources Office, pers. comm. 2001).

Experimental Populations

Congress made significant changes to the Act in 1982 with the addition of section 10(j), which provides for the designation of specific reintroduced populations of listed species as "experimental populations." Under section 10(j), the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range, but within its historic range, as "experimental." On the basis of the best scientific and commercial data available, we must determine whether an experimental population is "essential" or "nonessential" to the continued existence of the species.

The Service is proposing to establish a NEP of silvery minnow in the Big Bend stretch of the Rio Grande, because we believe this experimental population would not be essential to the continued existence of the species for the following reasons:

(a) An established population of silvery minnow exists in New Mexico;

(b) Captive propagation facilities produce enough offspring to maintain a captive population and provide silvery minnow for release; and

(c) The possible failure of this action would not be likely to reduce the likelihood of survival of the species.

Under the Act, species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of endangered wildlife. "Take" is defined in section 3 of the Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." Service regulations (50 CFR 17.31) generally extend the prohibition of take to threatened wildlife. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitats. It mandates all Federal agencies to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species. It also states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private lands unless they are authorized, funded, or carried out by a Federal agency.

For purposes of section 9 of the Act, a population designated as experimental is treated as threatened regardless of the species' designation elsewhere in its range. Through section 4(d) of the Act, threatened designation allows us greater discretion in devising management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt regulations that are necessary to provide for the conservation of a threatened species. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the special 4(d) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species. Regulations issued under section 4(d) for NEPs are usually more compatible with routine human activities in the reintroduction area.

For the purposes of section 7 of the Act, we treat NEPs as threatened species when the NEP is located within a National Wildlife Refuge or National Park, and section 7(a)(1) and the consultation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) requires all Federal agencies to use their authorities to conserve listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, ensure any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. When NEPs are located outside a National Wildlife Refuge or National Park, we treat the population as proposed for listing and only two provisions of section 7 would apply; section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities.

Individual silvery minnows used to establish a NEP may come from a donor population, provided their removal will not create adverse impacts upon the parent population, and provided appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal.

In order to establish a NEP, we must issue a proposed regulation and consider public comments on the proposed rule prior to publishing a final regulation. In addition, we must comply with NEPA (42 U.S.C. 4321 et seq.). Also, our regulations require that, to the maximum extent practicable, a regulation issued under section 10(j) of the Act represents an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of the experimental population (see 50 CFR 17.81(d)).

We have not yet identified possible alternatives for accomplishing our recovery goals in the Big Bend stretch of the Rio Grande River, and we do not know what the preferred alternative (the proposed action) or other alternatives might entail. Once identified, the

alternatives will be carried forward into detailed analyses pursuant to NEPA.

We will take the following steps prior to making a decision regarding any release of the silvery minnow as "experimental": (1) Compile and analyze all new biological information on the species; (2) review and update the administrative record covering previous Federal actions for the species; (3) review the overall approach to the conservation and recovery of the silvery minnow in the United States; (4) review available information that pertains to the habitat requirements of this species, including material received during the public comment period for this notice, during the scoping meetings, and from previous rulemakings; (5) review actions identified in the Recovery Plan (Service 1999); (6) coordinate with State, county, local, and Federal partners; (7) coordinate with Mexican authorities; (8) write a draft EA and present alternatives to the public for review and comment; (9) incorporate public input and use current knowledge of silvery minnow habitat use and availability to precisely map the potential experimental population area; (10) publish a proposed experimental population rule in the **Federal Register** and solicit comments from the public; (11) finalize the draft EA; and (12) if we determine it is prudent to proceed with the designation, finalize the experimental population rule, thereby identifying an experimental population area and authorizing the release of the silvery minnow as an experimental population in Texas.

We are the lead Federal agency for compliance with NEPA for this action. Thus far, the National Park Service and the International Boundary and Water Commission, United States Section, have agreed to be cooperating agencies in the NEPA process. The draft EA will incorporate public concerns in the analysis of impacts associated with the proposed action and associated project alternatives. The draft EA will be sent out for a minimum 30-day public review period, during which time comments will be solicited on the adequacy of the document. The final EA will address the comments we receive during public review and will be furnished to all who commented on the draft EA, and made available to anyone who requests a copy. This notice is provided pursuant to regulations for implementing NEPA (40 CFR 1506.6).

References

A complete list of all references cited in this notice is available, upon request, from the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (*see* **ADDRESSES** section).

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

Dated: July 22, 2005.

Paul Hoffman,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–15303 Filed 8–2–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–038–1220–AL; HAG 05–0176]

AGENCY: Bureau of Land Management (BLM), Vale District.

ACTION: Meeting notice for National Historic Oregon Trail Interpretive Center Advisory Board.

SUMMARY: The National Historic Oregon Trail Interpretive Center Advisory Board will meet September 22, 2005, 8 a.m. to Noon (PDT) at the National Historic Oregon Trail Interpretive Center, 42267 Highway 86, Baker City, Oregon.

Meeting topics may include capital improvement, education and outreach, a facility tour, and other topics as may come before the board. The meeting is open to the public, and the public comment opportunity is scheduled from 10 to 10:15 a.m.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the National Historic Oregon Trail Interpretive Center Advisory Board may be obtained from Debbie Lyons, Public Affairs Officer, BLM Vale District Office, 100 Oregon Street, Vale, Oregon 97918, (541) 473–6218 or e-mail *Debra_Lyons@or.blm.gov.*

Dated: July 27, 2005.

David R. Henderson,

Vale District Manager.

[FR Doc. 05–15275 Filed 8–2–05; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Public Meeting: Resource Advisory Council to the Boise District, Bureau of Land Management, U.S. Department of the Interior

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Boise District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held August 23, 2005, beginning at 9 a.m. and adjourning at 4 p.m. at the Ashley Inn, located at 500 N. Main St., Cascade, ID. Public comment periods will be held after topics on the agenda.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in southwestern Idaho. At this meeting, the following actions will occur/topics will be discussed:

- Hot Topics;
- Three Field Office Managers and District Fire Manager provide updates on current issues and planned activities in their Field Offices and the District;
- District Fire Manager, Andy Delmas provides a review of the fires that have occurred in 2005, including an assessment of damage to natural resources, wildlife and wildlife habitat, sensitive species, areas of critical environmental concern including LEPA (*Lepidium Papilliferum*)
- Subcommittee Reports:
  - Rangeland Standards and Guidelines;
  - Briefing on the new grazing regulations,
  - Briefing on the status of assessments, appeals and litigation,
  - OHV & Transportation Management;
  - Briefing on development of District Travel Management Plan,
  - Briefing on DOI Listening Sessions held on proposed Recreation RAC's.
  - Sage Grouse Habitat Management, and;
  - Briefing on current activities of the Owyhee Sage Grouse Working Group,
  - Resource Management Plans,
  - Overview of changes to draft alternatives for the Snake River Birds of Prey National Conservation Area Resource Management Plan since April presentation to RAC. Discussion and feedback.

Agenda items and location may change due to changing circumstances, including wildfire emergencies. All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for

hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below. Expedited publication is requested to give the public adequate notice.

Dated: July 28, 2005.

Jerry Taylor,

Acting District Manager.

[FR Doc. 05–15272 Filed 8–2–05; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–1020–PG; HAG 05–0174]

AGENCY: Bureau of Land Management (BLM), Vale District.

ACTION: Meeting notice change for the John Day/Snake Resource Advisory Council.

SUMMARY: The John Day/Snake Resource Advisory Council (JDSRAC) meeting scheduled for September 21, 2005, in Pendleton, Oregon, has been rescheduled to September 12, 2005. The meeting will be held at the Geiser Grand Hotel, 1996 Main Street, Baker City, Oregon. The meeting may include such topics as off highway vehicle, noxious weeds, planning, Sage-grouse, mining and other matters that may come before the council. A field trip is scheduled for September 13, 2005 to discuss mining operations on public lands in the Baker City area.

The meeting is open to the public. Public comment is scheduled for 11 a.m. to 11:15 a.m. (Pacific standard time) September 12, 2005. For a copy of the information to be distributed to the JDSRAC members, please submit a written request to the BLM Vale District Office 10 days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the JDSRAC may be obtained from Debbie Lyons, Public Affairs Officer, BLM Vale District Office, 100 Oregon Street, Vale, Oregon 97918, (541) 473–6218 or e-mail *Debra_Lyons@or.blm.gov.*

Dated: July 27, 2005.

David R. Henderson,

Vale District Manager.

[FR Doc. 05–15276 Filed 8–2–05; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meeting of Concessions Management Advisory Board

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting of Concessions Management Advisory Board.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), notice is hereby given that the Concessions Management Advisory Board (the Board) will hold its 14th meeting on August 25, 2005, at Grand Teton National Park, Moose, Wyoming. The meeting will be held at the Jackson Lake Lodge in Grand Teton National Park. The meeting will convene at 8:30 a.m. and will conclude at 4:30 p.m.

SUPPLEMENTARY INFORMATION: The Board was established by Title IV, Section 409 of the National Park Omnibus Management Act of 1998, November 13, 1998 (Public Law 105–391). The purpose of the Board is to advise the Secretary and the National Park Service on matters relating to management of concessions in the National Park System. The Board will meet at 8:30 a.m. for the regular business meeting for continued discussion on the following subjects:

- Contracting Program; Prospectus Development Contractors
- Standards, Evaluations and Rate Approval Program
- Annual Financial Report
- Leasehold Surrender Interest
- Public Law 105–391
- Regional Concessions Chiefs Update

The meeting will be open to the public, however, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis.

Assistance to Individuals With Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you plan to attend and will require an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least 2 weeks before the scheduled meeting date. Attempts will be made to meet any request(s) we receive after that date, however, we may not be able to make the requested auxiliary aid or service available because of insufficient time to arrange for it. Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time. Such requests should be made to the director, National Park Service, Attention: Manager, Concession Program, at least 7 days prior to the meeting.

Further information concerning the meeting may be obtained from National Park Service, Concession Program, 1849 C Street, NW., Washington, DC 20240, Telephone: 202/513–7144. Draft minutes of the meeting will be available for public inspection approximately 6 weeks after the meeting, at the Concession Program office located at 1201 Eye Street, NW., 11th Floor, Washington, DC.

Dated: July 18, 2005.

Fran P. Mainella,

Director, National Park Service.

[FR Doc. 05–15356 Filed 8–2–05; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of the National Park Subsistence Resource Commission (SRC) Meetings for Aniakchak National Monument and Lake Clark National Park

SUMMARY: The National Park Service (NPS) announces the SRC meeting schedule for the following NPS areas within the Alaska Region: Aniakchak National Monument and Lake Clark National Park. The purpose of each meeting is to develop and continue work on subsistence hunting recommendations and other related subsistence management issues. Each meeting is open to the public and will have time allocated for public testimony. The public is welcomed to present written or oral comments to the SRC.

The NPS SRC program is authorized under Title VIII, Section 808, of the Alaska National Lands Conservation Act, Public Law 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act. Draft meeting minutes will be available for public inspection approximately six weeks after each meeting.

DATES: The meeting times and locations are:

1. Aniachak National Monument SRC, Monday September 26, 2005, from 1 p.m. to 5 p.m. at the Port Heiden

Community Center, telephone (907) 837–2296.

2. Lake Clark National Park SRC, Thursday, September 29, 2005, from 1 p.m. to 5 p.m. at the Nondalton Community Center, telephone (907) 294–2288.

FOR FURTHER INFORMATION CONTACT: Mary McBurney, Subsitence Program Manager, Aniakchak National Monument and Lake Clark National Park at (907) 644–3598 or (907) 235–7891.

SUPPLEMENTARY INFORMATION: SRC meeting locations and dates may need to be changed on weather of local circumstances. Notice of each meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. The agendas for each meeting include the following:

(1) Call to order.
(2) Roll call to confirm quorum.
(3) Introductions.
(4) Superintendent's welcome.
(5) Additions, corrections and approval of agenda.
(6) Approval of SRC meeting minutes.
(7) SRC purpose and role.
(8) Status of membership.
(9) Park Subsistence coordinator's report.
(10) Old business.
(11) New business.
(a) Call for proposals to change Federal subsistence hunting and trapping regulations for the 2006–2007 regulatory year.
(b) Review of 2005–2006 Federal Subsistence Board Fisheries Proposals.
(12) Other business.
(13) SRC work session-prepare correspondence and recommendations.
(14) Set time and place for next meeting.
(15) Adjournment.

Marcia Blaszak,

Regional Director, Alaska Region.

[FR Doc. 05–15315 Filed 8–2–05; 8:45 am]

BILLING CODE 4312–HE–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Gila National Forest, Silver City, NM; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice, correction.

Notice is here given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of Agriculture, Forest Service, Gila National Forest, Silver City, NM; and in the possession of Arizona State Museum, University of Arizona, Tucson, NM; Field Museum of Natural History, Chicago, IL; Logan Museum of Anthropology, Beloit College, Beloit, WI; Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM; Museum of New Mexico, Museum of Indian Arts and Culture, Santa Fe, NM; Ohio Historical Society, Columbus, OH; Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA; University of Texas at Austin, Texas Memorial Museum, Austin, TX; and Western New Mexico University Museum, Silver City, NM. The human remains and associated funerary objects were removed from Gila National Forest, Catron County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Arizona State Museum, University of Arizona; Field Museum of Natural History; Logan Museum of Anthropology, Beloit College; Maxwell Museum of Anthropology, University of New Mexico; Museum of New Mexico, Museum of Indian Arts and Culture; Ohio Historical Society; Peabody Museum of Archaeology and Ethnology, Harvard University; University of Texas at Austin, Texas Memorial Museum; and Western New Mexico University Museum professional staffs and U.S. Department of Agriculture Forest Service professional staff in consultation with representatives of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

This notice corrects the number of human remains and associated funerary objects, and sites reported in a Notice of Inventory Completion published in the **Federal Register** on July 22, 1998, FR Doc 98–19536, pages 39293–39294. In 2005, the Field Museum of Natural History, Chicago, IL, re-examined the human remains and associated funerary objects taken from nine sites in the Gila National Forest, Catron County, NM. In light of the findings from the re-examination, the original notice of inventory is amended to include additions to the minimum number of individuals, a decrease in the amount of associated funerary objects, and a deletion of one of the sites (Brown site), as no excavations took place by the Field Museum of Natural History, Chicago, IL, nor were human remains and associated funerary objects removed from the Brown site. The human remains and associated funerary objects are culturally affiliated with the same tribes as described in the original notice, which are the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

This notice corrects the previously published Notice of Inventory Completion, by substituting the following paragraph for paragraph five:

Between 1935-1955, human remains representing 74 individuals were recovered from SU site, Oak Springs Pueblo, Tularosa Cave, Apache Creek Pueblo, Turkey Foot Ridge Site, Wet Leggett Pueblo, Three Pines Pueblo, and South Leggett Pueblo by Dr. Paul Martin of the Field Museum of Natural History, Chicago, IL. These human remains are currently in the possession of the Field Museum of Natural History. No known individuals were identified. The 56 associated funerary objects include ceramic vessels and sherds, stone and shell jewelry, stone and bone tools, and projectile points.

The following paragraphs are substituted for paragraphs 27 and 28:

Officials of the U.S. Department of Agriculture, Forest Service, Gila National Forest have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 185 individuals of Native American ancestry. Officials of the U.S. Department of Agriculture, Forest Service, Gila National Forest also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 256 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Department of Agriculture, Forest Service, Gila National Forest have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, U.S. Department of Agriculture, Forest Service, 333 Broadway Boulevard, SE, Albuquerque, NM 87102, telephone (505) 842–3238, before September 2, 2005. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The U.S. Department of Agriculture, Forest Service, Gila National Forest is responsible for notifying the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: July 13, 2005

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–15316 Filed 8–2–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: U.S. Department of Agriculture, Forest Service, Gila National Forest, Silver City, NM, and Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the control of the U.S. Department of Agriculture, Forest Service, Gila National Forest, Silver City, NM, and in the possession of the Field Museum of Natural History, Chicago, IL, that meets the definition of "unassociated funerary object" under 25 U.S.C. 3001. The cultural item was removed from the Gila National Forest, Catron County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations in this notice.

The cultural item is a turquoise pendant consisting of 19 small pieces of perforated turquoise.

A detailed assessment of the cultural item was made by U.S. Department of Agriculture, Forest Service, Gila National Forest and Field Museum of Natural History professional staff in consultation with the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

In 1939, one turquoise pendant was removed from the SU site in the Gila National Forest, Catron County, NM, during legally authorized excavations and collected by Dr. Paul S. Martin of the Field Museum, Chicago, IL.

Material culture, architecture and site organization indicate that the SU site is an Upland Mogollon pithouse village occupied between A.D. 450 and 500. The territory of the Upland Mogollon stretched from south-central Arizona to south-central New Mexico. The Upland Mogollon territories are claimed, currently inhabited, or used by the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico. Villages had pithouses or pueblo-style houses. Most archeological evidence linking Upland Mogollon to present-day tribes relies on ceramics that suggest the early establishment of brownware producing groups. Present-day descendants of the Upland Mogollon are the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico. Oral traditions presented by representatives of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico support cultural affiliation.

Additional unassociated funerary objects removed from Gila National Forest, Catron County, NM, were published in a Notice of Intent to Repatriate Cultural Items in the **Federal Register** of June 1, 2005, FR Doc 05–10805, page 31510.

Officials of the U.S. Department of Agriculture, Forest Service, Gila National Forest have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the one cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the U.S. Department of Agriculture, Forest Service, Gila National Forest also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary object and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with this unassociated funerary object should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 333 Broadway Blvd., SE, Albuquerque, NM 87102, telephone (505) 842–3238, before September 2, 2005. Repatriation of this unassociated funerary object to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The U.S. Department of Agriculture, Forest Service, Gila National Forest is responsible for notifying the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: July 13, 2005

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–15322 Filed 8–2–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: Bernice Pauahi Bishop Museum, Honolulu, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the Bernice Pauahi Bishop Museum, Honolulu, HI, that meets the definition of "unassociated funerary object" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

In 1937, Emma Turnbull removed a cultural item in the sands of a West Molokai beach, Molokai Island, HI. The cultural item is one rock oyster pendant.

It is believed that Ms. Turnbull most likely found the pendant in an area known as Mo'omomi. In 1976, Ms. Turnbull's daughter, Mrs. J.D. Korsund, wrote to the Bernice Pauahi Bishop Museum requesting information on the pendant and mentioned that the pendant was found in an area that had human remains. In 1985, Ms. Turnbull sent a letter to the Bernice Pauahi Bishop Museum stating that she was sending the pendant as a gift to the museum and that there were many bones in the area where she picked up the pendant. In June of that same year, Ms. Turnbull signed the deed of gift for the pendant to the Bernice Pauahi Bishop Museum. The Bernice Pauahi Bishop Museum has classified the pendant as a "niho palaoa" due to its similarity in shape to other Hawaiian pendants usually made from animal ivory or whale teeth.

Consultation was held with the representatives of the Hui Malama I Na Kupuna O Hawai'i Nei, Maui/Lanai Island Burial Council, Molokai Island Burial Council, Na Lei Ali'i Kawananakoa, and Royal Hawaiian Academy of Traditional Arts. Based on Ms. Turnbull's description that the pendant was found in an area with evidence of burials, it was concluded during consultation that this pendant may be classified as an unassociated funerary object.

Officials of the Bernice Pauahi Bishop Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the one cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native Hawaiian individual. Officials of the Bernice Pauahi Bishop Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary object and the Hui Malama I Na Kupuna O Hawai'i Nei, Na Lei Ali'i Kawananakoa, and Royal Hawaiian Academy of Traditional Arts.

Representatives of any other Indian tribe or Native Hawaiian organization that believes itself to be culturally affiliated with the unassociated funerary object should contact Betty Kam, Bernice Pauahi Bishop Museum, 1525 Bernice Street, Honolulu, HI, 96817, telephone (808) 848–4144, before September 2, 2005. Repatriation of the unassociated funerary object to Hui Malama I Na Kupuna O Hawai'i Nei, Na Lei Ali'i Kawananakoa, and Royal Hawaiian Academy of Traditional Arts may proceed after that date if no additional claimants come forward.

Bernice Pauahi Bishop Museum is responsible for notifying the Hui Malama I Na Kupuna O Hawai'i Nei, Maui/Lanai Island Burial Council, Molokai Island Burial Council, Na Lei Ali'i Kawananakoa, and Royal Hawaiian Academy of Traditional Arts that this notice has been published.

Dated: July 5, 2005

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–15323 Filed 8–2–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Organ Pipe Cactus National Monument, Ajo, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the U.S. Department of the Interior, National Park Service, Organ Pipe Cactus National Monument, Ajo, AZ. The human remains were removed from a vandalized cremation burial near Dripping Spring in the Puerto Blanco Mountains, Pima County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the superintendent, Organ Pipe Cactus National Monument.

A detailed assessment of the human remains was made by Organ Pipe Cactus National Monument professional staff in consultation with representatives of the Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico. The Ak-Chin Indian Community of the Maricopa (Ak-Chin) Indian Reservation, Arizona was represented by members of the Gila River Indian Community of the Gila River Indian Reservation, Arizona.

In 1967, human remains representing a minimum of one individual were removed from a site in Pima County, AZ. A National Park Service employee collected burned and fragmented human remains from a vandalized cremation burial near Dripping Springs in the Puerto Blanco Mountains of Arizona. The fragments were recovered from the surface of a pit-like depression at the base of a natural wall-like outcrop on a ridge top. Since collection, the human remains have always been in National Park Service control. No known individual was identified. No associated funerary objects are present.

The cremation represents an adult of unknown sex. Based on the burial type and location, as well as available archeological and historical information, it is likely that the remains are Native American. Cremations are characteristic of prehistoric Hohokam funerary practices in this region. During consultation, representatives from the above mentioned tribes stated that their oral traditions say they are culturally affiliated with the Hohokam. The ethnographic, archeological, and historical evidence supports their claim of cultural affiliation.

Organ Pipe Cactus National Monument is located in the western Papagueria of the Sonora Desert Subsection of the Basin and Range Province. The Papagueria is an area that extended from west of Tucson, AZ to the Colorado River and south of the Gila River to the Rocky Point Region. It is further subdivided, based on archeology and climate, into the eastern and western Papagueria. The western Papagueria is the most arid portion of the Sonoran Desert and ranges from south of the Gila River to Rocky Point and from the Ajo Mountains to the Colorado River.

The Akimel O'odham (Pima), Tohono O'odham and the Hia-Ced O'odham claim to be the descendants of the Hohokam. Their oral history documents the end time of the Hohokam, when armies from the south and southeast gathered and marched on the Great House communities (Casa Grande, Mesa Grande, Pueblo Grande) and cast out the priestly societies. The armies intermarried with the Hohokam and became the O'odham people. The Ak-Chin Indian Community is composed primarily of Akimel and Tohono O'odham, and a few families of Hia-Ced O'odham. The Gila River Indian Community and the Salt River Pima-Maricopa Community are both composed of Akimel O'odham along with small populations of Maricopa who moved from the central portion of the Gila River around Gila Bend to join

Akimel O'odham population living along the Salt and Gila Rivers.

Oral history and the archeological record also support the claim by the Zuni and Hopi that some clans originated in the Salt-Gila region and were originally Hohokam.

Hopi history is based, in large part, in clan migration narratives. The Hopi consider all of Arizona to be within traditional Hopi lands, i.e. areas to which Hopi clans are believed to have migrated in the past. Some Hopi clans trace their inception to a place believed to be near the Valley of Mexico, other clans originated in Central and South America, and others in what is now the eastern United States. Clans that moved out of central Mexico migrated north and settled for a time in the Gila and Salt River Valleys. Hopi cultural advisors have indicated that the western Papagueria was one of many migration routes used by the clans.

There is also a resemblance between Hopi ceremonies and those of the O'odham, in particular the Tohono O'odham. Teague (1993:447–448) has noted the similarities of the O'odham *Wi'ikita* ceremony and the Hopi *Wuwtsin* (Ancient's Society) and on the connections with the *Paalolokangw* (Plumed Water Serpent) and the *Kwaakwant* (Agave Society). Underhill (1946) also drew clear links between the O'odham *Wi'ikita* ceremony and Hopi and other pueblo ceremonies. According to Amadeo Rea (1997) the Akimel O'odham (Pima) *Navichu* ceremony bears all the earmarks of the Hopi katchine cult.

The claims of the Zuni Tribe, the *A:shiwi* People, are based on oral history of ancestral migrations and settling throughout this region in their search for the Middle Place of the World (present day Pueblo of Zuni). *A:shiwi* elders have observed and identified features, including shrines, and petroglyphs in the western Papagueria that are affiliated with the *A:shiwi*. The *A:shiwi* trace their migration from the origin point in the Grand Canyon. The ancestors embarked from this point and left many markers of the passing. These include trails, habitation sites, campsites, burials, sacred shrines, rock art, and other shrines that mark specific events. Pilgrimage and trade routes to collect shells and ocean water are known to pass through the Western Papagueria.

Officials of Organ Pipe Cactus National Monument have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of at least one individual of Native American ancestry. Officials of Organ Pipe Cactus National Monument have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Ak-Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Kathy Billings, superintendent, Organ Pipe Cactus National Monument, 10 Organ Pipe Drive, Ajo, AZ 85321, telephone (520) 387–6849, ext. 7500, before September 2, 2005. Repatriation of the human remains to the Ak-Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

Organ Pipe Cactus National Monument is responsible for notifying the Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: June 29, 2005

Sherry Hutt,

Manager, National NAGPRA Program

[FR Doc. 05–15317 Filed 8–2–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and Arizona State Museum, University of Arizona, Tucson, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and in the physical custody of the Arizona State Museum, University of Arizona, Tucson, AZ, that meet the definition of "unassociated funerary objects" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The 14 cultural items are 8 ceramic bowl fragments, 1 ceramic bowl, 2 ceramic jars, 2 projectile points, and 1 shell pendant.

A detailed assessment of the cultural items was made by Bureau of Indian Affairs professional staff and Arizona State Museum professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico. The Zuni Tribe has withdrawn from this consultation. The Gila River Indian Community of the Gila River Indian Reservation, Arizona is acting on behalf of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona; and themselves.

On unknown dates between 1931 and 1934, cultural items were removed from cremation features at an unknown site in the vicinity of Sacaton (AZ U:14:--area), Gila River Indian Reservation, Pinal County, AZ, by Carl A. Moosberg. The four cultural items are a shell pendant, two projectile points, and a ceramic jar. In 1935, the four cultural items were donated to the Arizona State Museum by Mr. Moosberg.

In 1947, the two projectile points were loaned to the Maxwell Museum, University of New Mexico, Albuquerque, NM. In 2005, Maxwell Museum returned the two cultural items to the Arizona State Museum. In 1953, the ceramic jar and shell pendant were sent to the Denver Museum of Natural

History (now the Denver Museum of Nature and Science), Denver, CO, as part of an exchange. In 2005, the Denver Museum of Nature and Science returned the two cultural items to the Arizona State Museum.

Based on characteristics of the mortuary pattern and the attributes of the ceramic style, the cultural items from AZ U:14:--area have been identified as being associated with the Hohokam archeological tradition, which spanned the years circa A.D. 500–1350/1400.

In 1963, cultural items were removed from cremation features during excavations at site AZ U:13:9 ASM, Gila River Indian Reservation, Pinal County, AZ, by Arizona State Museum staff member Alfred E. Johnson. The two cultural items are a ceramic jar and a ceramic bowl. In 1967, the two cultural items were loaned to the Milwaukee Public Museum, Milwaukee, WI. In 2005, the Milwaukee Public Museum returned the two cultural items to the Arizona State Museum.

Based upon architecture, portable material culture, and site organization, occupation at site AZ U:13:9 ASM has been dated to the Colonial through Classic Phases of the Hohokam archeological tradition, approximately A.D. 700–1350/1400.

In 1964–1965, cultural items were removed from cremation features at AZ U:13:24 ASM, Gila River Indian Reservation, Pinal County, AZ, during joint University of Arizona, Department of Anthropology and Arizona State Museum excavations. The eight cultural items are eight ceramic bowl fragments. In 2005, the ceramic bowl fragments were rediscovered during inventory of boxes from the office of a former professor. The human remains associated with the cultural items were reported in a Notice of Inventory Completion published in the **Federal Register** on December 29, 2000 (Volume 65, Number 251, page 83081) and repatriated in 2001.

The archeological evidence, including characteristics of portable material culture, attributes of ceramic styles, domestic and ritual architecture, site organization, and canal-based agriculture of the settlement, places AZ U:13:24 ASM within the archeologically-defined Hohokam tradition and within the Phoenix Basin local variant of that tradition. The occupation of AZ U:13:24 ASM spans the years circa A.D. 1150–1350/1400.

Continuities of mortuary practices, ethnographic materials, and technology indicate affiliation of Hohokam settlements with present-day O'odham (Piman), Pee Posh (Maricopa), and Puebloan cultures. Oral traditions documented for the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico support affiliation with Hohokam sites in central Arizona.

Officials of the Bureau of Indian Affairs and Arizona State Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 14 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Bureau of Indian Affairs and Arizona State Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the cultural items should contact John Madsen, Repatriation Coordinator, Arizona State Museum, University of Arizona, Tucson, AZ 85721, telephone (520) 621- 4795, before September 2, 2005. Repatriation of the unassociated funerary objects to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Arizona State Museum is responsible for notifying the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: July 11, 2005

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–15320 Filed 8–2–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and Arizona State Museum, University of Arizona, Tucson, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and in the physical custody of the Arizona State Museum, University of Arizona, Tucson, AZ. The human remains were removed from sites within the boundaries of the Gila River Indian Reservation, Pinal County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Bureau of Indian Affairs professional staff and Arizona State Museum professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico. The Zuni Tribe has withdrawn from this consultation. The Gila River Indian Community of the Gila River Indian Reservation, Arizona is acting on behalf

of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona; and themselves.

During the years 1971–1973, human remains representing a minimum of six individuals were removed from sites designated GR 2752, GR 2910, GR 3053, and AZ U:13:35 ASM, on the Gila River Indian Reservation, Pinal County, AZ, by Donald Wood, staff member of the Arizona State Museum. The human remains were originally classified as faunal remains. In 2005, a staff member of the Arizona State Museum examined collections of faunal bones from sites on the Gila River Indian Reservation and reclassified these six sets of remains as human bone. These are fragmentary sets of human remains that were not collected from recognized mortuary contexts. No known individuals were identified. No associated funerary objects are present. Additional human remains from the same survey, representing a minimum of three individuals, were reported in a Notice of Inventory Completion published in the **Federal Register** on December 29, 2000 (Volume 65, Number 251, page 83081).

Based on characteristics of the mortuary program, the human remains have been identified as having a high probability of association with the archeologically-defined Hohokam tradition, which spans the years circa A.D. 500–1350/1400.

In 1974, human remains representing a minimum of one individual were removed from site AZ U:13:65 ASM on the Gila River Indian Reservation, Pinal County, AZ, during archeological investigations conducted by the Arizona State Museum under the direction of Gwinn Vivian as part of the Queen Creek Floodway project. The human remains were originally classified as faunal remains. In 2005, a staff member of the Arizona State Museum examined collections of faunal bones from sites on the Gila River Indian Reservation and reclassified these remains as human bone. These are fragmentary human remains that were collected from the surface and not from a recognized mortuary context. No known individual was identified. No associated funerary objects are present.

Based on characteristics of the mortuary pattern and the attributes of the ceramic style, the human remains have been identified as having a high probability of being associated with the Classic Period of the Hohokam archeological tradition, which spanned the years circa A.D. 1150–1350/1400.

Continuities of mortuary practices, ethnographic materials, and technology indicate affiliation of Hohokam settlements with present-day O'odham (Piman), Pee Posh (Maricopa), and Puebloan cultures. Oral traditions documented for the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico support affiliation with Hohokam sites in central Arizona.

Officials of the Bureau of Indian Affairs and Arizona State Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of seven individuals of Native American ancestry. Officials of the Bureau of Indian Affairs and Arizona State Museum have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact John Madsen, Repatriation Coordinator, Arizona State Museum, University of Arizona, Tucson, AZ 85721, telephone (520) 621–4795, before September 2, 2005. Repatriation of the human remains to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Arizona State Museum is responsible for notifying the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: July 11, 2005

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–15321 Filed 8–2–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Northwest Christian College Museum, Kellenberger Library, Eugene, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of Northwest Christian College Museum, Kellenberger Library, Eugene, OR. The human remains were removed from San Juan County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Northwest Christian College Museum, Kellenberger Library and State Museum of Anthropology, University of Oregon professional staff in consultation with representatives of the Lummi Tribe of the Lummi Reservation, Washington.

In the early part of the 20th century, human remains representing a minimum of two individuals were removed from Lopez Island of the San Juan Islands, San Juan County, WA, by Theodore Leavitt. The human remains were donated by Mr. Leavitt sometime between 1922 and 1928 to the Eugene Bible University Museum (now the Northwest Christian College Museum, Kellenberger Library). According to the museum records one cranium was found by a tree on Lopez Island and the other cranium was located in Mud Bay on the beach of Lopez Island. No known individuals were identified. No associated funerary objects are present.

Lopez Island, part of the San Juan Islands in San Juan County, is located in the Northern Straits area and was historically occupied by a number of Salish peoples speaking various dialects of the Northern Straits language (Suttles, 1990). The Salish people or "tribes" and those surrounding them in the Northern Straits area practiced artificial cranial reshaping in the pattern noted in the remains of the two individuals. Therefore, the cranial reshaping of the human remains is consistent with the origin of the skeletal material as listed in the museum records and supports a cultural affiliation of the material with the Salish peoples of the Northern Straits area. By the mid–19th century most of the Salish peoples of the Northern Straits area were sent to the Lummi Reservation in northwestern Washington (Suttles, 1990).

Lopez Island is within the ancestral and traditional lands of the Lummi Tribe of the Lummi Reservation, Washington. Historical evidence, morphological characteristics, the presence of artificial cranial reshaping in the pattern typical for aboriginal Northwest Coast populations (fronto-occipital), and provenience information suggest that the human remains are Salish. Members of the Lummi Tribe of the Lummi Reservation, Washington are the present-day descendants of the Salish people of the Northern Straits area.

Officials of the Northwest Christian College Museum, Kellenberger Library have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Northwest Christian College Museum, Kellenberger Library also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Lummi Tribe of the Lummi Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Maureen Cole, Director, Northwest Christian College, 828 E. 11th Avenue, Eugene, OR 97401, telephone (541) 684–7237, before September 2, 2005. Repatriation of the human remains to the Lummi Tribe of the Lummi Reservation, Washington may proceed after that date if no additional claimants come forward.

Northwest Christian College Museum, Kellenberger Library is responsible for notifying the Lummi Tribe of the Lummi Reservation, Washington that this notice has been published.

Dated: June 27, 2005

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–15324 Filed 8–2–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Horner Collection, Oregon State University, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Horner Collection, Oregon State University, Corvallis, OR. The human remains were removed from Wasco County, OR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Horner Collection. Oregon State University professional staff in consultation with representatives of the Confederated Tribes of the Warm Springs Reservation of Oregon.

The Museum of Oregon Country, Oregon Agricultural College was renamed the John B. Horner Museum of the Oregon Country in 1936, and became commonly known as the Horner Museum. The Oregon Agricultural College was renamed the Oregon State College in 1937, and became Oregon State University in 1962. The Horner Museum closed in 1995. Currently, cultural items from the Horner Museum are referred to as the Horner Collection, which is owned by, and in the possession of, Oregon State University.

At an unknown time, human remains representing a minimum of five individuals were removed from an unknown site in Shaniko, Wasco County, OR. In December 1974, Keith Chamberlain gifted three skulls and three mandibles to the John B. Horner Museum of the Oregon Country. It is unknown whether the human remains were removed by Mr. Chamberlain. Upon examination of the human remains it was discovered that two of the three mandibles originally thought to be associated with two of the three skulls, in fact represented an additional two individuals. No known individuals were identified. No associated funerary objects are present.

A handwritten note in the museum file states, "3 (skulls) - mineralized - from Shaniko Eastern Oregon from Stone Age Site." The author of this note is unknown. The "Stone Age Site" referred to is unknown. Shaniko, Wasco County, OR, is within the territory ceded to the United States in the Treaty of Wasco, Columbia River, Oregon Territory, June 1855, by the Confederated Tribes of the Warm Springs Reservation of Oregon.

Officials of the Horner Collection, Oregon State University have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of five individuals of Native American ancestry. Officials of the Horner Collection, Oregon State University have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes of the Warm Springs Reservation of Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Sabah Randhawa, Executive Vice President and Provost, President's Office, Oregon State University, 600 Kerr Administration Building, Corvallis, OR 97331, telephone (541) 737–8260, before September 2, 2005. Repatriation of the human remains to the Confederated Tribes of the Warm Springs Reservation of Oregon may proceed after that date if no additional claimants come forward.

Horner Collection, Oregon State University is responsible for notifying the Confederated Tribes of the Warm Springs Reservation of Oregon that this notice has been published.

Dated: June 26, 2005

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–15319 Filed 8–2–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA that meets the definition of "sacred objects" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The one cultural item is a wooden bowl (UPMt 29–48–301) created from a tree burl or knot. Cross hatching is visible on the outside surface of the bowl. The bowl also has a raised projection along one edge of the rim. It is possible that this projection was notched twice, but is now too worn down to make a positive determination.

In 1910, Mark Raymond Harrington purchased the bowl (me te gwi na gun) from a Fox Chief, named Pushetonequa (Pu ci ta ni kwe), in Iowa during an ethnological expedition funded by George Gustav Heye, a member of the University of Pennsylvania Museum of Archaeology and Anthropology Board of Overseers. At an unknown date, but probably in 1911, University of Pennsylvania Museum of Archaeology and Anthropology provided storage space for much of Mr. Heye's collection, including the bowl. On October 22, 1919, University of Pennsylvania Museum of Archaeology and Anthropology formally received the bowl as part of an exchange with Mr. Heye. In 1930, the bowl was catalogued into the permanent collection.

The cultural affiliation of the bowl is "Fox" or "Meskwaki" as indicated by museum records. Officials of the University of Pennsylvania Museum consulted with representatives of the Sac and Fox Tribe of the Mississippi in Iowa. Based on consultation and available literature, wooden bowls of this type are needed by traditional Meskwaki (Fox) religious leaders in order to pray to and communicate with their gods. Bowls of this type were and still are used in many complex and traditional religious practices and ceremonies, such as the Sacred Bundle Ceremony, the Ceremonial Feast to Honor the Departed, the Ceremonial Naming Feast, the Return of the Name Feast, and Ceremonial Adoptions.

Officials of the University of Pennsylvania Museum of Archaeology and Anthropology have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the one cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the University of Pennsylvania Museum of Archaeology and Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the bowl and the Sac and Fox Tribe of the Mississippi in Iowa. Lastly, officials of the University of Pennsylvania Museum of Archaeology and Anthropology have concluded that, pursuant to 25 U.S.C. 3001 (13), the University of Pennsylvania Museum of Archaeology and Anthropology has right of possession of the sacred object, but in recognition of the significance of the sacred object to the tribe's contemporary religious practices and its historical significance, consistent with the intent of NAGPRA, and in compromise, the University of Pennsylvania Museum of Archaeology and Anthropology wishes to voluntarily return the bowl to the Sac and Fox Tribe of the Mississippi in Iowa.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred object should contact Dr. Richard M. Leventhal, The Williams Director, University of Pennsylvania Museum of Archaeology and Anthropology, 3260 South Street, Philadelphia, PA 19104–6324, telephone (215) 898–4050, before September 2, 2005. Repatriation of the sacred object to the Sac and Fox Tribe of the Mississippi in Iowa may proceed after that date if no additional claimants come forward.

The University of Pennsylvania Museum of Archaeology and Anthropology is responsible for notifying the Sac and Fox Tribe of the Mississippi in Iowa that this notice has been published.

Dated: July 5, 2005

Sherry Hutt,

Manager, National NAGPRA Program

[FR Doc. 05–15318 Filed 8–2–05; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–544]

In the Matter of Certain Hand-Held Mobile Computing Devices, Components Thereof and Cradles Therefor; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 30, 2005, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Intermec Technologies Corporation. A letter supplementing the complaint was filed on July 12, 2005. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain hand-held mobile computing devices, components thereof and cradles therefor by reason of infringement of claims 62, 66, 67, 71, 126, and 130–132 of U.S. Patent No. 5,410,141, claims 1–3 of U.S. Patent No. 5,468,947, and claims 17–25 and 27–31 of U.S. Patent No. 6,375,344. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint and supplemental letter, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the

Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 26, 2005, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain hand-held mobile computing devices, components thereof and cradles therefor by reason of infringement of one or more of claims 62, 66, 67, 71, 126, and 130–132 of U.S. Patent No. 5,410,141, claims 1–3 of U.S. Patent No. 5,468,947, and claims 17–25 and 27–31 of U.S. Patent No. 6,375,344, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Intermec Technologies Corporation, 6001 36th Avenue West, Everett, Washington 98203.

(b) The respondents are the following companies alleged to be in violation of Section 337 and upon which the complaint is to be served—Symbol Technologies, Inc., One Symbol Plaza, Holtsville, New York 11742.

Symbol de Mexico, Sociedad de R.L. de C.V., Avenida Industrial Rio San Juan Mz–99–L–4 Parque Del Norte, Reynosa, Tamaulipas, Mexico.

(c) Thomas S. Fusco, Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–E, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting a response to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: July 28, 2005.

Marilyn Abbott,

Secretary to the Commission.

[FR Doc. 05–15262 Filed 8–2–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–545]

In the Matter of Certain Laminated Floor Panels; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 1, 2005, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Unilin Beheer B.V. of the Netherlands, Flooring Industries Ltd. of Ireland, and Unilin Flooring N.C. LLC of Thomasville, North Carolina. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain laminated floor panels by reason of infringement of claims 1, 14, 17, 19, 20, 21, 37, 52, 65, and 66 of U.S. Patent No. 6,006,486, claims 1, 2, 10, 13, 18, 19, 22, 23, 24, and 27 of U.S. Patent No. 6,490,836, and claims 1–6 of U.S. Patent No. 6,874,292. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: David H. Hollander, Jr., Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2746.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 27, 2005, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain laminated floor panels by reason of infringement of one or more of claims 1, 14, 17, 19, 20, 21,

37, 52, 65, and 66 of U.S. Patent No. 6,006,486, claims 1, 2, 10, 13, 18, 19, 22, 23, 24, and 27 of U.S. Patent No. 6,490,836, and claims 1–6 of U.S. Patent No. 6,874,292, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—Unilin Beheer B.V., Hoogeveenenweg 28, Postbus 135, 2910 AC, Nieuwerkerk ann den Ijssel, The Netherlands.

Flooring Industries Ltd., Westblock I.F.S.C., Dublin 1, Republic of Ireland.

Unilin Flooring N.C. LLC, 3284 Denton Road, Thomasville, NC 27360.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

3E Business Enterprises Ltd., 5041 Manor St., Vancouver, BC V5R 3Y4, Canada.

AMZ (Ghangzhou) Wooden Industrial Co., Ltd., Amazon Industrial Garden, Pingbu Road Huadu, Guangzhou, Guangdong 510800 China.

Changzhou Dongjia Decorative Materials Co., Ltd., South Cuiqiao Industrial Zone, Henglin, Changzhou, Jiangsu 213103, China.

Changzhou Saili Wood Co., Ltd., Furong Town, Changzhou City, Jiangsu 213118, China.

Changzhou Wujin Zhongxin Wood Co., Ltd., #711 Building C, AnZhen-Foreign Trade Plaza, Hepingli Chaoyang District, Beijing 100013, China.

China Floors Co. Ltd., No. 188 Bao Yuan 4th Road, Huoxian Village JiangQiao Town, Jinbao Industrial Park, Jia Ding District, Shanghai 201812 China.

Dalton Carpet Liquidators, Inc., d/b/a Dalton Flooring Liquidators, 804 East Broad Street, Gadsden, AL 35903.

Fujian Yongan Forestry (Group) Joint, Stock Co., Ltd., No. 13 Nige, Yongan City, Fujian Province, China 366000.

HFC Horizon Flooring Ltd., 305 Holly Avenue, Columbus, OH 43212.

Huzhou Yongji Wooden Co., Ltd., No. 18 Nianfeng Road, Nanxun, Huzhou, Zhejiang 313009, China.

Inter Source Trading Corporation, 10F-N, Hongqiao Shijia Garden, No. 179, Zhongshan Road (W), Shanghai, China, and 201–3785 Myrtle St., Burnaby, BC, Canada V5C 4E7.

Jiangsu Lodgi Wood Industry Co. Ltd., 7/F, Furi Building, 169 Wuyi North Road, Fuzhou, China.

Lodgi North America, Inc., 11131 Bird Road, Richmond, BC V6X IN7, Canada.

Pacific Flooring Manufacture, Inc., 391 Foster City Blvd., Foster City, CA 94404.

P.J. Flooring Distributor, 1455 Monterey Pass Rd., Suite 105, Monterey Park, CA 91754.

Power Dekor Group Co., Ltd., 3/F Byfond Hotel, No. 1587, Zhangyang Rd, Shanghai 200135 China.

Quality Craft, Ltd., #301, 17750–65A Avenue, Surrey, BC V3S 5N4, Canada.

R.A.H. Carpet Supplies, Inc., 551 Main Avenue, Wallington, NJ 07057.

Salvage Building Material, Inc., 951 N. Liberty Street, Winston Salem, NC 27101.

Shanghai Dekorman Flooring Co., Ltd., No. 198 Zhongxin Road, Tianma, Songjian District, Shanghai, 201600 China.

Shanghai Zhengrun Industry, Development Co., Ltd., No. 7735 Fanghuang Road, Shanghai 200000, China.

Shengda Flooring Corp., 26–27/F Spectar Building, #42 Donghua Zhengjie Street, Chengdu City, China 610016.

Stalheim Industries Sdn Bhd, Lot 2994, Jalan Bukit Badong, 45600 Batang Berjuntai, Selangor Darul Ehsan, Malaysia.

Stalheim (USA), Inc., 17360 Colima Road #332, Rowland Heights, CA 91748.

Tsailin Floorings, Inc., 283, Building 3, #402 Siping Road, Hongkou Qu, Shanghai 200081 China.

Universal Floor Covering, Inc., 4500 Automall Parkway, Fremont, CA 94538.

Vegas Laminate Hardwood Floors LLC, 4059 Renate Drive, Las Vegas, NV 89103.

Vöhringer Wood Product (Shanghai) Co., Ltd., 1950 Huhang Road, Fengxian District, Shanghai 201415, China.

Yekalon Industry, Inc., Suite 16A, Flat A, Jinxiu Building, Wenjin Middle Road, Shenzhen, Guangdong 518003, China.

Yingbin (Shunde-Foshan) Wood Industry Co., Ltd., No. 163, Qichong Road, Dachong Town Zhongshan, Guangdong, 528403, China.

(c) David H. Hollander, Jr., Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: July 28, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–15260 Filed 8–2–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–282 (Second Review)]

Petroleum Wax Candles From Cina

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on petroleum wax candles from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on August 2, 2004 (69 FR 46182)

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

and determined on November 5, 2004 that it would conduct a full review (69 FR 68175, November 23, 2004). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on January 21, 2005 (70 FR 3224). The hearing was held in Washington, DC, on May 25, 2005, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this review to the Secretary of Commerce on July 28, 2005. The views of the Commission are contained in USITC Publication 3790 (July 2005), entitled Petroleum Wax Candles from China: Investigation No. 731–TA–282 (Second Review).

Issued: July 28, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–15263 Filed 8–2–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Ultrasonic Metal Welding—Enabling the All Aluminum Vehicle Joint Venture

Notice is hereby given that, on June 28, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Ultrasonic Metal Welding-Enabling the All Aluminum Vehicle Joint Venture ("USW Project") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Branson Ultrasonics Corporation, Danbury, CT has been added as a party to this venture, and American Technologies, Inc., Danbury, CT has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and USW Project intends to file additional written notification disclosing all changes in membership.

On August 6, 2003, USW Project filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 8, 2003 (68 FR 52959).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–15300 Filed 8–2–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Parole Commission

Pursuant To The Government In The Sunshine Act (Public Law 94–409) (5 U.S.C. 552b)

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 2:30 p.m., Tuesday, August 2, 2005.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matter has been placed on the agenda for the open Parole Commission meeting:

Rule amendments for reviewing requests from the Attorney General for reconsideration of a Commission decision.

Earlier notice of this meeting could not be made because of the need to promptly resolve a pending request from the Attorney General for reconsideration of a Commission decision.

AGENCY CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Dated: July 29, 2005.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 05–15405 Filed 8–1–05; 8:45 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Office of the Secretary

Combating Exploitive Child Labor through Education in Zambia

AGENCY: Bureau of International Labor Affairs, Department of Labor.

Announcement Type: New. Notice of Intent to Fund Sole Source Award.

Catalog of Federal Domestic Assistance (CFDA) Number: Not applicable.

SUMMARY: The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), intends to award U.S. $750,000 through a sole source cooperative agreement to Jesus Cares Ministries (JCM), a local, Zambian, faith-based organization. This funding will be used to support a three-year second phase of the JCM project "Combating Child Labor Through Education".

Funding for this award is based on the FY 2005 appropriation to USDOL for improving "access to basic education in international areas with a high rate of abusive and exploitative child labor" through the Child Labor Education Initiative grant program. Since 1995, USDOL has awarded grants to international and non-governmental organizations working to eliminate the worst forms of child labor through the provision of basic education.

ILAB is authorized to award and administer this program by the Consolidated Appropriations Act, 2005, Pub. L. 108–447, 118 Stat. 2809 (2004). The cooperative agreement awarded under this initiative will be managed by ILAB's International Child Labor Program (ICLP) to assure achievement of the stated goals.

ILAB finds JCM is uniquely qualified by virtue of its institutional and individual knowledge of conditions in Zambia, its familiarity with local officials and support groups, and its readily available personnel and facilities, to provide the kinds of services needed to best reach the intended target group in Zambia—children working in the worst forms of child labor and those at-risk of entering such work, including children working in stone crushing, in exploitive agricultural work, and those who live and work on streets in urban areas. The range of services provided by JCM includes counseling, provision of transitional and vocational education, and placement of children in formal schools. JCM also has been instrumental in protecting children affected by HIV/AIDS from entering harmful labor conditions in Zambia, where the HIV/AIDS pandemic has left hundreds of thousands of children vulnerable to such exploitation.

USDOL's experience working with JCM dates back to 2002, when JCM submitted a proposal to USDOL in response to a solicitation for grant applications under USDOL's Child

Labor Education Initiative (EI). As a result of that competitive procurement process, USDOL entered into a cooperative agreement with JCM to implement an EI project in Zambia. JCM has been innovative in using a community school approach to reach the over 2,000 children that it targeted in Phase 1 of the project. JCM was also successful in meeting all of the other goals it set for the first phase of the project. Moreover, this approach has encouraged local ownership and buy-in of the project. JCM has also secured additional funding from the Zambian government and from international organizations to complement its activities under their USDOL grant. JCM is staffed entirely by host country nationals and operates in several urban parts of the country, as well as in Zambia's Eastern Province.

Given the extensive stakeholder relationships that JCM has nurtured in Zambia, their innovative community school approach, and efficient management structure, USDOL finds JCM to be uniquely qualified for this sole source award. The awarding of further USDOL support for JCM will allow it to reach many more vulnerable children and further expand its role as a leading local organization working to eliminate the worst forms of child labor in Zambia.

For additional information on this award, please contact Kevin Willcutts at (202) 693–4843.

Intergovernmental Review

This funding opportunity is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Signed in Washington, DC, this 26th day of July, 2005.

Lisa Harvey,

Grant Officer.

[FR Doc. 05–15285 Filed 8–2–05; 8:45 am]

BILLING CODE 4510–28–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–125)]

National Environmental Policy Act; New Horizons Mission

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of final environmental impact statement (FEIS) for implementation of the New Horizons mission.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and procedures (14 CFR part 1216 subpart 1216.3), NASA has prepared and issued a FEIS for the New Horizons mission. The FEIS addresses the potential environmental impacts associated with continuing the preparations for and implementing the mission. The purpose of the Proposed Action, that is NASA's Preferred Alternative, is to explore Pluto, its moon Charon, and possibly one or more objects within the Kuiper Belt.

The New Horizons mission is planned for launch in January–February 2006 from Cape Canaveral Air Force Station (CCAFS), Florida, on an expendable launch vehicle. With a launch in mid January 2006, the New Horizons spacecraft would arrive at Pluto as early as 2015 and would conduct scientific investigations of Pluto and its moon, Charon, as it flies past these bodies. The spacecraft may then continue on an extended mission into the Kuiper Belt, where it would investigate one or more of the objects found there. The spacecraft would require electrical power for normal spacecraft operations and to operate the science instruments. One radioisotope thermoelectric generator (RTG) containing plutonium dioxide would be used for this purpose. A backup launch opportunity could occur in February 2007 with an arrival at Pluto in 2019 or 2020 depending upon the exact date of launch.

DATES: NASA will take no final action on the proposed New Horizons mission on or before September 2, 2005, or 30 days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency (EPA) notice of availability of the New Horizons FEIS, whichever is later.

ADDRESSES: The FEIS may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street, SW., Washington, DC 20546–0001;

(b) The Johns Hopkins University Applied Physics Laboratory, Gibson Library, 11100 Johns Hopkins Road, Laurel, MD 20723–6099. Hard copies of the FEIS may be reviewed at other NASA Centers (*see* **SUPPLEMENTARY INFORMATION** below).

Limited hard copies of the FEIS are available for distribution by contacting Kurt Lindstrom at the address, telephone number, or electronic mail address indicated below. The FEIS is also available in Acrobat® format at *http://spacescience.nasa.gov/admin/pubs/plutoeis/index.htm*. NASA's Record of Decision (ROD) will also be placed on that Web site when it is issued. Anyone who desires a hard copy of NASA's ROD when it is issued should contact Mr. Lindstrom.

FOR FURTHER INFORMATION CONTACT: Kurt Lindstrom, Mission and Systems Management Division, Science Mission Directorate, NASA Headquarters, Washington, DC 20546–0001, telephone 202–358–1588, or electronic mail *osspluto@hq.nasa.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the action addressed in this FEIS is to further our knowledge of Pluto, the outermost known planet of our solar system, and its moon, Charon, and, if possible, the Kuiper Belt. The goal of the New Horizons mission would be to measure the fundamental physical and chemical properties of Pluto and Charon. Specifically, the New Horizons mission would acquire data to address the following primary scientific objectives.

—Characterize the global geology and morphology of Pluto and Charon.
—Map the surface compositions of Pluto and Charon.
—Characterize the neutral (uncharged) atmosphere of Pluto and its rate of escape.

After the Pluto-Charon flyby and data playback is complete, the spacecraft may continue on an extended mission to encounter one or more objects within the Kuiper Belt. The remote science instrumentation planned for Pluto and Charon could also be used for investigations of the Kuiper Belt Objects (KBO).

Pluto is the only major body within our solar system that has not yet been visited by spacecraft. Many of the questions posed about Pluto and Charon can only be addressed by a spacecraft mission that brings advanced instruments close to the two bodies. Scientific knowledge of all other planets and their moons, and thus understanding of the nature of the solar system, has been increased enormously through visits by spacecraft.

The science to be performed at Pluto and Charon is time-critical because of long-term seasonal changes in the surfaces and atmospheres of both bodies. The objectives of surface mapping and surface composition mapping would be significantly compromised as Pluto and Charon recede from the Sun and their polar regions become increasingly hidden in shadow. Furthermore, as Pluto recedes from the Sun, substantial decline, if not complete collapse, of its atmosphere is widely anticipated.

The recent discovery of many objects beyond Neptune in the Kuiper Belt has opened another dimension for this mission of exploration. KBOs, in stable and well-defined orbits that have never taken them close to the Sun, are likely to be remnants of solar system formation and may hold clues to the birth of the planets. Knowledge gained from close examination of objects in the Kuiper Belt would be of great value in developing theoretical models of the evolution and destiny of the solar system.

The Proposed Action consists of continuing preparations for and implementing the New Horizons mission. The New Horizons spacecraft would be launched on an Atlas V 551 from CCAFS in January–February 2006. This launch opportunity represents the best opportunity for achieving the time-critical science objectives at Pluto and Charon. A backup launch opportunity could occur in February 2007 with arrival at Pluto in 2019 or 2020 depending upon the exact date of launch. Accordingly, the only alternative that was evaluated is the No Action alternative.

For the New Horizons missions, the potentially affected environment for a normal launch includes the area at and in the vicinity of the launch site, CCAFS in Florida. The environmental impacts of a normal launch of the mission for the Proposed Action would be associated principally with the exhaust emissions from the Atlas V launch vehicle. These effects would include: (1) Short-term impacts on air quality within the exhaust cloud and near the launch pad, and (2) the potential for acidic deposition on the vegetation and surface water bodies at and near the launch complex, particularly if rain occurs shortly after launch.

Potential launch accidents could result in the release of some of the radioactive material on board the spacecraft. The spacecraft would have one RTG that uses plutonium dioxide to provide electrical power. The radioisotope inventory of the RTG would total up to approximately 124,000 curies of plutonium.

The U.S. Department of Energy (DOE), in cooperation with NASA, has performed a risk assessment of potential accidents for the New Horizons mission. This assessment used a methodology refined through applications to the Galileo, Ulysses, Cassini, and Mars Exploration Rover missions, and incorporates results of safety tests on the RTG and an evaluation of the January 17, 1997, Delta II accident at CCAFS. DOE's risk assessment for this mission indicates that in the event of a launch accident the expected impacts of released radioactive material at and in the vicinity of the launch area, and on a global basis, would be small.

The FEIS may be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(a) NASA, Ames Research Center, Moffett Field, CA 94035 (650–604–1181).

(b) NASA, Dryden Flight Research Center, PO Box 273, Edwards, CA 93523 (661–276–2704).

(c) NASA, Glenn Research Center at Lewis Field, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2755).

(d) NASA, Goddard Space Flight Center, Greenbelt Road, Greenbelt, MD 20771 (301–286–4721).

(e) NASA, Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

(f) NASA, Johnson Space Center, Houston, TX 77058 (281–483–8612).

(g) NASA, Kennedy Space Center, FL 32899 (321–867–9280).

(h) NASA, Langley Research Center, Hampton, VA 23681 (757–864-2497).

(i) NASA, Marshall Space Flight Center, Huntsville, AL 35812 (256–544–1837).

(j) NASA, Stennis Space Center, MS 39529 (228–688–2118).

NASA published a Notice of Availability (NOA) of the Draft EIS (DEIS) for the New Horizons mission in the **Federal Register** on February 25, 2005 (70 FR 9387), and made the DEIS available in electronic format on its Web site. The EPA published its NOA in the **Federal Register** on February 25, 2005 (70 FR 9306). In addition, NASA published its NOA in local newspapers in the Cape Canaveral, Florida regional area, and held public meetings in Cocoa, Florida on March 29 and 30, 2005, during which attendees were invited to present both oral and written comments on the DEIS. No comments relevant to the DEIS were presented at either meeting. NASA received 967 written comment submissions, both hardcopy and electronic, during the comment period ending April 11, 2005. The comments are addressed in the FEIS.

Jeffrey E. Sutton,

Assistant Administrator for Infrastructure and Administration.

[FR Doc. 05–15250 Filed 8–2–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before September 2, 2005, to be assured of consideration.

ADDRESSES: Send comments to Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on May 23, 2005 (70 FR 29541). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Request Pertaining to Military Records.

OMB number: 3095–0029.

Agency form number: SF 180.
Type of review: Regular.
Affected public: Veterans, their authorized representatives, State and local governments, and businesses.
Estimated number of respondents: 889,065.
Estimated time per response: 5 minutes.
Frequency of response: On occasion (when respondent wishes to request information from a military personnel record).
Estimated total annual burden hours: 74,089 hours.
Abstract: The authority for this information collection is contained in 36 CFR 1228.168(b). In accordance with rules issued by the Department of Defense (DOD) and Department of Homeland Security (DHS, U.S. Coast Guard), the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers military service records of veterans after discharge, retirement, and death. When veterans and other authorized individuals request information from or copies of documents in military service records, they must provide in forms or in letters certain information about the veteran and the nature of the request. Federal agencies, military departments, veterans, veterans' organizations, and the general public use Standard Forms (SF) 180, Request Pertaining to Military Records, in order to obtain information from military service records stored at NPRC. Veterans and next-of-kin of deceased veterans can also use eVetRecs (*http://www.archives.gov/research_room/vetrecs/*) to order copies.

Dated: July 28, 2005.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 05–15286 Filed 8–2–05; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Cancellation of panel meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, has been cancelled.

FOR FURTHER INFORMATION CONTACT: Michael McDonald at (202) 606–8322.

Cancellation

Date: August 26, 2005.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for EDISTEment in Peer Review, submitted to the Division of Education at the July 30, 2005, deadline.

Dated: July 28, 2005.

Michael McDonald,

Acting Advisory Committee Management Officer.

[FR Doc. 05–15255 Filed 8–2–05; 8:45 am]

BILLING CODE 7536–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for the Elimination of OPM Optional Form 510, Applying for a Federal Job; the Revision of OPM Optional Form 612, Optional Application for Federal Employment; the Resume Builder in the USAJOBS Web Site; and the USAJOBS Web Site

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for the elimination of the optional form (OF) called Applying for a Federal Job (OF 510), the revision of the optional form called Optional Application for Federal Employment (OF 612), the specifications of the improved resume builder in the USAJOBS Web site (*http://www.USAJOBS.gov*), and screen shots of the web pages within the USAJOBS Web site.

OPM proposes eliminating the OF 510. The OF 510 is a brochure that has been used to provide guidance to the general public on how to apply for Federal jobs and how to construct a Federal resume (i.e., what necessary work, education, and other information applicants should include in their resumes or other applications). However, the same instructions contained in the OF 510 have been incorporated into the revised OF 612 and the USAJOBS resume builder. The instructions are also available through numerous other sources, including the USAJOBS Web site, that were not available at the time this brochure was originally created. This proposed action will eliminate the need to print, maintain, and distribute an instructional guide in hard copy format now that the information can be readily updated and delivered by leveraging current web and other automated technology.

The OF 612 is a form used to collect applicant qualifications information associated with vacancy announcements. The form provides necessary guidance to applicants so that they can be considered for employment when applying for Federal jobs. Presently the OF 612 is downloadable from OPM's electronic forms page on the USAJOBS Web site (*http://www.opm.gov/forms*) in fillable pdf format. The data collected are necessary for Federal agencies to evaluate applicants for Federal jobs under the authority of sections 1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394 of title 5, United States Code.

OPM has reconstructed the resume builder in the USAJOBS Web site to be in line with the data elements collected in the revised OF 612. The resume builder contains the critical elements applied across the Federal government to assess an applicant's qualifications as required under the aforementioned sections of 5 United States Code.

The OF 612 and the resume builder in the USAJOBS Web site contain questions regarding the applicant's education history, including dates of attendance, name, type and place of institution, and degrees earned. Due to the increasing number of claimed degrees earned from non-accredited or bogus institutions, commonly referred to as "diploma mills," the revised OF 612 and the USAJOBS resume ask applicants to list only degrees from schools that were accredited by accrediting institutions recognized by the U.S. Department of Education or other education that meets the provisions of OPM's Operating Manual at *www.opm.gov/qualifications/SEC–II/s2–e4.htm*. The revised OF 612 and resume builder also advise applicants not to list education from degrees based solely on life experiences, or obtained from schools with little or no academic standards.

The USAJOBS Web site is the Federal Government's official one-stop source for Federal jobs and employment information. USAJOBS is operated by OPM and provides job vacancy information, employment fact sheets, job applications/forms, and on-line resume development. Job seekers may create a "My USAJOBS" account where they can create up to five resumes. These resumes are stored in one

location where they can be updated, saved, or sent at any time.

The public reporting burden for the collection of the data will vary from 20 to 240 minutes, with an average of 90 minutes for both, the OF 612 and the online resume builder. This time estimate includes time for reviewing instructions, searching existing data sources, gathering data, and completing and reviewing the information.

OF 612—burden hours calculation:

Estimated number of respondents: 245,000.

Average time to complete the OF 612: 90 min. (1.5 hours). 245,000 × 1.5 = 367,500 burden hours.

Federal Resume—burden hours calculation:

Estimated number of respondents: 3,510,600.

Average time to complete the on-line resume builder: 90 min. (1.5 hours). 3,510,600 × 1.5 = 5,265,900 burden hours.

The dramatic upsurge in responses is due to expansion and acceptance of resumes in the Federal application process and the advancement of technology to provide for online application, as well as increased interest by job seekers in Federal employment as evidenced by an eightfold growth in visits to the USAJOBS Federal employment information system in FY 2004 over FY 2003. The increase in time is based on new requirements that job applicants provide accreditation information for institutions of higher education from which they have received a degree. As job applicants will need to verify their education against this new requirement, the OF–612 or Federal resume will take longer to complete than it has in the past.

As a result of the 60-day notice, OPM received one comment expressing concern about the additional burden for applicants. The reason for this extra burden was the requirement that applicants provide accreditation information for institutions of higher education from which they have received degrees. OPM has determined that this was a valid concern. Therefore, the OF 612 and the resume builder will contain specific instructions to the applicant to list only degrees from facilities that have been duly accredited by the U.S. Department of Education or other education that meets the provisions of OPM's Operating Manual at *http://www.opm.gov/qualifications/SEC–II/s2–e4.htm*, and not from non-accredited or bogus institutions.

For copies of this proposal, contact Mary Beth Smith-Toomey by phone at (202) 606–8358, by FAX at (202) 418–3251, or via e-mail at *MaryBeth.Smith-Toomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

U.S. Office of Personnel Management, USAJOBS, ATTN: Mariana Pardo, U.S. Office of Personnel Management, 1900 E Street, NW, Room 2469, Washington, DC 20415

and

Brenda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. 05–15366 Filed 8–2–05; 8:45 am]

BILLING CODE 6325–38–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of information collection: Continuing Disability Report; OMB 3220–0187.

Under Section 2 of the Railroad Retirement Act, an annuity is not payable or is reduced for any month in which the annuitant works for a railroad or earns more than prescribed dollar amounts from either non-railroad employment or self-employment. Certain types of work may indicate an annuitant's recovery from disability. The provisions relating to the reduction or non-payment of annuities by reasons of work and an annuitant's recovery from disability for work are prescribed in 20 CFR 220.17–220.20. The RRB conducts continuing disability reviews (CDR) to determine whether annuitants continue to meet the disability requirements of the law. Provisions relating to when and how often the RRB conducts CDR's are prescribed in 20 CFR 220.186.

Form G–254, Continuing Disability Report, is used by the RRB to develop information for CDR determinations, including determinations prompted by a report of work, return to railroad service, allegations of medical improvement, or routine disability call-up. The RRB provides significant non-burden impacting editorial and formatting changes. The editorial changes are proposed largely to provide better instructions and to clarify information currently requested.

Form G–254a, Continuing Disability Update Report, is used to help identify disability annuitants whose work activity and/or recent medical history warrants a more extensive review and thus completion of Form G–254. The RRB proposes non-burden impacting changes to Form G–254a to delete items no longer necessary and to add the Paperwork Reduction Act/Privacy notice that had previously been part of an accompanying transmittal letter.

One response is requested of each respondent to Form G–254 and G–254a. Completion is required to retain a benefit.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form	Annual responses	Time (min)	Burden (hrs)
G–254	1,500	5–35	623
G–254a	1,500	5	125

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 05–15308 Filed 8–2–05; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 52145/July 28, 2005]

Securities Exchange Act Of 1934; Order Regarding Alternative Net Capital Computation for Morgan Stanley & Co., Which Has Elected To Be Supervised on a Consolidated Basis

Morgan Stanley & Co. ("MS"), a broker-dealer registered with the Securities and Exchange Commission ("Commission"), and its ultimate holding company, Morgan Stanley ("MSGroup"), have indicated their desire to be supervised by the Commission as a consolidated supervised entity ("CSE"). MS, therefore, has submitted an application to the Commission for authorization to use the alternative method of computing net capital contained in Appendix E to Rule 15c3–1 (17 CFR 240.15c3–1e) to the Securities Exchange Act of 1934 ("Exchange Act").

Based on a review of the application that MS submitted, the Commission has determined that the application meets the requirements of Appendix E. The Commission also has determined that MSGroup is in compliance with the terms of its undertakings, as provided to the Commission under Appendix E. The Commission, therefore, finds that approval of the application is necessary or appropriate in the public interest or for the protection of investors.

Accordingly,

It is ordered, under paragraph (a)(7) of Rule 15c3–1 (17 CFR 240.15c3–1) to the Exchange Act, that MS may calculate net capital using the market risk standards of Appendix E to compute a deduction for market risk on some or all of its positions, instead of the provisions of paragraphs (c)(2)(vi) and (c)(2)(vii) of Rule 15c3–1, and using the credit risk standards of Appendix E to compute a deduction for credit risk on certain credit exposures arising from transactions in derivatives instruments, instead of the provision of paragraph (c)(2)(iv) of Rule 15c3–1.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4118 Filed 8–2–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of United Financial Mortgage Corp., To Withdraw Its Common Stock, No Par Value, From Listing and Registration on the American Stock Exchange LLC File No. 1–14127

July 27, 2005.

On July 6, 2005, United Financial Mortgage Corp., an Illinois corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, no par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

On May 2, 2005, the Board of Directors ("Board") of the Issuer approved resolutions to withdraw the Security from listing and registration on Amex and to list the Security on the Nasdaq SmallCap Market ("Nasdaq"). The Issuer stated that the Board believes trading the Security on Nasdaq will provide a variety of advantages over Amex, including, but not limited to: (i) Improved liquidity in the Security; (ii) an increase in the Issuer's visibility and faster trade execution time; and (iii) better execution quality for investors in the Security. The Issuer stated that the Board believes it is in the best interest of the Issuer and its stockholders to change the listing of the Security to Nasdaq.

The Issuer stated that it has met the requirements of Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration by complying with all the applicable laws in effect in Illinois, in which it is incorporated. The Issuer's application relates solely to the withdrawal of the Security from listing on Amex and from registration under Section 12(b) of the Act,[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before August 22, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–14127; or

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 1–14127. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–4116 Filed 8–2–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52146; File No. SR-OPRA–2005–02]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information To Revise the Manner in which OPRA's Professional Subscribers Fee at the Enterprise Rate Is Determined

July 28, 2005.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")[1] and Rule 11Aa3–2 thereunder,[2] notice is hereby given that on July 11, 2005, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan").[3] The proposed OPRA Plan amendment would revise the manner in which OPRA's Professional Subscribers Fee at the Enterprise Rate would be determined by amending the Enterprise Rate Amendment to the OPRA Professional Subscriber Agreement and the OPRA Professional Subscriber Fee Schedule. The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

I. Description and Purpose of the Amendment

OPRA states that the purpose of the proposed amendment is to slightly revise the manner in which OPRA's Professional Subscriber Fee at the Enterprise Rate is determined. The Enterprise Rate is an alternative to OPRA's device-based professional subscriber fee, and it is based on the total number of a professional subscriber's registered representatives in the United States, its territories, and possessions as determined on the last day of each calendar year or as determined at other times in accordance with the terms of the Enterprise Amendment to the Professional Subscriber Agreement.

The proposed amendment provides that, in reporting the number of its registered representatives, a professional subscriber need not include persons who may previously have been registered representatives, but who are, at the time of the report, legally prohibited from acting as registered representatives (because, for example, their registration has been suspended or withdrawn) and who do not so act. To the extent such persons could have been taken into account in the calculation of the Professional Subscriber Fee at the Enterprise Rate, the effect of the proposed amendment would be to reduce the amount of the Fee. In addition, the proposed amendment to the Professional Subscriber Fee Schedule reflects the elimination of outdated language referring to fees that are no longer in effect. The text of the proposed rule change is available at the principal office of OPRA and at the Commission's Public Reference Room.

II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph (c)(3)(i) of Rule 11Aa3–2 under the Act,[4] OPRA designates this amendment as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to, or use of, OPRA facilities, thereby qualifying for effectiveness upon filing. The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2) under the Act,[5] if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a national market system; or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment 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–OPRA–2005–02 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–OPRA–2005–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OPRA. 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-OPRA–2005–02 and should be submitted on or before August 24, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4125 Filed 8–2–05; 8:45 am]

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[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *http://www.opradata.com.*

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The six participants to the OPRA Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

[4] 17 CFR 240.11Aa3–2(c)(3)(i).

[5] 17 CFR 240.11Aa3–2(c)(2).

[6] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52150; File No. SR–Amex–2005–079]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Extend the Linkage Fee Pilot Program

July 28, 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 July 25, 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 and II below, which Items have been substantially prepared by the Exchange. 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 for a pilot period through July 31, 2006.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend for one (1) year until July 31, 2006, the current pilot program regarding transaction fees for trades submitted through the intermarket option linkage ("Linkage") and executed on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.amex.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 III below. The Exchange 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.

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 extend for one (1) year until July 31, 2006, the current pilot program establishing Exchange fees for Principal Orders ("P Orders") and Principal Acting as Agent Orders ("P/A Orders") submitted through Linkage and executed on the Exchange. The fees in connection with the pilot program are scheduled to expire on July 31 2005.[3]

The current fees applicable to P Orders and P/A Orders executed on the Exchange are as follows: (i) $0.10 per contract side options transaction fee for equity options (including exchange-traded fund shares (ETFs) and OEF options); (ii) $0.21 per contract side options transaction fee for index options; (iii) $.05 per contract side options comparison fee; (iv) $0.05 per contract side options floor brokerage fee; (v) $0.20 per contract side options licensing fee for SPDR O-Strip options; (vi) $0.15 per contract side options licensing fee for the ONEQ, MNX and NDX options; (vii) $0.10 per contract side options licensing fee for SPY, QQQQ, LQD, SHY, IEF, TLT, AGG and TIP options; (viii) $0.09 per contract side options licensing fee for ICF; and (ix) $0.05 per contract side options licensing fee for OEF. These are the same fees charged to specialists and registered option traders ("ROTs") for transactions executed on the Exchange. The Exchange does not charge for the execution of Satisfaction Orders sent through Linkage.

As was the case in the original pilot program and subsequent extensions, the Exchange believes that the existing fees currently charged to Exchange specialists and ROTs should also apply to executions resulting from Linkage orders.

Based on the experience to date, the Exchange believes that an extension of the pilot program for one (1) year until July 31, 2006 is appropriate.

2. Statutory Basis

The Exchange believes that the proposed fee change is consistent with Section 6(b)(4) of the Act[4] regarding the equitable allocation of reasonable dues, fees and other charges among exchange members and other persons using exchange facilities.

[3] *See* Securities Exchange Act Release No. 50116 (July 29, 2004), 69 FR 47473 (August 5, 2004) (SR–Amex–2004–54).

[4] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no 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–Amex–2005–079 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–2005–079. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–079 and should be submitted on or before August 24, 2005.

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 the Act and the rules and regulations thereunder applicable to a national securities exchange,[5] and, in particular, the requirements of Section 6(b) of the Act [6] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2006 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[8] for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change will preserve the Exchange's existing pilot program for Linkage fees without interruption as the Exchange and the Commission further consider the appropriateness of Linkage fees.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–Amex–2005–079) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4119 Filed 8–2–05; 8:45 am]

BILLING CODE 8010–01–P

[5] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15.U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(2).

[9] *Id.*

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52149; File No. SR–BSE–2005–22]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot Program That Allows for No Minimum Size Order Requirement for the Price Improvement Period Process

July 28, 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 July 22, 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 and II below, which Items have been prepared by the Exchange. The BSE filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] 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 is proposing to amend Supplementary Material .01 to Chapter V, Section 18 of the rules of the Boston Options Exchange ("BOX"), an options trading facility of the BSE, to extend its existing Price Improvement Period ("PIP") pilot program that allows for no minimum size order requirement ("PIP Pilot Program") from August 7, 2005 until July 18, 2006. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in [brackets].

* * * * *

Chapter V, Section 18

* * * * *

Supplementary Material to Section 18

.01 [Initially, and for at least] *During the extended* Pilot Period *from August 7, 2005 to July 18, 2006* [of eighteen months from the commencement of trading on BOX], there will be no minimum size requirement for Customer Orders to be eligible for the PIP process. During this *extended* Pilot Period, BOXR will *continue* to submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size PIP orders, that there is significant price improvement for all orders executed through the PIP, and that there is an active and liquid market functioning on BOX outside of the PIP mechanism. Any data which is submitted to the Commission by BOXR will be provided on a confidential basis.

.02 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. 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 purpose of the proposed rule change is to extend the PIP Pilot Program under the rules of the BOX.[6] The PIP Pilot Program allows BOX to have no minimum size requirement for orders entered into the PIP. The proposed rule change retains the text of the Supplementary Material to Section 18 of Chapter V of the BOX Rules, as currently approved on an eighteen-month pilot basis, and seeks to extend the operation of the PIP Pilot Program until July 18, 2006.

The PIP Pilot Program provides small customer orders with benefits not available under the rules of most other

[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] The BSE has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii). *See also* discussion *infra* Section III.

[6] *See* Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2768 (January 20, 2004) (SR–BSE–2003–04) ("PIP Pilot Program Approval Order").

exchanges. One of the important factors of the PIP Pilot Program is that it guarantees members the right to trade with their customer orders that are less than 50 contracts. In particular, any order entered into the PIP is guaranteed an execution at the end of the auction at a price at least a penny better than the National Best Bid and Offer ("NBBO").

In further support of this proposed rule change and as required by the PIP Pilot Program Approval Order, the Exchange has been submitting to the Commission a monthly PIP Pilot Program Report, offering detailed data from and analysis of the PIP Pilot Program.

2. Statutory Basis

The Exchange believes the data demonstrates that there is sufficient investor interest and demand to extend the PIP Pilot Program for another year. The proposed rule change is designed to provide investors with real and significant price improvement regardless of the size of the order, without adversely affecting the regular auction. Accordingly, the Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[7] in general, and Section 6(b)(5) of the Act,[8] in particular, in that it is designed to provide price improvement to any order, which is consistent with the public interest and protection of investors from a best execution standpoint. Additionally, the Exchange believes price improvement to any size order creates competition for the best execution of all orders, without unduly burdening competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed 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) 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) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 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. In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The BSE has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay to allow the PIP Pilot Program to continue to operate without interruption. The Commission waives the five-day pre-filing notice requirement. In addition, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the PIP Pilot Program to continue without interruption through July 18, 2006.[9] For this reason, the Commission designates that the proposal become operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comment

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–BSE–2005–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. SR–BSE–2005–22. 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–2005–22 and should be submitted on or before August 24, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4121 Filed 8–2–05; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 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).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52147; File No. SR–BSE–2005–28]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Extend the Linkage Fee Pilot Program

July 28, 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 July 27, 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 and II 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 and is approving the proposal on an accelerated basis for a pilot period through July 31, 2006.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule ("Fee Schedule") of the Boston Options Exchange, the options trading facility of the BSE ("BOX"), to extend until July 31, 2006, the current pilot program applicable to the option intermarket linkage ("Linkage") fees and to make some technical changes to the Fee Schedule. The text of the proposed fee schedule is available on the Exchange's Web site (*http://www.bostonstock.com*), at the offices of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's fees for Principal ("P") and Principal Acting as Agent ("P/A") orders[3] executed on BOX currently operate under a pilot program scheduled to expire on July 31, 2005.[4] The Exchange proposes to extend the current pilot program for such Linkage fees through July 31, 2006. Currently, because all Linkage Orders received by BOX are for the account of a market maker on another exchange, the Linkage fees that are applicable to P and P/A Orders are the same as fees applicable to market makers on other exchanges that submit orders to BOX outside of the Linkage. The side of a BOX trade opposite an inbound P or P/A Order would be billed normally as any other BOX trade. Also, consistent with the Linkage Plan, no fees will be charged to a party sending a Satisfaction request ("S" order) to BOX. Rather, a fee will be charged to the BOX Options Participant that was responsible for the trade-through that caused the S order to be sent.

The Exchange believes that extending the Linkage fee pilot program until July 31, 2006 will give the Exchange and the Commission additional time and opportunity to evaluate the appropriateness of the Linkage fees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4) of the Act,[6] in particular, in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

[3] Under Chapter XII of the BOX Rules, a "Linkage Order" means an Immediate or Cancel order routed through the Linkage. There are three types of Linkage Orders:

(i) "P/A Order," which is an order for the principal account of a Market Maker (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent;

(ii) "P Order," which is an order for the principal account of a market maker (or equivalent entity on another Participant Exchange) and is not a P/A Order; and

(iii) "Satisfaction Order," which is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

[4] See Securities Exchange Act Release No. 50124 (July 30, 2004), 69 FR 47963 (August 6, 2004) (SR–BSE 2004–32).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on 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–BSE–2005–28 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–2005–28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at

the principal office of the 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–2005–28 and should be submitted on or before August 24, 2005.

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 the Act and the rules and regulations thereunder applicable to a national securities exchange,[7] and, in particular, the requirements of Section 6(b) of the Act[8] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2006 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[10] for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change will preserve the Exchange's existing pilot program for Linkage fees without interruption as the Exchange and the Commission further consider the appropriateness of Linkage fees.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–BSE–2005–28) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2006.

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(2).

[11] *Id.*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4124 Filed 8–2–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52131; File No. SR-NASD–2005–093]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to NASD Rule 3370

July 27, 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 July 20, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Rule 3370 to clarify that members must make certain affirmative determinations when effecting long sales and document compliance with those affirmative determination requirements. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

3370. [Purchases]*Prompt Receipt and Delivery of Securities*

(a) Purchases

No member or person associated with a member may accept a customer's purchase order for any security unless it has first ascertained that the customer placing the order or its agent agrees to receive securities against payment in an amount equal to any execution, even though such an execution may represent the purchase of only a part of a larger order.

(b) Long Sales

No member or person associated with a member shall accept a long sale order from any customer in any equity security unless the order meets the requirements applicable to long sales set forth in Regulation SHO. To the extent a member or person associated with a member does not have physical possession or control of the securities, the member or person associated with a member must document, at the time the order is taken, the communication with the customer as to the present location of the securities in question, whether they are in good deliverable form and the customer's ability to deliver them to the member by settlement date. For purposes of this rule, the term "customer" includes a non-member broker-dealer.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 23, 2004, the SEC adopted certain provisions of a new short sale regulation, designated Regulation SHO.[4] Regulation SHO consists of, among other provisions, SEC Rule 200(g), requirements for marking sell order of equity securities, and SEC Rule 203(a), delivery requirements for long sales.[5] Specifically, SEC Rule 200(g) of Regulation SHO requires that sell orders in all equity securities be marked either "long," "short," or "short exempt."

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 17 CFR 240.19b-4.

[4] *See* Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004).

[5] The compliance date for SEC Rule 200(g) and SEC Rule 203(a) was January 3, 2005.

Pursuant to SEC Rule 200(g), an order can be marked "long" only when the seller owns the security being sold and the security either is in the physical possession or control of the broker-dealer or it is reasonably expected that the security will be in the physical possession or control of the broker-dealer no later than settlement. Subject to certain exceptions, SEC Rule 203(a) requires that a broker-dealer selling an equity security marked long will be able to deliver the security on settlement date without borrowing the security. Regulation SHO's long sale delivery requirements, together with the long sale order marking requirements, require broker-dealers, prior to executing the order, to confirm the customer's ownership of the security and its ability to deliver the security by settlement date.

As noted in the adopting release for Regulation SHO, the SEC has indicated its expectation that self-regulatory organization ("SRO") rules that overlapped with the provisions of Regulation SHO would be repealed. Accordingly, NASD repealed, among other rules, NASD Rule 3370(b) that, in part, required members to undertake the following obligations in connection with a long sale: (1) To make an affirmative determination as to the location of the securities, (2) to determine whether the securities are in deliverable form and in fact can be delivered within 3 business days; and (3) to document such information in writing (collectively, the "affirmative determination requirements"). NASD staff has received inquiries as to whether the affirmative determination requirements continue to apply, given that these requirements are not explicitly provided in Regulation SHO.

As a result, NASD is proposing to amend Rule 3370 to re-adopt expressly the affirmative determination requirements as they now relate to member obligations with respect to long sales under Regulation SHO.[6] NASD believes that this proposed amendment will clarify a member's obligations in connection with sale transactions that are marked long. Specifically, the member must comply with the requirements applicable to long sales in Regulation SHO and, to the extent the member or person associated with the member does not have physical possession or control of the securities, make and document, at the time the order is taken, an affirmative determination as to the location of the security, that they are in good deliverable form, and the customer's ability to deliver such securities on settlement date. As with Regulation SHO, absent countervailing circumstances, it may not be reasonable to rely on the representation of a customer that an order is "long" if the customer has had prior failures to deliver in a security.

NASD proposes to make the proposed rule change operative on the date of filing.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[7] of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will more clearly state a member's obligations in connection with sale transactions that are marked long, and is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is filed pursuant to paragraph (A) of Section 19(b)(3)[8] and Rule 19b–4(f)(6).[9] Because the foregoing 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 and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to the thirty days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. NASD has requested that the Commission waive the thirty day operative delay requirement to re-adopt expressly the affirmative determination requirements as they now relate to member obligations with respect to long sales under Regulation SHO.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change effective as of the date of this order.[10] The Commission notes that the affirmative determination requirements with respect to member long sales were unintentionally deleted when NASD repealed rules that overlapped with the provisions of Regulation SHO.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–093 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–093. 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

[6] Note: The deletion of the affirmative determination requirements in connection with the adoption of Regulation SHO was unintentional.

[7] 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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, 100 F Street, NE., Washington, DC 20549–9303. Copies of such filing also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–NASD–2005–093 and should be submitted on or before August 23, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4117 Filed 8–2–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52141; File No. SR–NASD–2004–009]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1, 2, 3, 4, and 5 Thereto To Modify Nasdaq's Clearly Erroneous Rule

July 27, 2005.

I. Introduction

On January 21, 2004, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] to modify the Nasdaq's clearly erroneous rule. On August 23, 2004, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] On May 5, 2005, Nasdaq submitted Amendment No. 2 to the proposed rule change.[4] On May 11, 2005, Nasdaq submitted Amendment No. 3 to the proposed rule change.[5] On May 16, 2005, Nasdaq submitted Amendment No. 4 to the proposed rule change.[6] The proposed rule change, as amended by Amendment Nos. 1, 2, 3, and 4, was published for comment in the **Federal Register** on May 26, 2005.[7] On June 16, 2005, Nasdaq submitted Amendment No. 5 to the proposed rule change.[8] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.[9]

II. Description of the Proposed Rule Change

NASD Rule 11890 governs the review and resolution of clearly erroneous transactions. The NASD Rule permits Nasdaq to review, at the request of a market participant, any transaction arising out of the use or operation of any execution or communication system owned or operated by Nasdaq to determine if such transaction is clearly erroneous. NASD Rule 11890 also permits Nasdaq to review transactions on Nasdaq's own motion under specific circumstances. The NASD Rule provides Nasdaq officials with the authority to nullify a transaction or modify one or more terms of the transaction. In addition, NASD Rule 11890 sets forth the procedures for review of a transaction to determine whether it is clearly erroneous and for appeal of a determination to the Market Operations Review Committee ("MORC").

The NASD proposes to amend NASD Rule 11890 to: (1) Specify the supporting information that must be submitted in connection with a complaint requesting review of a transaction to determine whether it is clearly erroneous; (2) establish minimum price deviation thresholds that would provide a "bright line" standard for determining whether a transaction is eligible for review; (3) provide that complaints failing to meet minimum price deviation thresholds or documentation requirements would be rejected, and limit the grounds for review of such rejections by the MORC; and (4) make several clarifying changes to the rule text. These changes are described in more detail below.

Specify the Supporting Information To Be Submitted by a Complainant

The proposed rule change would amend NASD Rule 11890 to require that a complaint, to be eligible for review, must include the following information: approximate time of transaction(s), security symbol, number of shares, price(s), contra broker(s) if transactions are not anonymous, the Nasdaq system used to execute the transactions, and the reason that the review is being sought.

Establish Minimum Price Deviation Thresholds

The proposed rule change also would establish minimum price deviation thresholds that would provide a standard for determining whether transactions are considered eligible for review. A transaction price that meets the minimum price threshold would not automatically trigger a clearly erroneous determination; however, if the transaction price does not meet the minimum price threshold, the transaction would not be considered as a clearly erroneous transaction. Thus, there would be a conclusive presumption that a transaction to buy (sell) is not clearly erroneous unless its price is greater than (less than) the best offer (best bid) by an amount that equals or exceeds the minimum threshold set forth below:

Inside price	Minimum threshold
$0–$0.99	$0.02 + (0.10 × Inside Price).
$1.00–$4.99 ...	$0.12 + (0.07 × (Inside Price—$1.00)).
$5.00–$14.99	$0.40 + (0.06 × (Inside Price—$5.00)).
$15 or more ...	$1.00.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 20, 2004 ("Amendment No. 1"). Amendment No. 1 replaced the original rule filing in its entirety.

[4] Amendment No. 2 replaced Amendment No. 1 in its entirety.

[5] Amendment No. 3 revised incorrect cross-references in the rule text.

[6] Amendment No. 4 revised an incorrect paragraph designation in the rule text.

[7] *See* Securities Exchange Act Release No. 51722 (May 20, 2005), 70 FR 30508.

[8] *See* Amendment No. 5, which made technical corrections to the rule text, is a technical amendment that is not subject to notice and comment. The amended rule text proposed in Amendment No. 5 is available on the NASD's Web site (*http://www.nasd.com*), at the NASD's Office of the Secretary, and at the Commission's Public Reference Room.

[9] Nasdaq has represented that the proposed rule change would take effect on a date specified in a Head Trader Alert to its members, which date would be no later than three weeks after Commission approval of the proposal. Telephone call on July 27, 2005, between John Yetter, Senior Associate General Counsel, Nasdaq, and Terri Evans, Special Counsel, Division, Commission.

For a transaction to buy (sell) a Nasdaq listed security, the inside price would be the best offer (best bid) in Nasdaq at the time that the first share of the order that resulted in the disputed transaction was executed, and for a transaction to buy (sell) an exchange-listed security, the inside price shall be the national best offer (best bid) at the time that the first share of the order that resulted in the disputed transaction was executed.[10] Nasdaq also proposes to adopt IM–11890–3 to assist market participants in understanding the minimum price deviation thresholds by providing an example of their application.

Reject, as Ineligible, Non-Conforming Clearly Erroneous Complaints

In addition, in conjunction with providing standards as to required minimum documentation and minimum price deviation thresholds, the proposed rule would set forth clearly defined consequences for failing to meet the minimum documentation requirements. Members failing to meet the minimum documentation requirements within the initial 30-minute time frame for complainants to submit any supporting written information or failing to meet the minimum price deviation parameters would not be eligible to maintain an action under NASD Rule 11890, unless the member alleges a mistake of material fact. Nasdaq staff would notify the complainant immediately of any deficiencies in the filing so that the complainant can revise and resubmit the documentation, if possible, within the 30-minute time frame.

In cases where a claim is not eligible for review because the transaction does not meet the minimum price deviation thresholds or because the complaint does not include the supporting documentation required by the proposed amendment to the rule, the party appealing to the MORC must allege a mistake of material fact upon which it believes the Nasdaq officer's determination was based.[11] The MORC would not substantively review an appeal of a determination that does not allege a mistake of material fact. Accordingly, if the MORC finds that a mistake has not been alleged in an appeal, Nasdaq is not required to notify the counterparty to the trade concerning the appeal or to submit the decision for further review by the MORC. If the MORC concludes that the appeal alleges a mistake of material fact, the counterparty would be notified and the determination would be reviewed by the same panel. If the MORC then finds that the determination was based on a mistake of material fact, the MORC would remand the matter to the Nasdaq officer for adjudication; otherwise, the determination would become final and binding. If the matter is remanded to the Nasdaq officer, the right of appeal to the MORC would be preserved.

Other Proposed Changes

Finally, in order to clarify the Rule's text and expedite procedures under the Rule, Nasdaq is proposing the following additional changes:

- The text of IM–11890–2 would be amended to reflect the proposed use of panels of one or more members of the MORC for purposes of reviewing determinations that a transaction is not eligible for review because the complainant failed to provide all the supporting information or the transaction price does not meet or exceed the applicable minimum deviation thresholds.
- NASD Rule 11890 would be amended to provide that adjudication of a complaint or an appeal is not required if the party submitting the complaint or appeal withdraws it prior to the notification of counterparties.
- NASD Rule 11890 would be amended to provide that appeals are focused solely on trades to which the party submitting the appeal is a party. Thus, for example, if Broker A submits a complaint regarding two separate trades with Broker B and Broker C, the trades are broken, and Broker B appeals but Broker C does not, the appeal would focus solely on the trade between Broker A and Broker B.
- NASD Rule 11890 currently provides that facsimile machines are the preferred method for submitting materials regarding clearly erroneous adjudications. Nasdaq proposes to amend the rule to provide that parties should use such telecommunications methods as are announced from time to time through an NASD Notice to Members or a Nasdaq Head Trader Alert.
- In light of the upcoming retirement of the Nasdaq Workstation II Service, Nasdaq also is proposing to replace a reference to that service with a more general reference to Nasdaq telecommunications protocols.
- Cross references in NASD Rule 111890 would be amended to reflect preferred NASD style, and references to the "Committee" would be replaced with references to the "MORC."

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,[12] and, in particular, with the requirements of Section 15A of the Act.[13] Specifically, the Commission finds that the proposal is consistent with Section15A(b)(6)[14] of the Act in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the amendments to NASD Rule 11890 to establish minimum price deviation thresholds and to specify the information necessary to support a complaint are designed to provide greater specificity and clarity with respect to the procedures Nasdaq must follow in determining whether a transaction is clearly erroneous. The amendments also would provide Nasdaq with objective bases for rejecting clearly erroneous petitions that fail to provide complete information or that relate to a transaction at a price sufficiently close to the inside market that it should not be considered for review as a clearly erroneous transaction. The Commission believes that it is proper for Nasdaq's trade adjustment and nullification provisions to provide for objective standards in determining whether a transaction is eligible for clearly erroneous review and clear procedures in conducting such a review or an appeal of such review, because they would provide greater certainty to Nasdaq market participants

[10] Trades in exchange-listed securities are reviewed under NASD Rule 5265, which incorporates Rule 11890 by reference.

[11] For purposes of NASD Rule 11890, a decision of the MORC may be rendered by a panel of the MORC. In the case of a determination by a Nasdaq officer under Rule 11890(a)(2)(C) that a transaction is not eligible for review (including a review of the sufficiency of allegations contained in an appeal regarding such a determination), the panel may consist of one or more members of the MORC, provided that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a member whose revenues from market making activity exceed ten percent of its total revenues. In all other cases, the panel shall consist of three or more members of the MORC, provided that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed ten percent of its total revenues.

[12] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78*o*–3.

[14] 15 U.S.C. 78*o*–3(b)(6).

who are parties to trades that are claimed to be clearly erroneous. In addition, Nasdaq officers who are called upon to review such trades would be provided with transparent standards and procedures when determining whether a transaction is clearly erroneous.

The amendments to NASD Rule 11890 also would require a Nasdaq market participant to allege a mistake of material fact in order to appeal a determination of a Nasdaq officer that a transaction is not eligible for review and would permit the use of panels of one or more members of the MORC for the purpose of reviewing such determinations. If the MORC panel concludes that a mistake of material fact has not been alleged in an appeal, the determination shall become final and binding and Nasdaq would not be required to notify the counterparty to the trade about the appeal. The Commission notes that, if the MORC concludes that an appeal alleges a mistake of material fact, the counterparty would be notified and a determination as to whether the appeal alleges a mistake of material fact would be reviewed by the MORC panel. In the event that the panel then determines that the appeal alleges a mistake of material fact, the complaint would be remanded to the Nasdaq officer and the right of either party to appeal would be preserved. The Commission believes that these procedures, particularly the requirement that the complaint be remanded to the Nasdaq officer and the preservation of the appeal right in the event the MORC panel determines that the appeal alleges a mistake of material fact, are designed so that NASD Rule 11890 is exercised an efficient manner, while the rights of the parties to an appeals process are preserved.

Finally, the amendments to NASD Rule 11890 would eliminate the requirement for an adjudication of a complaint or an appeal if the party submitting the complaint or appeal withdraws it prior to the notification of counterparties and would provide that appeals be focused solely on trades to which the party submitting the appeal is a party. The Commission believes that these features of the amendments are designed to provide additional certainty to Nasdaq market participants that their trades would not be adjusted or nullified if they decide not to appeal a particular trade or trades.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NASD–2004–009), as amended by Amendments Nos. 1, 2, 3, 4, and 5, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4120 Filed 8–2–05; 8:45 am]

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[15] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52148; File No. SR–NASD–2005–56]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Eliminating the Directed Order Process in the Nasdaq Market Center

July 28, 2005.

On April 21, 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 to eliminate the Directed Order Process in the Nasdaq Market Center. On May 2, 2005, Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on May 16, 2005.[3] The Commission received no comments on the proposal.[4]

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 registered securities association.[5] In particular, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act[6] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

Nasdaq proposes to eliminate the Directed Order Process from the Nasdaq Market Center. The Directed Order Process, which replicates the SelectNet functionality that pre-dated the implementation of the Nasdaq Market Center, operates independent of the Non-Directed Order Process. Specifically, the Directed Order Process is used by members to negotiate trades and allows orders to be executed at prices inferior to the best prices displayed in the Nasdaq Market Center. In addition, because the Directed Order Process is not integrated within the order execution algorithm for the Non-Directed Order Process, Directed Order trades are executed without consideration of the price-time priority of orders in the Non-Directed Order Process.

Because the Directed Order Process allows orders to bypass limit orders that have price priority and/or time priority, its elimination will enhance the protection of limit orders in the Nasdaq Market Center. Accordingly, the Commission believes that this proposed rule change may result in increased liquidity. In addition, the Commission notes that Nasdaq represented that it believes that it is now appropriate to retire the Directed Order Process from the Nasdaq Market Center in light of the recent elimination of Nasdaq's pre-open Trade-or-Move requirements which obligated market participants to send Directed Orders containing a Trade-or-Move message.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–NASD–2005–056) be, and hereby is, approved.

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51668 (May 11, 2005), 70 FR 25869 ("Notice").

[4] The Commission notes that Nasdaq also proposed to eliminate the Directed Order Process in File No. SR–2004–181. The Commission has received one comment letter on that proposal. *See* letter to Jonathan G. Katz, Secretary, Commission, from Mary Yeager, Assistant Secretary, New York Stock Exchange, dated January 10, 2005. The comment letter raised issues regarding Nasdaq's application to register as a national securities exchange and did not specifically address any issues relating to the elimination of the Directed Order Process. The Commission expects Nasdaq to file an amendment to File No. S–NASD–2004–181 to reflect the Commission's approval of this proposed rule change.

[5] In approving this proposal, the Commission considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4122 Filed 8–2–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52155; File No. SR–NYSE–2005–52]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Voluntary Supplemental Procedures for Selecting Arbitrators

July 28, 2005.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"),[2] and Rule 19b–4 thereunder, notice is hereby given that on July 25, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed amendments to its arbitration rules as described in Items I and II below, which items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an extension until November 30, 2005, of the Voluntary Supplemental Procedures for Selecting Arbitrators ("Supplemental Procedures").

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. 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 proposed rule change is intended to extend until November 30, 2005 the Supplemental Procedures, which were approved by the Commission, most recently in SR–NYSE–2005–10,[5] for a six-month period ending July 31, 2005.

The Exchange currently has several methods by which arbitrators are assigned to cases, including the traditional method under NYSE Rule 607, pursuant to which Exchange staff appoints arbitrators to cases (the "Traditional Method"). On August 1, 2000, the Exchange implemented a two-year pilot program to allow parties, on a voluntary basis, to select arbitrators under two alternative methods (in addition to the Traditional Method).[6] Upon expiration of the two-year pilot, the Exchange renewed the pilot for an additional two years, which expired on July 31, 2004,[7] and then again for an additional six months through January 31, 2005,[8] and ultimately until July 31, 2005.[9]

Under the Supplemental Procedures, the first alternative to the Traditional Method is the Random List Selection method by which the parties are provided randomly generated lists of public-classified and securities-classified arbitrators. The parties have ten days to strike and rank the names on the lists. Based on mutual ranking of the lists, the highest-ranking arbitrators are invited to serve on the case. If a panel cannot be generated from the first list, a second list is generated, with three potential arbitrators for each vacancy, and one peremptory challenge available to each party for each vacancy. If vacancies remain after the second list has been processed, arbitrators are then randomly assigned to serve, subject only to challenges for cause.

The second alternative to the Traditional Method is entitled Enhanced List Selection, in which six public-classified and three securities-classified arbitrators are selected, based on their qualifications and expertise, by Exchange staff. The lists are then sent to the parties. The parties have a limited number of strikes to use and are required to rank the arbitrators not stricken. Based on mutual ranking of the lists, the highest-ranking arbitrators are invited to serve on the case.

Finally, the Supplemental Procedures provide that the Exchange will accommodate the use of any reasonable alternative method of selecting arbitrators that the parties decide upon, provided that the parties agree. Absent agreement as to the use of Random List Selection, Enhanced List Selection, or any other reasonable alternative method, the Traditional Method is used.

The Exchange, pursuant to a separate filing,[10] is proposing amendments to NYSE Rule 607 which would, in effect, make permanent a variation of the pilot program described herein. Pending Commission approval of those amendments, the Exchange proposes to extend the pilot period for the Supplemental Procedures for an additional four months, until November 30, 2005.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5)[11] of the Act in that it promotes just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Exchange Act Release No. 51085 (January 27, 2005), 70 FR 5716 (February 3, 2005).

[6] *See* Exchange Act Release No. 43214 (August 28, 2000), 65 FR 53247 (September 1, 2000) (SR–NYSE–00–34).

[7] *See* Exchange Act Release No. 46372. *See also* Exchange Act Release No. 47929 (May 27, 2003), 68 FR 32791 (June 2, 2003) (SR–NYSE–2003–15).

[8] *See* Exchange Act Release No. 49915 (June 25, 2004), 69 FR 39993 (July 1, 2004).

[9] *See* Exchange Act Release No. 51085, *supra* note 5.

[10] *See* Exchange Act Release No. 51863 (June 16, 2005) 70 FR 36451 (June 23, 2005) (SR–NYSE–2005–02).

[11] 15 U.S.C. 78f(b)(5).

interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) [13] thereunder. 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 Act.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[14] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange must file notice of its intent to file the proposed rule change at least five business days beforehand. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission is exercising its authority to waive the five-day pre-filing requirement and believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.[15] In this regard, the Commission notes that the proposal is the extension of a pilot program that has been in effect at the Exchange since August 2000. The Commission has also published for comment amendments to NYSE Rule 607 which would, in effect, make permanent a variation of the pilot program described herein. For these reasons, the Commission designates the proposed rule change as effective and operative immediately. Nothing in the current notice should be interpreted as suggesting the Commission is predisposed to approving on a permanent basis the proposed variation of the pilot program.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2005–52 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–2005–52.

This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the 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–2005–52 and should be submitted on or before August 24, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4123 Filed 8–2–05; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52151; File No. SR–PCX–2005–86]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Extend the Linkage Fee Pilot Program

July 28, 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 July 21, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 for a pilot period through July 31, 2006.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Charges for Exchange Services to extend until July 31, 2006 the current pilot program regarding transaction fees charged for trades executed on the Exchange that are submitted through the intermarket option linkage ("Linkage").[3] The text of the proposed fee schedule is available on the Exchange's Web site (*http://www.pacificex.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 III below. The Exchange has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] At the request of the Exchange, the Commission staff made a change to clarify the statement regarding the orders to which the transaction fees apply. Telephone conversation between Steven Matlin, Senior Counsel, Exchange, and Kim Allen, Attorney, Division of Market Regulation, on July 26, 2005.

forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend for one year the pilot program establishing Exchange fees for Principal ("P") Orders and Principal Acting as Agent ("P/A") Orders executed on the Exchange that are submitted through Linkage. The fees currently are effective for a pilot program set to expire on July 31, 2005, and this proposal would extend such fees through July 31, 2006. The two fees the Exchange charges for P and P/A orders are: The basic execution fee for trading on the Exchange; and a $.05 comparison fee, each per contract side. These are the same fees that all PCX Option Trading Permit Holders pay for non-customer transactions executed on the Exchange. The Exchange does not charge for the execution of Satisfaction Orders sent through Linkage and is not proposing to charge for such orders.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[4] in general, and Section 6(b)(4) of the Act[5] in particular, in that the proposed rule change provides for the equitable allocation of dues, fees and other charges among its members and other persons using its facilities for the purpose of executing P/A Orders or P Orders that are routed to the Exchange from other market centers.

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.

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–PCX–2005–86 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–PCX–2005–86. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–86 and should be submitted on or before August 24, 2005.

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 the Act and the rules and regulations thereunder applicable to a national securities exchange,[6] and, in particular, the requirements of Section 6(b) of the Act[7] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2006 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause pursuant to Section 19(b)(2) of the Act,[9] for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register.** The Commission believes that granting accelerated approval of the proposed rule change will preserve the Exchange's existing pilot program for Linkage fees without interruption as the Exchange and the Commission further consider the appropriateness of Linkage fees.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PCX–2005–86) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4126 Filed 8–2–05; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(2).

[10] *Id.*

[11] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning China's Compliance with WTO Commitments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing concerning China's compliance with its WTO commitments.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to assist the Office of the

United States Trade Representative (USTR) in the preparation of its annual report to the Congress on China's compliance with the commitments made in connection with its accession to the World Trade Organization (WTO).

DATES: Persons wishing to testify orally at the hearing must provide written notification of their intention, as well as a copy of their testimony, by noon, Thursday, September 1, 2005. Written comments are due by noon, Tuesday, September 6, 2005. A hearing will be held in Washington, DC, on Wednesday, September 14, 2005.

ADDRESSES: *Submissions by electronic mail: FR0437@USTR.EOP.GOV.*

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, (202) 395–6143.

The public is strongly encouraged to submit documents electronically rather than by facsimile.

(See requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Gloria Blue, (202) 395–3475. All other questions should be directed to Terrence J. McCartin, Senior Director of Monitoring and Enforcement for China, (202) 395–3900, or Stephen S. Kho, Associate General Counsel, (202) 395–3582.

SUPPLEMENTARY INFORMATION:

1. Background

China became a member of the WTO on December 11, 2001. In accordance with section 421 of the U.S.-China Relations Act of 2000 (Pub. L. 106–286), USTR is required to submit, by December 11 of each year, a report to Congress on China's compliance with commitments made in connection with its accession to the WTO, including both multilateral commitments and any bilateral commitments made to the United States. In accordance with section 421, and to assist it in preparing this year's report, the TPSC is hereby soliciting public comment. Last year's report is available on USTR's Internet Web site (at *http://www.ustr.gov/World_Regions/North_Asia/China/Section_Index.html*).

The terms of China's accession to the WTO are contained in the Protocol on the Accession of the People's Republic of China (including its annexes) (Protocol), the Report of the Working Party on the Accession of China (Working Party Report), and the WTO Agreement. The Protocol and Working Party Report can be found on the Department of Commerce Web page, *http://www.mac.doc.gov/China/WTOAccessionPackage.htm*, or on the WTO Web site, *http://docsonline.wto.org* (document symbols: WT/L/432, WT/MIN(01)/3, WT/MIN(01)/3/Add.1, WT/MIN(01)/3/Add.2).

2. Public Comment and Hearing

USTR invites written comments and/or oral testimony of interested persons on China's compliance with commitments made in connection with its accession to the WTO, including, but not limited to, commitments in the following areas: (a) Trading rights; (b) import regulation (*e.g.*, tariffs, tariff-rate quotas, quotas, import licenses); (c) export regulation; (d) internal policies affecting trade (*e.g.*, subsidies, standards and technical regulations, sanitary and phytosanitary measures, government procurement, trade-related investment measures, taxes and charges levied on imports and exports); (e) intellectual property rights (including intellectual property rights enforcement); (f) services; (g) rule of law issues (*e.g.*, transparency, judicial review, uniform administration of laws and regulations) and status of legal reform; and (h) other WTO commitments. Persons submitting written comments should identify the commitments discussed therein by listing one or more of these categories on the first page of the comments.

Written comments must be received no later than noon, Tuesday, September 6, 2005.

A hearing will be held on Wednesday, September 14, 2005, in Room 1, 1724 F Street, NW., Washington, DC 20508. If necessary, the hearing will continue on the next day.

Persons wishing to testify orally at the hearing must provide written notification of their intention by noon, Thursday, September 1, 2005. The notification should include: (1) the name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraph) summary of the presentation, including the commitments at issue and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC.

All documents should be submitted in accordance with the instructions in section 3 below.

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: "China WTO" followed by (as appropriate) "Written Comments," "Notice of Testimony," or "Testimony." Documents should be submitted as either Adobe PDF, WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notices of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395–6186. Appointments must be scheduled at least 48 hours in advance.

General information concerning USTR may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 05–15365 Filed 8–2–05; 8:45 am]

BILLING CODE 3190–W5–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collections. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collections of information was published on April 12, 2005, page 19144.

DATES: Comments must be submitted on or before September 2, 2005. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

1. *Title:* Pilot schools—FAR 141.
Type of Request: Extension of a currently approved collection.
OMB Control Number: 2120–0009.
Forms(s): FAA Form 8420–8.
Affected Public: A total of 524 pilot schools.
Abstract: 49 U.S.C. 44707 authorizes certification of civilian schools giving instruction in flying. 14 CFR part 141 prescribes requirements for pilot schools certification. Information collected is used for certification and to determine compliance. The respondents are applicants who wish to be issued pilot school certificates and associated ratings.
Estimated Annual Burden Hours: An estimated 28,878 hours annually.

2. *Title:* Rotorcraft External Load Operator Certificate Application.
Type of Request: Extension of a currently approved collection.
OMB Control Number: 2120–0044.
Forms: FAA Form 8710–4.
Affected Public: A total of 4000 rotorcraft operators.
Abstract: 14 CFR part 133, Rotorcraft External-Load Operations, was adopted to establish certification rules governing non-passenger-carrying rotorcraft external-load operations conducted for compensation or hire. The applicants are individual airmen, state and local governments, and businesses.
Estimated Annual Burden Hours: An estimated 3,268 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 27, 2005.

Judith D. Street,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 05–15312 Filed 8–2–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement Seattle, WA

AGENCY: Federal Highway Administration (FHWA), USDOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this revised notice of intent to update the public, Tribes, and agencies of changes made to the previous notice of intent for a proposed highway project along SR 99 in Seattle, King County, Washington. The previous notice of intent was published in the **Federal Register** on September 26, 2003. It announced that a Draft Environmental Impact Statement (EIS) would be prepared for the Alaskan Way Viaduct and Seawall Replacement Project. The Draft EIS for the Alaskan Way Viaduct and Seawall Replacement Project was published March 31, 2004. Since the Draft EIS was issued, the project's purpose and need statement has been revised to include access and safety improvements from the Battery Street Tunnel north to Roy Street.

FOR FURTHER INFORMATION CONTACT: Megan Hall (FHWA) 711 South Capitol Way, Suite 501, Olympia, Washington, 98501 (telephone 360–753–8079); Kathryn Stenberg, WSDOT Urban Corridors Office, 999 Third Avenue, Suite 2424, Seattle, Washington, 98104 (telephone 206–382–5279).

SUPPLEMENTARY INFORMATION: The FHWA, Washington State Department of Transportation (WSDOT), in cooperation with the City of Seattle will prepare a supplemental draft EIS and a final environmental impact statement documenting the environmental impacts for improvements proposed along the existing SR 99 corridor now partially served by the Alaskan Way Viaduct and Alaskan Way Seawall located in downtown Seattle, King County, Washington. The Alaskan Way Viaduct is one of two primary north-south limited access routes through downtown Seattle and is a vital link in the region's roadway system. The Alaskan Way Seawall provides supports for the soils that hold up the viaduct's foundations.

Since the previous notice of intent, the lead agencies have revised the project's purpose and need statement to address the need for safety and access improvements to the SR 99 corridor from the Battery Street Tunnel north to Roy Street.

The revised purpose and need statement for the project is provided below:

The purpose of the proposed action is to provide a transportation facility and seawall with improved earthquake resistance. The project will maintain or improve mobility, accessibility, and traffic safety for people and goods along the existing Alaskan Way Viaduct Corridor as well as improve access to and from SR 99 from the Battery Street Tunnel north to Roy Street. The southern terminus of the project would be approximately Spokane Street. The north terminus would be Roy Street north of the existing Battery Street Tunnel.

The Alaskan Way Viaduct and Alaskan Way Seawall are both at the end of their useful life. Improvements to both are required to protect public safety and maintain the transportation corridor. Because these facilities are at risk of sudden and catastrophic failure in an earthquake, FHWA, WSDOT and the City of Seattle seek to implement these improvements as quickly as possible. Improvements between the Battery Street Tunnel and Roy Street will be needed to improve access to and from SR 99 and to improve local street connections once the viaduct is

replaced. FHWA, WSDOT and the City of Seattle have identified the following underlying needs the project should address: seismic vulnerability, traffic safety, roadway design deficiencies, and bicycle and pedestrian safety and accessibility.

Issued on: April 1, 2005.

Mary E. Gray,

Environmental Program Specialist, Olympia, Washington.

[FR Doc. 05–15270 Filed 8–2–05; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 9 a.m. on Wednesday, August 30, 2005, at 445 Antigua Lane, West Palm Beach, FL, 33480. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Quarterly Report; Old and New Business; Closing Discussion; Adjournment.

Attendance at the meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact, not later than August 26, 2005, Anita K. Blackman, Chief of Staff, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202–366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on July 27, 2005.

Albert S. Jacquez,

Administrator.

[FR Doc. 05–15294 Filed 8–2–05; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to increasing compliance and lessening the burden for Small Business/Self Employed individuals.

DATES: The meeting will be held Thursday, September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be held Thursday, September 1, 2005, from 3 p.m. e.t. to 4:30 p.m. e.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write to Marisa Knispel, TAP Office, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: July 29, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–15360 Filed 8–2–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Thursday, August 25, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Peterson O'Brien at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Thursday, August 25, 2005, from 12:30 p.m. Pacific time to 1:30 p.m. Pacific time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary Peterson O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary Peterson O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: various IRS issues.

Dated: July 28, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–15361 Filed 8–2–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0545]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs (VA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 2, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–2900–0545."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0545" in any correspondence.

Title: Report of Medical, Legal, and Other Expenses Incident to Recovery for Injury or Death, VA Form 21–8416b.

OMB Control Number: 2900–0545.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 21–8416b to report compensation awarded by another entity or government agency for personal injury or death. Such award is consider as countable income; however, medical, legal or other expenses incident to the injury or death, or incident to the collection or recovery of the compensation may be deducted from the amount awarded or settled. The information collected is used to determine the claimant's eligibility for income based benefits and the rate payable.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 4, 2005 at pages 17144–17145.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,125 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,500.

Dated: July 26, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. 05–15234 Filed 8–2–05; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 70, No. 148
Wednesday, August 3, 2004

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

Department of the Army; Corps of Engineers

Notice of Solicitation for Estuary Habitat Restoration Program; Extension of Submittal Date

Correction

In notice document 05–14584 appearing on page 42539 in the issue of Monday, July 25, 2005, make the following corrections:

1. In the first column, under the "**SUMMARY:**" heading, in the second line, "applications" should read "applicants".

2. In the same column, under the same heading, in the same paragraph, in the third line, "had" should read "has".

3. In the same column, under the "**DATES:**" heading, in the first line, "Proposed" should read "Proposals".

4. In the same column, under the "**ADDRESSES:**" heading, in the first line, "Proposed" should read "Proposal".

5. In the same column, under the same heading, in the same paragraph, in the third line, "civilworks/cecwo/estuart_act/" should read "civilworks/cecwp/estuary_act/".

6. In the same column, under the same heading, in the same paragraph, in the fifth line, "proposed" should read "proposals".

7. In the second column, in the first line, "submission" should read "submissions".

[FR Doc. C5–14584 Filed 8–2–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Doramectin

Correction

In rule document 05–14630 beginning on page 43046 in the issue of Tuesday, July 26, 2005, make the following correction:

On page 43046, in the second column, under the heading "**DATES**", in the first and second lines, "July 26, 2006" should read "July 26, 2005".

[FR Doc. C5–14630 Filed 8–2–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 243X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Forsyth County, NC

Correction

In notice document 05–14077 appearing on page 41813 in the issue of Wednesday, July 20, 2005, make the following correction:

In the first column, in the first paragraph, in the last line, "29302 and 29306" should read, "27101, 27104, 27105, and 27107".

[FR Doc. C5–14077 Filed 8–2–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 261X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Spartanburg, SC

Correction

In notice document 05–14078 beginning on page 41813 in the issue of Wednesday, July 20, 2005, make the following correction:

On page 41813, in the third column, in the first paragraph, in the last two lines, "27101, 27104, 27105, and 27107"should read "29302 and 29306".

[FR Doc. C5–14078 Filed 8–2–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
August 3, 2005

Part II

Securities and Exchange Commission

17 CFR Parts 200, 228, 229, et al.
Securities Offering Reform; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 228, 229, 230, 239, 240, 243, 249, and 274

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

RIN 3235–AI11

Securities Offering Reform

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting rules that will modify and advance significantly the registration, communications, and offering processes under the Securities Act of 1933. Today's rules will eliminate unnecessary and outmoded restrictions on offerings. In addition, the rules will provide more timely investment information to investors without mandating delays in the offering process that we believe would be inconsistent with the needs of issuers for timely access to capital. The rules also will continue our long-term efforts toward integrating disclosure and processes under the Securities Act and the Securities Exchange Act of 1934. The rules will further these goals by addressing communications related to registered securities offerings, delivery of information to investors, and procedural aspects of the offering and capital formation processes.

EFFECTIVE DATE: December 1, 2005.

FOR FURTHER INFORMATION CONTACT: Amy M. Starr, Daniel Horwood, or Anne Nguyen, at (202) 551–3200, in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549 or, with respect to questions regarding investment companies, Kieran Brown in the Division of Investment Management, at (202) 551–6784.

SUPPLEMENTARY INFORMATION: We are amending Rule 30–1 [1] of the Administrative Practice and Procedure, Item 512 [2] of Regulation S–B,[3] Item 512 [4] of Regulation S–K,[5] and Rules 134, 137, 138, 139, 153, 158, 174, 401, 405, 408, 412, 413, 415, 418, 424, 426, 430A, 439, 456, 457, 462, 473, 497, and 902 [6] and eliminating Rule 434 [7] under the Securities Act.[8] We are adding Rules 159, 159A. 163, 163A, 164, 168, 169, 172, 173, 430B, 430C, and 433 under the Securities Act. We are amending Forms S–1, S–3, S–4, F–1, F–3, and F–4 and eliminating Forms S–2 and F–2 [9] under the Securities Act; amending Rule 100 [10] of Regulation FD [11] and Rule 14a–2 [12] under the Securities Exchange Act of 1934; [13] amending Forms 10, 10–K, 10–Q, 10–KSB, and 20–F [14] under the Exchange Act; and amending Form N–2 [15] under the Securities Act and the Investment Company Act of 1940.[16]

Table of Contents

[1] 17 CFR 200.30–1.

[2] 17 CFR 228.512.

[3] 17 CFR 228.10 *et seq.*

[4] 17 CFR 229.512.

[5] 17 CFR 229.10 *et seq.*

[6] 17 CFR 230.134; 17 CFR 230.137; 17 CFR 230.138; 17 CFR 230.139; 17 CFR 230.153; 17 CFR 230.158; 17 CFR 230.174; 17 CFR 230.401; 17 CFR 230.405; 17 CFR 230.408; 17 CFR 230.412; 17 CFR 230.413; 17 CFR 230.415; 17 CFR 230.418; 17 CFR 230.424; 17 CFR 230.426; 17 CFR 230.430A; 17 CFR 230.439; 17 CFR 230.456; 17 CFR 230.457; 17 CFR 230.462; 17 CFR 230.473; 17 CFR 230.497; and 17 CFR 230.902.

[7] 17 CFR 230.434.

[8] 15 U.S.C. 77a *et seq.*

[9] 17 CFR 239.11; 17 CFR 239.13; 17 CFR 239.25; 17 CFR 239.31; 17 CFR 239.33; 17 CFR 239 34; 17 CFR 239.12; and 17 CFR 239.32.

[10] 17 CFR 243.100.

[11] 17 CFR 243.100 through 243.103.

[12] 17 CFR 240.14a–2.

[13] 15 U.S.C. 78a *et seq.*

[14] 17 CFR 249.210; 17 CFR 249.308a; 17 CFR 249.310; 17 CFR 249.310b; and 17 CFR 249.220f.

[15] 17 CFR 239.14 and 17 CFR 274.11a–1.

[16] 15 U.S.C. 80a–1 *et seq.*

I. Introduction

A. Overview

On November 3, 2004, we issued proposed rule and form changes under the Securities Act and the Exchange Act that would modernize the securities offering and communication processes while maintaining protection of investors under the Securities Act.[17] We received over 130 comment letters on the proposals.[18] While a large number of letters focused on only one area of the proposals,[19] a significant number of the other letters addressed many aspects of the proposals. In general, commenters strongly supported the proposals and their objectives. A number of commenters believed that the proposals struck the appropriate balance between improving the capital formation process and modernizing offering communications, while preserving investor protection and avoiding unnecessary impediments to the capital formation process. As with other rulemakings, including those of the magnitude that the proposals represented, commenters provided many thoughtful comments and useful suggestions. We are adopting the rules and amendments as proposed with certain modifications to address a number of points that commenters raised.

The rules we are adopting today continue the evolution of the offering process under the Securities Act that began as far back as 1966, when Milton Cohen noted the anomaly of the structure of the disclosure rules under the Securities Act and the Exchange Act and suggested the integration of the requirements under the two statutes.[20] Mr. Cohen's article was followed by a 1969 study led by Commissioner Francis Wheat[21] and the Commission's Advisory Committee on Corporate Disclosure in 1977.[22] These studies eventually led to the Commission's adoption of the integrated disclosure system, short-form registration under the Securities Act, and Securities Act Rule 415 permitting shelf registration of continuous offerings and delayed offerings.[23]

The Commission's attention to the offering and communications processes under the Securities Act continued more recently. In particular, in March 1996, members of the Commission staff delivered the Report of the Task Force on Disclosure Simplification to the Commission.[24] It recommended a number of areas where simplification and modernization of the registration and offering process could be accomplished. In July 1996, the Advisory Committee on the Capital Formation and Regulatory Processes delivered its report to the Commission.[25] Its principal recommendation was that the Securities Act registration and disclosure processes be more directly tied to the philosophy and structure of the Exchange Act through the adoption of a system of "company registration." Under company registration, the focus of Securities Act and Exchange Act registration and disclosure would move from transactions to issuers, and corollary steps would be taken to provide for disclosure and registration of individual offerings within the company registration framework.

Promptly after the Advisory Committee on the Capital Formation and Regulatory Processes delivered its report, the Commission issued a concept release regarding regulation of the securities offering process.[26] The release sought input on a number of significant issues, including:

- Whether the concept of company registration should be pursued;
- Whether other methods of increasing the integration of Securities Act and Exchange Act disclosure and other processes should be considered;
- Whether existing or further reliance on Exchange Act filings should be accompanied by enhancements to Exchange Act reporting;
- Whether companies make information about their public securities offerings available to investors in an appropriate and timely manner, including:
  - At what point in the offering process delivery of, or access to, information should be assured in connection with registered offerings under the Securities Act and whether current requirements ensure timely delivery of information to the secondary market in connection with such offerings;
  - Whether prospectus supplements in shelf offerings should be made part of the registration statement;

[17] *Securities Offering Reform*, Release No. 33–8501 (Nov. 3, 2004) [69 FR 67392] ("Proposing Release").

[18] The public comments we received are available for inspection in our Public Reference Room at 100 F Street, NE, Washington, DC 20549 in File No. S7–38–04, or may be viewed at *http://www.sec.gov/rules/proposed/s73804.shtml*.

[19] A large number of commenters submitted comments that addressed only issues regarding electronic road shows. See, *e.g.*, letters from Robert Alpert; E. Price Ambler; Kenneth Arnot; Richard Barrera; Lisa Baudot; Thomas Bengtsson; Barry Bruner; Harold Candland; Nikita Chitnis; Herbert Chung; Rick Dowdle; Pat Gilbert; Ira Ginsburg; Naval Goel; Bernard Krieg; Francis Lanio; Jimmy Liu; Marvin Lutz; Peter Martin; Craig Millar; Piers Monckton; NetRoadshow Inc. ("NetRoadshow"); F. Thomas O'Halloran, Paul J. Rasplicka; Kim Redding; Eric Ribner; David Schumacher, Andre Shih; Susquehanna International Group, LLP ("SIG"); Steve Smart-O'Connor; Bob Smith, Forrest Tempel; Chris Wallis; and Adam White.

[20] Milton H. Cohen, *Truth in Securities Revisited*, 79 Harv. L. Rev. 1340 (1966). ("It is my thesis that the combined disclosure requirements of these statutes would have been quite different if the 1933 and 1934 Acts * * * had been enacted in opposite order, or had been enacted as a single, integrated statute—that is, if the starting point had been a statutory scheme of continuous disclosures covering issuers of actively traded securities and the question of special disclosures in connection with public offerings had then been faced in this setting. Accordingly, it is my plea that there now be created a new coordinated disclosure system having as its basis the continuous disclosure system of the 1934 Act and treating the '1933 Act' disclosure needs on this foundation.")

[21] See *Disclosure to Investors—A Reappraisal of Federal Administrative Policies under the '33 and '34 Acts*, Policy Study (the "Wheat Report"), *www.sechistorical.org/museum/Museum_Popers/museum_Popers_Chron.php#1960* (Mar. 27, 1969).

[22] See Report of the Advisory Committee on Corporate Disclosure, Cmte. Print 95–29, House Cmte. On Interstate and Foreign Commerce, 95th Cong., 1st. Sess., Nov. 3, 1977 (Nov. 3, 1977). In addition, beginning in 1968, the American Law Institute ("ALI") began its work on a Federal Securities Code, which was approved in 1978 by the ALI membership. The ALI Federal Securities Code included company registration as a central component. See American L. Inst., Federal Securities Code (1980).

[23] See *Adoption of Integrated Disclosure System*, Release No. 33–6383 (Mar. 3, 1982) [47 FR 11380] ("Integrated Disclosure Release"); *Delayed or Continuous Offering and Sale of Securities*, Release No. 33–6423 (Sept. 2, 1982) [47 FR 39799]; and *Shelf Registration*, Release No. 33–6499 (Nov. 17, 1983) [48 FR 52889].

[24] *Report of the Task Force on Disclosure Simplification*, available at *www.sec.gov/news/studies/smpl.htm* (Mar. 5, 1996).

[25] *Report of the Advisory Committee on the Capital Formation and Regulatory Process* (the "Advisory Committee Report"), available at *www.sec.gov/news/studies/capform.htm* (July 24, 1996).

[26] *Securities Act Concepts and Their Effects on Capital Formation*, Release No. 33–7314 (July 25, 1996) [61 FR 40044] (the "1996 Concept Release").

- Whether and, if so, in what circumstances electronic access should replace actual delivery of information in connection with offerings registered under the Securities Act; and
- Whether restrictions on written offers under the Securities Act should be liberalized and what liability standards should attach to such communications;

• Whether adjustments to the roles and responsibilities of traditional "gatekeepers" in the Securities Act offering process, such as underwriters and accountants, should be made in light of increases in the speed of and other evolutions in the offering process;

• Whether changes should be made to address evolution in the relationships between the public and private offering processes, including:

- Whether changes in Rules 144A [27] and 144 [28] under the Securities Act should be considered; and
- Whether there should be any relaxation in our prohibition against general solicitations of interest or offers in unregistered private offerings; and

• Whether the review process of issuer filings under the Securities Act and the Exchange Act by the staff of the Division of Corporation Finance should be modified to limit the impact of the process on access to capital markets, at least for some category of large seasoned issuers.[29]

In 1998, the Commission proposed new rules under the Securities Act that were intended to modernize the securities offering process.[30] As we recognized in the Proposing Release, much of the comment in response to the 1998 proposals suggested that the system of regulating capital formation in the registered offering market provides a number of advantages that should be considered carefully and retained if we are to make other changes.

The rules we are adopting today are focused primarily on constructive, incremental changes in our regulatory structure and the offering process rather than the introduction of a far-reaching new system, as we believe that we can best achieve further integration of Securities Act and Exchange Act disclosure and processes by making adjustments in the current integrated disclosure and shelf registration systems. Further, consistent with our belief that investors and the securities markets will benefit from greater permissible communications by issuers while retaining appropriate liability for these communications, we have sought to address the need for timeliness of information for investors by building on existing statutory provisions and processes without mandating delays in the offering process that we believe would be inconsistent with the needs of issuers for timely access to the securities markets and capital.

We are adopting the proposed revisions to the registration, communications, and offering processes for registered transactions under the Securities Act with certain modifications. We believe the rules we are adopting, while limited in scope, properly address the areas that are in need of modernization. The adopted rules involve three main areas:

• Communications related to registered securities offerings;

• Registration and other procedures in the offering and capital formation processes; and

• Delivery of information to investors, including delivery through access and notice, and timeliness of that delivery.

Today's rules reflect our view that revisions to the Securities Act registration and offering procedures are appropriate in light of significant developments in the offering and capital formation procedures and can provide enhanced protection of investors under the statute. We believe that the rule changes we adopt today will:

• Facilitate greater availability of information to investors and the market with regard to all issuers;

• Eliminate barriers to open communications that have been made increasingly outmoded by technological advances;

• Reflect the increased importance of electronic dissemination of information, including the use of the Internet;

• Make the capital formation process more efficient; and

• Define more clearly both the information and the timeliness of the availability of information against which a seller's statements are evaluated for liability purposes.

The rules we are adopting today reflect certain modifications from the proposals to address important points commenters raised. The modifications to the proposals include the following:

• The definitions of graphic communication and written communication (including as to road shows) exclude live, in real-time communications to a live audience that are transmitted graphically;

• The free writing prospectus rules address "cross-liability" concerns among offering participants arising from the use of free writing prospectuses;

• The free writing prospectus rules clarify the filing conditions applicable to media publications, descriptions of the final terms of securities and offerings, and electronic and other road shows, and modify the record retention provisions;

• The shelf registration rules address issues regarding the liability of officers, directors, and accountants and other experts arising from the new effective dates triggered by the filing of prospectus supplements;

• The definition of ineligible issuer more closely conforms the definition to other ineligibility provisions in the Securities Act;

• The rule permitting specified written notices that are not prospectuses narrows the types of information for which a preliminary prospectus will have to include a price range as a condition;

• The definition of well-known seasoned issuer enables issuers to include all registered non-convertible securities, other than common equity, issued for cash in measuring the amount of registered fixed income securities over the prior three years; and

• The prospectus delivery rule addresses concerns about potential underwriter liability due to an issuer's failure to timely file its final prospectus.

We also have endeavored to provide more guidance to market participants regarding our interpretation of the liability provisions of Securities Act Sections 12(a)(2) and 17(a)(2).[31]

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[27] 17 CFR 230.144A.

[28] 17 CFR 230.144.

[29] In addition, the 1996 Concept Release sought input on a number of items suggested for consideration by the Task Force on Disclosure Simplification, including the following: Allowing smaller issuers that have been reporting for one year to make delayed offerings (without altering the disclosure requirements or permitting forward incorporation by reference); eliminating "at-the-market" offering restrictions; allowing universal shelf registration for secondary offerings; allowing issuers and majority-owned subsidiaries to be named as possible issuers on a shelf registration (without designating the issuer until takedown); allowing reallocation of securities on a shelf registration statement by post-effective amendment; allowing registration by seasoned issuers without any specification of the classes registered; and allowing seasoned issuers to pay registration fees at the time of the takedown.

[30] See *The Regulation of Securities Offerings*, Release No. 33–7606A (Nov. 13, 1998 [63 FR 67174] (the "1998 proposals"). The Commission proposed these new rules after it was granted general exemptive authority under the Securities Act. The National Securities Markets Improvement Act of 1996 (NSMIA) (Pub. L. 104–290, 110 Stat. 3416 (Oct. 11, 1996)) provided the Commission with general authority to adopt exemptive rules under the Securities Act to the extent that such exemptive action is "necessary or appropriate in the public interest and consistent with the protection of investors." See Securities Act Section 28 [15 U.S.C. 77z–3].

[31] 15 U.S.C. 77*l*(a)(2) and 15 U.S.C. 77q(a)(2).

B. Background

1. Advances in Technology

As we noted in the Proposing Release, significant technological advances over the last three decades have increased both the market's demand for more timely corporate disclosure and the ability of issuers to capture, process, and disseminate this information. Computers, sophisticated financial software, electronic mail, teleconferencing, videoconferencing, webcasting, and other technologies available today have replaced, to a large extent, paper, pencils, typewriters, adding machines, carbon paper, paper mail, travel, and face-to-face meetings relied on previously. The rules we are adopting today seek to recognize the integral role that technology plays in timely informing the markets and investors about important corporate information and developments.

2. Exchange Act Reporting Standards

The role that a public issuer's Exchange Act reports play in investment decision making is a key component of the rules we are adopting today. Congress recognized that the ongoing dissemination of accurate information by issuers about themselves and their securities is essential to the effective operation of the trading markets. The Exchange Act and underlying rules have established a system of continuing disclosure about issuers that have offered securities to the public, or that have securities that are listed on a national securities exchange or are broadly held by the public. The Exchange Act rules require public issuers to make periodic disclosures at annual and quarterly intervals, with other important information reported on a more current basis. The Exchange Act specifically provides for current disclosure to maintain the timeliness and adequacy of information disclosed by issuers, and we have significantly expanded our current disclosure requirements consistent with the provision in the Sarbanes-Oxley Act of 2002 [32] that "[e]ach issuer reporting under Section 13(a) or 15(d) * * * disclose to the public on a rapid and current basis such additional information concerning material changes in the financial condition or operations of the issuer * * * as the Commission determines * * * is necessary or useful for the protection of investors and in the public interest." [33]

A public issuer's Exchange Act record provides the basic source of information to the market and to potential purchasers regarding the issuer and its management, business, financial condition, and prospects. Because an issuer's Exchange Act reports and other publicly available information form the basis for the market's evaluation of the issuer and the pricing of its securities, investors in the secondary market use that information in making their investment decisions. Similarly, during a securities offering in which an issuer uses a short-form registration statement, an issuer's Exchange Act record is very often the most significant part of the information about the issuer in the registration statement.

With the enactment of the Sarbanes-Oxley Act and our recent rulemaking and interpretive actions, we have enhanced significantly the disclosure included in issuers' Exchange Act filings and accelerated the filing deadlines for many issuers. The following are examples of recent regulatory actions that have improved the delivery of timely, high-quality information to the securities markets by issuers under the Exchange Act:

- Requiring the establishment of disclosure controls and procedures; [34]
- Requiring a public issuer's top management to certify the content of periodic reports and highlight their responsibilities for and evaluation of the issuer's disclosure controls and procedures and internal control over financial reporting; [35]
- Modifying the approach to current disclosure by increasing significantly the types of events that must be reported on a current basis and shortening the time for filing current reports; [36]
- Approving listing standard changes intended to improve corporate governance and enhance the role of the audit committee of the issuer's board of directors with regard to financial reporting and auditor independence; [37] and
- Providing further interpretive guidance regarding the content and understandability of Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A)—a disclosure item we believe is at the core of a reporting issuer's periodic reports.[38]

Many of the recent changes to the Exchange Act reporting framework provide greater rigor to the process that issuers must follow in preparing their financial statements and Exchange Act reports. Senior management now must certify the material adequacy of the content of periodic Exchange Act reports. Moreover, issuers, with the involvement of senior management, now must implement and evaluate disclosure controls and procedures and internal controls over financial reporting. Further, we believe the heightened role of an issuer's board of directors and its audit committee provides a structure that can contribute to improved Exchange Act reports.

As we recognized in the Proposing Release, the 1996 Concept Release and the 1998 proposals also considered the role of enhanced Exchange Act reporting as an important corollary to reform of the offering process under the Securities Act.[39] We believe that the enhancements to Exchange Act reporting described above enable us to rely on these reports to a greater degree in adopting our rules to reform the securities offering process.

II. Well-Known Seasoned Issuers; Other Categories of Issuers

A. Well-Known Seasoned Issuers

We are modifying the framework for communications in connection with public offerings for all issuers and the framework of the registration process for most issuers that report under the Exchange Act. As we explained in the Proposing Release, we believe that the most far-reaching revisions of our communications rules and registration processes should be considered for issuers that have a reporting history under the Exchange Act and are presumptively the most widely followed in the marketplace.[40]

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[32] Pub. L. 107–204, 116 Stat. 745 (2002).

[33] See Section 409 of the Sarbanes-Oxley Act, which added Section 13(l) to the Exchange Act (15 U.S.C. 78m(l)). See also *Additional Form 8–K Disclosure Requirements and Acceleration of Filing Date*, Release No. 33–8400 (Mar. 16, 2004) [69 FR 15594] and *Additional Form 8–K Disclosure Requirements and Acceleration of Filing Date; Correction*, Release No. 33–8400A (Aug. 4, 2004) [69 FR 48370] ("Form 8–K Releases").

[34] *See Certification of Disclosure in Companies' Quarterly and Annual Reports*, Release No. 33–8124 (Aug. 28, 2002) [67 FR 57276] ("Certification Release").

[35] See *Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports*, Release No. 33–8238 (June 5, 2003) [68 FR 36636]; Certification Release, note 34.

[36] See Form 8–K Releases, note 33.

[37] See *Standards Relating to Listed Company Audit Committees*, Release No. 33–8220 (Apr. 9, 2003) [68 FR 18788].

[38] See *Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations*, Release No. 33–8350 (Dec. 19, 2003) [68 FR 75056] (the "2003 MD&A Release").

[39] Enhanced Exchange Act reporting also was central to the recommendations of the Advisory Committee. See note 25.

[40] Today's rules will provide a class of well-known seasoned issuers greater flexibility in registering their securities offerings under a more streamlined registration process known as automatic shelf registration. Under the automatic shelf registration process, eligible well-known

Today, the largest issuers are followed by sophisticated institutional and retail investors, members of the financial press, and numerous sell-side and buy-side analysts that actively seek new information on a continual basis. Unlike smaller or less mature issuers, large seasoned public issuers tend to have a more regular dialogue with investors and market participants through the press and other media. The communications of these well-known seasoned issuers are subject to scrutiny by investors, the financial press, analysts, and others who evaluate disclosure when it is made.

1. Definition of Well-Known Seasoned Issuer

We are adding a new category of issuer—a "well-known seasoned issuer"—that will be permitted to benefit to the greatest degree from the modifications to our rules we are adopting today regarding communications and the registration processes.[41] We are defining a well-known seasoned issuer as an issuer that is required to file reports pursuant to Section 13(a) or Section 15(d) the Exchange Act and satisfies the following requirements as of the date on which its status as a well-known seasoned issuer is determined:

- The issuer must meet the registrant requirements of Form S–3 or Form F–3;[42]
- The issuer either:

As of a date within 60 days of its eligibility determination date must have a worldwide market value of its outstanding voting and non-voting common equity held by non-affiliates of $700 million or more; or

As of a date within 60 days of its eligibility determination date, must have issued in the last three years, at least $1 billion aggregate principal amount of non-convertible securities, other than common equity,[43] in primary offerings for cash, not exchange, registered under the Securities Act; [44] and

- The issuer must not be an ineligible issuer.[45]

If it does not itself meet the conditions for eligibility as a well-known seasoned issuer, a majority-owned subsidiary of a well-known seasoned issuer will nonetheless be a well-known seasoned issuer in connection with the offer and sale of its own securities if:

- The securities are non-convertible securities, other than common equity, and the parent of the majority-owned subsidiary is a well-known seasoned issuer and fully and unconditionally guarantees those securities; [46]
- The securities are guarantees of non-convertible securities, other than common equity, of (1) its well-known seasoned issuer parent or (2) another majority-owned subsidiary where those non-convertible securities are fully and unconditionally guaranteed by the well-known seasoned issuer parent; [47] or
- The majority-owned subsidiary is offering non-convertible investment grade securities.[48]

Overall, the issuers that will meet our thresholds for well-known seasoned issuers are the most active issuers in the U.S. public capital markets. In 2004, those issuers, which represented approximately 30% of listed issuers, accounted for about 95% of U.S. equity market capitalization. They have accounted for more than 96% of the total debt raised in registered offerings over the past eight years by issuers listed on a major exchange or equity market. These issuers, accordingly, represent the most significant amount of capital raised and traded in the United States. As a result of the active participation of these issuers in the markets and, among other things, the wide following of these issuers by market participants, the media, and institutional investors, we believe that it is appropriate to provide communications and registration flexibilities to these well-known seasoned issuers beyond that provided to other issuers, including other seasoned issuers.

a. Market Capitalization Threshold

As we discussed in the Proposing Release, we believe that non-affiliate equity market capitalization, or "public float," of a reporting issuer can be used as a proxy for whether the issuer has a demonstrated market following.[49] We are adopting as a threshold a public float of $700 million or more. We have used market capitalization as a proxy for public float in evaluating this threshold and its implications.

To determine whether an issuer meets the $700 million threshold under the definition, the issuer will calculate its public float in the same manner that it calculates its public float for purposes of determining Form S–3 or F–3 eligibility.[50] We have revised the definition from the proposal to clarify that the non-affiliate equity market capitalization is determined on a worldwide basis, as it historically has been for purposes of eligibility to use Form F–3. In addition, for purposes of calculating public float of a non-U.S. issuer to determine eligibility as a well-known seasoned issuer and eligibility to use Form S–3 or F–3, we interpret

seasoned issuers can register, on a more flexible basis than is currently the case, offerings of different types of securities using Form S–3 or Form F–3 registration statements that are effective upon filing. See discussion in Section V.B.2. below under "Automatic Shelf Registration for Well-Known Seasoned Issuers."

[41] Except for expanding eligibility for certain majority-owned subsidiaries, as discussed below, we are not changing the existing eligibility standards for the use of Form S–3 and Form F–3.

[42] Through the form requirements, the definition requires that a well-known seasoned issuer be current and timely in its Exchange Act reporting obligations.

[43] "Common equity" is defined in Securities Act Rule 405 as "any class of common stock, or an equivalent interest, including but not limited to a unit of beneficial interest in a trust or a limited partnership interest."

[44] As we discuss below, these issuers generally are limited in the types of securities they may register on an automatic shelf registration statement as a well-known seasoned issuer. See Section II.A.3 below under "Well-Known Seasoned Issuers Securities Offerings."

[45] See definition of "ineligible issuer" added to Securities Act Rule 405 and discussed in Section III.D.3 below under "Issuer Eligibility." Further, an issuer will not meet the definition of well-known seasoned issuer if it is an asset-backed issuer (as defined in Item 1101(b) of Regulation AB [17 CFR 229.1101(b)]), an investment company registered under the Investment Company Act of 1940, or a business development company. Business development companies are a category of closed-end investment companies that are not required to register under the Investment Company Act. See Section 2(a)(48) of the Investment Company Act of 1940 [15 U.S.C. 80a–2(a)(48)].

[46] Whether a guarantee is full and unconditional is analyzed under the same principles as those used under Rule 3–10 of Regulation S–X [17 CFR 210.3–10] and Exchange Act Rule 12h–5 [17 CFR 240.12h–5]. In addition, the guarantee may only be of securities that have a limited duration and are not perpetual. This analysis is not different from the current analysis under Form S–3 or Form F–3 for registered guaranteed securities.

[47] See amendments to Securities Act Rule 405. Unless the majority-owned subsidiary itself meets the eligibility conditions for a well-known seasoned issuer, it may, of course, only register securities as a well-known seasoned issuer on its parent's automatic shelf registration statement.

[48] These offerings would be required to meet the conditions of General Instruction I.B.2 of Form S–3 or Form F–3.

[49] Public float also is one of the key determinants for eligibility for current short-form registration on Form S–3 or Form F–3.

[50] The determination of public float is based on a public trading market. This is the same requirement in General Instruction I.B.1 of Form S–3 and Form F–3 that a registrant have a $75 million market value and in the definition of accelerated filer in Exchange Act Rule 12b–2 [17 CFR 240.12b2]. Therefore, an entity with $700 million of common equity securities outstanding but not trading in any public trading market would not be a well-known seasoned issuer based on market capitalization. See *Simplification of Registration Procedures for Primary Securities Offerings*, Release No. 33–6964 (Oct. 29, 1982) [57 FR 48970]; *Simplification of Registration Procedures for Primary Securities Offerings*, Release No. 33–6943 (July 22, 1992) [57 FR 32461] (proposing release); Integrated Disclosure Release, note ; and *Reproposal of Comprehensive Revision to System for Registration of Securities Offerings*, Release No. 33–6331 (Aug. 18, 1981) [46 FR 41902].

"common equity" as defined in Securities Act Rule 405 as including a class of participating voting or non-voting preferred stock of a foreign issuer where the issuance of the preferred stock results from requirements of the applicable foreign jurisdiction or market and where the class of preferred stock has liquidation or dividend preferences and other terms that cause it to be the substantial economic equivalent of a class of common stock.

To evaluate the implications of a $700 million public float threshold, staff in our Office of Economic Analysis ("OEA") obtained data on the 12,551 registered offerings that were conducted from 1997 to 2004 by 2,875 issuers that had public equity outstanding and were listed on a major exchange or equity market.[51] Of these offerings, 9,164 were debt offerings that raised proceeds of $1,927 billion, and 3,387 were equity offerings that raised proceeds of $567 billion. The average issuer conducted 4.2 debt offerings and 1.1 equity offerings per calendar year, although as many as 209 debt offerings have been conducted by a single issuer within a calendar year.

OEA also analyzed data on the financial market conditions under which these offerings were made. High levels of analyst coverage, institutional ownership, and trading volume are useful indicators of the scrutiny that an issuer receives from the market, although no one statistic can fully capture the extent to which an issuer is followed by the market.[52] Issuers with market capitalization in excess of $700 million that conducted offerings from 1997 to 2004 typically had an average of 12 analysts following them prior to the offering.[53] This includes only sell-side analysts and is, we believe, a conservative indicator of analyst scrutiny. Institutional investors accounted for an average of 52% of equity ownership prior to offerings by issuers with market capitalization above $700 million. Those issuers had an average daily trading volume of nearly $52 million prior to offerings in this period and accounted for the following percentages of capital raised:

OFFERING PROCEEDS, BY ISSUER CAPITALIZATION PRIMARY SEASONED OFFERINGS, 1997–2004 *

[$Billions (%) Proceeds from Offerings, by Issuer Capitalization]

	Market Capitalization of Issuers			
	>$700mm		>$0 (All Issuers)	
Equity	$396	(70%)	$567	(100%)
Debt[54]	1,849	(96%)	1,927	(100%)
Total ..	2,245	(90%)	2,494	(100%)

* Source: OEA estimates using Center for Research in Securities Prices at the University of Chicago and Securities Data Corporation data.

b. Registered Offerings of Non-Convertible Securities Threshold

Issuers that do not meet the public equity float test will be considered well-known seasoned issuers if they have issued for cash more than an aggregate of $1 billion in non-convertible securities, other than common equity, through registered primary offerings over the prior three years. These issuers also will have to satisfy the other conditions of the well-known seasoned issuer definition, such as the form eligibility requirement.[55] In determining compliance with this threshold:

- Issuers may aggregate the amount of non-convertible securities, other than common equity, issued in registered primary offerings during the prior three years;
- Issuers may include only such non-convertible securities that were issued in registered primary offerings for cash—they may not include registered exchange offers in this aggregation; and
- Parent company issuers only may include in their calculation the principal amount of their full and unconditional guarantees, within the meaning of Rule 3–10 of Regulation S–X,[56] of non-convertible securities, other than common equity, of their majority-owned subsidiaries issued in registered primary offerings for cash during the three-year period.

The aggregate principal amount of non-convertible securities that may be counted toward the $1 billion issuance threshold may have been issued in any registered primary offering for cash, on any form (other than Form S–4 or Form F–4). Those non-convertible securities need not be investment grade securities to be included in the calculation. In calculating the $1 billion amount, issuers generally may include the principal amount of any debt and the greater of liquidation preference or par value of any non-convertible preferred stock that were issued in primary registered offerings for cash.[57]

Issuers may not include the principal amount of securities that were offered in registered exchange offers by the issuer when determining compliance with the $1 billion non-convertible securities threshold. A substantial portion of these offerings involve registered exchange offers of substantially identical securities for securities that were sold in private offerings. In those cases, the original sale to investors in the private offering, relying upon, for example, the exemptions of Securities Act Section 4(2)[58] and Rule 144A, is not registered and is not carried out under the Securities Act's disclosure or liability standards. Moreover, in the subsequent registered exchange offers purchasers may not be able, in certain cases, to avail themselves effectively of the remedies otherwise available to purchasers in registered offerings for cash. While these exchange offers are permitted in some circumstances, the policy preference for registered offerings, in conjunction with the streamlining of the registration process we provide today, lead us to conclude that such exchange offers should not count towards the $1 billion threshold.

OEA analyzed statistics on issuers that did not meet the $700 million public equity threshold. OEA found that very few issuers that had public common equity but did not meet the $700 million public float threshold would meet the $1 billion non-convertible securities threshold. However, OEA also found that a number of issuers without any public common equity would meet the $1 billion threshold. Based on OEA's analysis, from 1997 to 2004 the issuers of fixed

[51] OEA compiled and analyzed the supporting data for the public float (using market capitalization) and outstanding debt thresholds.

[52] See, *e.g.*, Harrison Hong, Terrence Lim, and Jeremy C. Stein, *Bad News Travels Slowly: Size, Analyst Coverage and the Profitability of Momentum Strategies*, 55 Journal of Finance 265 (2000); Robert C. Merton, *A Simple Model of Capital Market Equilibrium with Incomplete Information*, 42 Journal of Finance 483 (1987).

[53] Issuers with a market capitalization of between $75 million and $200 million, in most cases, have between zero to five analysts following them, with approximately 50% having zero to two analysts following them.

[54] Because the methodology includes only listed issuers, it excludes debt-only issuers (including companies that will be well-known seasoned issuers), including those that are subsidiaries of companies with listed public equity but that are not themselves listed.

[55] As we discuss below, these issuers generally are limited in the types of securities they may register on an automatic shelf registration statement as a well-known seasoned issuer. See Section II.A.3 below under "Well-Known Seasoned Issuers Securities Offerings."

[56] 17 CFR 210.3–10.

[57] Some commenters asked for clarification on how to value certain types of debt issuances, such as debt issuances involving original issue discount or debt issued in foreign currency denominations. See, *e.g.*, letters from the American Bar Association ("ABA") and the New York State Bar Association ("NYSBA"). We have not made any modifications to the definition in response to these comments. Issuers should use the same calculation that they use to determine the dollar amount of securities that they are registering for purposes of determining their filing fees under Securities Act Rule 457.

[58] 15 U.S.C. 77d(2).

income securities that did not have outstanding public common equity but met the $1 billion threshold accounted for 16.7% of all of the issuers without public common equity that issued public debt, but accounted for 65% of total debt and preferred stock issued by all of such issuers. None of the debt offerings of issuers meeting the threshold was rated below investment grade, and 86% of their debt offerings were rated A or higher by a nationally recognized security rating organization (an "NRSRO"). This group of issuers also on average had 19 basis points lower yield spread for their issues, relative to issuers without public common equity that had issued less than $1 billion of fixed income securities in the past three years. We believe that this lower yield spread reflects lower default risk (higher ratings) and higher liquidity and transparency of the issuers.[59]

2. Timing of Determination of Well-Known Seasoned Issuer Status

Whether an issuer satisfies the eligibility requirements for being a well-known seasoned issuer generally will be determined on an approximately annual basis. We revised the timing of determination of status as a well-known seasoned issuer in response to comments.[60] As adopted, the definition uses the 60-day window period used in Form S–3 and Form F–3 and provides that the eligibility determination will be made as of the later of the time of filing of the issuer's most recent shelf registration statement or the time of its most recent amendment (by post-effective amendment, incorporated Exchange Act report, or form of prospectus) to a shelf registration statement for purposes of complying with Securities Act Section 10(a)(3).[61] In the event that the issuer has not filed a shelf registration statement or amended a shelf registration statement for purposes of complying with Securities Act Section 10(a)(3) for sixteen months, the determination date will be the time of filing of the issuer's most recent annual report on Form 10–K or Form 20–F. If the issuer does not accomplish its Section 10(a)(3) update or file its annual report when due, the due date will become the date of determination and, because the issuer will be neither timely nor current in its reporting obligations under the Exchange Act at that time, it will cease to be a well-known seasoned issuer. It can of course become a well-known seasoned issuer again in the future if and when it meets applicable requirements.

A well-known seasoned issuer may not be an ineligible issuer on the date of determination of well-known seasoned issuer status. The date of determination of whether an issuer is an ineligible issuer for these purposes is the same date as that used for other purposes in determining the issuer's status as a well-known seasoned issuer.

3. Well-Known Seasoned Issuers' Securities Offerings

An issuer that meets the definition of well-known seasoned issuer based on the $700 million public float threshold can use an automatic shelf registration statement, as discussed below, to register any offering of securities, other than those for business combination transactions.[62] An issuer that meets the definition of well-known seasoned issuer based on the amount of registered non-convertible security issuances in the prior three years also may register any such offering for cash using automatic shelf registration if it is eligible to register a primary offering of its securities on Form S–3 or Form F–3 pursuant to General Instruction I.B.1. of such forms.[63] An issuer that meets the definition of well-known seasoned issuer based on the amount of registered non-convertible security issuances in the prior three years but is not eligible to register a primary offering of securities on Form S–3 or Form F–3 pursuant to General Instruction I.B.1 of such forms may use automatic shelf registration to register only offerings for cash of non-convertible securities, other than common equity, whether or not investment grade.

4. Comments Regarding the Definition of Well-Known Seasoned Issuer

Commenters generally supported the addition of a class of well-known seasoned issuers who will benefit the most from the new rules.[64] Most of the comments related to the threshold for eligibility based on public equity float, the definition of "debt security" for purposes of the debt threshold calculation, the inclusion of securities issued in exchange offers, the frequency of eligibility determinations, and the inclusion or exclusion of Schedule B issuers, voluntary issuers, and asset-backed issuers.[65] A number of commenters also suggested that the timing of the eligibility determination for well-known seasoned issuers be revised.[66]

Some commenters expressed the view that the $700 million threshold was too high, while others thought additional eligibility conditions should be included.[67] None of the commenters provided any empirical data supporting their views to modify the thresholds. Other commenters suggested alternative ways to measure whether an issuer should be considered a well-known seasoned issuer, including average daily trading volume or institutional ownership measures.[68] Many commenters requested that we clarify that the public float used in the calculation be the company's worldwide public float.[69] A number of commenters on the definition requested that we direct the staff to reconsider the bases for the thresholds in two to three years.[70]

Commenters on the debt threshold were most concerned about the types of

[59] See Gordon J. Alexander, William F. Sharpe, and Jeffrey V. Bailey, *Fundamentals of Investments* (2001 ed.) at 530.

[60] See, *e.g.*, letters from Alston & Bird LLP ("Alston"); Davis Polk & Wardwell ("Davis Polk"); Ernst & Young LLP ("E&Y"); and the Association of the Bar of the City of New York ("NYCBA").

[61] See 15 U.S.C. 77j(a)(3). Under Form S–3 and Form F–3, the Section 10(a)(3) update need not be made through a post-effective amendment. Rather, under these Forms, the Section 10(a)(3) update generally occurs when the issuer files its annual report on Form 10–K or Form 20–F containing the issuer's audited financial statements for its most recently completed fiscal year by the due date of such annual report.

[62] Under the Rule, business combination transactions are those defined in Rule 165(f)(1) [17 CFR 230.165(f)(1)]. Rule 165(f)(1) defines a business combination transaction to mean any transaction specified in Rule 145(a) [17 CFR 230.145(a)] or exchange offer.

[63] We believe that an eligible well-known seasoned issuer that can otherwise use Form S–3 or Form F–3 for registered primary offerings because it has a $75 million public float should not have to use two different registration statements for its securities offerings for cash.

[64] See, *e.g.*, letters from Alston; The Bond Market Association ("TBMA"); Citigroup Global Corporate & Investment Bank ("Citigroup"); LaSalle Broker-Dealer Services Division of ABN–AMRO Financial Services, Inc. ("LaSalle"); NYSBA; and Reuters America LLC ("Reuters").

[65] See, *e.g.*, letters from ABA; the American Bar Association comment letter on asset-backed securities ("ABA–ABS"); Cleary Gottlieb Steen & Hamilton ("Cleary"); Fried, Frank, Harris, Shriver & Jacobson ("Fried Frank"); the International Bar Association ("IBA"); the Securities Industry Association ("SIA"); and TBMA.

[66] See, *e.g.*, letters from Alston; Davis Polk; E & Y; NYCBA; and TBMA.

[67] See, *e.g.*, letters from ABA; the American Institute for Certified Public Accountants ("AICPA"); BDO Seidman, LLP ("BDO Seidman"); Deloitte & Touche LLP ("Deloitte"); E & Y; Fried Frank; the National Association of Real Estate Investment Trusts ("NAREIT"); NYSBA; Reuters; Sullivan & Cromwell ("S&C"); and Students in Professor Samuel C. Thompson's Investment Banking Class, UCLA School of Law ("UCLA").

[68] See, *e.g.*, letters from ABA; Brinson Patrick Securities Corporation ("Brinson Patrick"); and S&C.

[69] See, *e.g.*, letters from ABA; Alston; Cleary; Fried Frank; IBA; NYSBA; and S&C.

[70] See, *e.g.*, letters from NYCBA; SIA; and UCLA.

securities included in the calculation and whether it was appropriate to include only debt issued in registered offerings.[71] Some commenters requested that the debt calculation be based on a broader category of fixed income securities including debt securities and non-convertible preferred securities.[72] Commenters suggested that non-investment grade debt be included in the calculation.[73] These commenters also suggested that securities issued in exchange offers, such as "Exxon Capital" exchange offers, be included in the debt calculation. Some commenters suggested that the debt calculation be based on all debt and non-convertible preferred stock sold, whether or not in registered offerings.[74] Finally, some commenters requested that issuers meeting the well-known seasoned issuer definition based on their debt offerings be allowed to use the automatic shelf registration procedure for registering offerings of equity securities as well as debt securities.[75]

We have retained the $700 million public float threshold and the $1 billion debt threshold. As the discussion above reflects, in reaching our determination to use the $700 million public float amount, we considered trading volume, institutional ownership, and market capitalization.

In response to comments, we have clarified that the basis for determining the public float calculation is worldwide public float of voting and non-voting common equity. In response to comments,[76] we also are providing an interpretation, as set forth above, regarding the inclusion in the calculation of certain participating preferred stock of non-U.S. issuers that is substantially economically equivalent to common equity.

While we are not revising the dollar amount of the thresholds for public equity float or for issued debt, the definition as adopted addresses a number of the other issues that commenters raised. For example, we have expanded the $1 billion debt threshold to include any non-convertible security, other than common equity, that has been issued in a registered offering for cash during the prior three years.[77] Further, the offering of the security included in the calculation could have been registered on any form (other than Form S–4 or Form F–4) and the security need not be investment grade. In addition, a parent issuer may count the aggregate amount of its registered full and unconditional guarantees of non-convertible securities, other than common equity, of its majority-owned subsidiaries issued for cash during the three-year period.

While we have not changed the dollar amounts of the thresholds, we do agree with commenters that it would be appropriate to revisit the thresholds in a few years. We, therefore, are directing the staff of the Division of Corporation Finance and OEA to undertake a study in three years after full implementation of the rules to evaluate the operation of the definition we adopt today and any material changes in the data upon which the thresholds are based and report back to us and recommend any potential changes to the thresholds based on such new data.

Although some commenters had suggested expanding the categories of eligible issuers beyond those contained in the proposed definition,[78] and others suggested narrowing the categories of eligible issuers or otherwise imposing more stringent eligibility conditions,[79] we have adopted the definition as proposed in that regard. As a result, well-known seasoned issuer status is not available to voluntary filers, asset-backed issuers, or Schedule B issuers.[80] Voluntary filers are not required to file reports under the Exchange Act, and we believe that such issuers should be required to register under the Exchange Act, and thus become subject to all of the results of registration for all purposes, if they wish to avail themselves of the benefits of reporting issuer, seasoned issuer, or well-known seasoned issuer status.[81] For Schedule B issuers, we expect that the staff will continue to consider disclosure and other shelf issues affecting Schedule B issuers in the same manner that they do today. Finally, we have recently adopted rules and regulations covering the offering of and reporting by asset-backed issuers.[82] This new regulatory structure is not yet fully operational. The advantages of a reporting history under the Exchange Act that influenced our decision to create the well-known seasoned issuer category are essentially absent for asset-backed issuers.

Commenters wanted market participants to have greater certainty that issuers were eligible as well-known seasoned issuers.[83] We have modified the timing for determination of well-known seasoned issuer status to provide more certainty. We have provided generally for an approximately annual determination of well-known seasoned issuer status. We also are adopting a change to Form 10–K and Form 20–F that will modify the cover page of those forms to include a check box for issuers to indicate if they are considered well-known seasoned issuers at the time of the filing of the Form 10–K or Form 20–F.

B. Other Categories of Issuers

We also are using existing categories of issuers, including seasoned issuers, unseasoned Exchange Act reporting issuers, and non-reporting issuers, in the new rules regarding communications and the registration process. A seasoned issuer is an issuer that is eligible to use Form S–3 or Form F–3 to register primary offerings of securities pursuant to General Instruction I.B.1 of such Forms or is registering securities in reliance on General Instruction I.B.2, I.B.5, or I.C. of Form S–3 or General Instruction I.A.5 or I.B.2 of Form F–3.[84] Majority-owned subsidiaries registering offerings of their securities on Form S–3 or Form F–3 pursuant to General Instruction I.C. of Form S–3 or I.A.5. of Form F–3 also are considered seasoned issuers.[85] As commenters requested, we are clarifying that issuers of asset-backed securities

[71] See, *e.g.*, letters from ABA; Alston; Cleary; Davis Polk; S&C; and TBMA.

[72] See, *e.g.*, letters from ABA; Alston; Cleary; the Society of Corporate Secretaries & Governance Professionals ("SCSGP"); the Southern Company ("Southern"); and TBMA.

[73] See, *e.g.*, letters from Alston; Davis Polk; the NYCBA; S&C; and TBMA.

[74] See, *e.g.*, letters from ABA; Alston; Fried Frank; IBA; and TBMA.

[75] See, *e.g.*, letters from Alston; Fried Frank; and TBMA.

[76] See letters from Cleary and Shearman & Sterling ("Shearman").

[77] We have not expanded the non-convertible security threshold to include the amount of securities issued in unregistered offerings or in exchange offers.

[78] See, *e.g.*, letters from ABA; ABA–ABS; Allied Capital Corporation ("Allied"); IBA; and TBMA.

[79] See, *e.g.*, letters from AICPA; BDO Seidman; Deloitte; and E&Y.

[80] As noted above, the definition of well-known seasoned issuer explicitly excludes investment companies registered under the Investment Company Act of 1940 and business development companies.

[81] As later discussed and consistent with our proposal, an issuer not subject to the reporting requirements of Exchange Act Section 13 or Section 15(d), but filing Exchange Act reports voluntarily, will not be a well-known seasoned issuer or a seasoned issuer. In addition, because voluntary filers are not required to report, they will not be treated as reporting issuers, for example, for purposes of Rule 138, Rule 168, or Rule 433.

[82] See *Asset-Backed Securities*, Release No. 33–8518 (Dec. 22, 2004) [70 FR 1506] (the "Asset-Backed Securities Adopting Release").

[83] See, *e.g.*, letters from ABA–ABS; American Securitization Forum ("ASF"); and Richard Hall.

[84] See Form S–3 and Form F–3.

[85] We are expanding the majority-owned subsidiary eligibility in Form S–3 and Form F–3 to allow majority-owned subsidiaries to use the forms under the same circumstances in which majority-owned subsidiaries may be well-known seasoned issuers. For example, see General Instruction I.C. to Form S–3.

eligible for registration on Form S–3 also are considered seasoned issuers.[86]

An unseasoned issuer is an issuer that is required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act, but does not satisfy the requirements of Form S–3 or Form F–3 for a primary offering of its securities. A non-reporting issuer is an issuer that is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act, regardless of whether it is filing such reports voluntarily.

A number of commenters suggested that the rules treat voluntary filers as seasoned issuers even though they are not required to file reports pursuant to Exchange Act Section 13 or Section 15(d).[87] As we note above with respect to eligibility for well-known seasoned issuer status, voluntary filers are not required to file reports under the Exchange Act, and we believe that such issuers should be required to register under the Exchange Act if they wish to avail themselves of the benefits accorded seasoned issuers under the rules we are adopting today.

III. Communications Rules

A. Communications Requirements Prior to Today's Rules and Amendments

The Securities Act restricts the types of offering communications that issuers or other parties subject to the Act's provisions (such as underwriters) may use during a registered public offering. The nature of the restrictions depends on the period during which the communications are to occur. The restrictions do not depend on the accuracy of the information contained in the communication. Before the registration statement is filed, all offers, in whatever form, are prohibited.[88] Between the filing of the registration statement and its effectiveness, offers made in writing (including by e-mail or Internet), by radio, or by television are limited to a "statutory prospectus" that conforms to the information requirements of Securities Act Section 10.[89] As a result, the only written material that is permitted in connection with the offering of the securities during the period between filing and effectiveness of a registration statement is a preliminary prospectus meeting the requirements of Section 10, which must be filed with us. Even after the registration statement is declared effective, offering participants still may make written offers only through a statutory prospectus, except that they may use additional written offering materials if a final prospectus that meets the requirements of Securities Act Section 10(a) is sent or given prior to or with those materials.[90] Violations of these restrictions generally are referred to as "gun jumping," and we use the term "gun-jumping provisions" in this release to describe the statutory provisions of the Securities Act that set forth these restrictions.

B. Need for Modernization of Communications Requirements

1. General

As we noted in the Proposing Release, the gun-jumping provisions of the Securities Act were enacted at a time when the means of communications were limited and restricting communications (without regard to accuracy) to the statutory prospectus appropriately balanced available communications and investor protection. The gun-jumping provisions were designed to make the statutorily mandated prospectus the primary means for investors to obtain information regarding a registered securities offering.

The capital markets, in the United States and around the world, have changed very significantly since those limitations were enacted. Today, issuers engage in all types of communications on an ongoing basis, including, importantly, communications mandated or encouraged by our rules under the Exchange Act, rules or listing standards of national securities exchanges, and comparable requirements in foreign jurisdictions. Modern communications technology, including the Internet, provides a powerful, versatile, and cost-effective medium to communicate quickly and broadly.[91] The changes in the Exchange Act disclosure regime and the tremendous growth in communications technology are resulting in more information being provided to the market on a more non-discriminatory, current, and ongoing basis. Thus, while investor protection remains a paramount interest, the gun-jumping provisions of the Securities Act impose substantial and increasingly unworkable restrictions on many communications that would be beneficial to investors and markets and would be consistent with investor protection.

The following factors, combined with the advances in technology described above, lead us to believe that investors and the market will benefit from access to greater permissible communications where protection for investors is maintained through the appropriate Securities Act liability standards for materially deficient disclosures in prospectuses and oral communications:

- Much of our recent rulemaking is intended to encourage reporting issuers to provide additional materially accurate and complete information to the market on a more current basis.[92] The Securities Act's constraints on communications during an offering, however, have caused issuers to be concerned about the treatment of their ongoing communications and whether, if they are engaged or will soon be engaged in capital raising, their customary disclosures will be considered an impermissible offer of securities;[93]

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[86] Asset-backed securities (as defined in Item 1101 of Regulation AB [17 CFR 229.1101]) may be offered and sold on Form S–3 if the issuer meets the requirements of General Instruction I.A.4 of Form S–3 and the transaction meets the requirements of General Instruction I.B.5 of such Form, including that the asset-backed securities are investment grade.

[87] See, *e.g.*, letters from ABA; Alston; Fried Frank; and TBMA.

[88] See Securities Act Section 5(c) [15 U.S.C. 77e(c)]. Securities Act Section 2(a)(3) [15 U.S.C. 77b(a)(3)] defines "offer" as any attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. The term "offer" has been interpreted broadly and goes beyond the common law concept of an offer. See *Diskin* v. *Lomasney & Co.*, 452 F.2d 871 (2d. Cir. 1971); *SEC* v. *Cavanaugh*, 1 F. Supp. 2d 337 (S.D.N.Y. 1998). The Commission has explained that "the publication of information and publicity efforts, made in advance of a proposed financing which have the effect of conditioning the public mind or arousing public interest in the issuer or in its securities constitutes an offer * * *." *Guidelines for the Release of Information by Issuers Whose Securities are in Registration*, Release No. 33–5180 (Aug. 16, 1971) [36 FR 16506].

[89] See Securities Act Section 5(b)(1) [15 U.S.C. 77e(b)(1)] and Securities Act Section 10 [15 U.S.C.77j].

[90] See Securities Act Section 2(a)(10) [15 U.S.C. 77b(a)(10)] and Section 5(b)(1).

[91] For example, the Internet provides a medium through which to deliver electronic documents, to broadcast radio and television programs, to issue press releases or print advertisements, to conduct telephone or videoconferences with investors, prospective investors, and other parties, and to send personal e-mails.

[92] Other recent rulemaking initiatives addressing disclosure issues include those referenced in notes 33 through 38 and those contained in *Disclosure Regarding Nominating Committee Functions and Communications Between Security Holders and Boards of Directors*, Release No. 33–8340 (Nov. 24, 2003) [68 FR 66992]; and *Disclosure in Management's Discussion and Analysis About Off-Balance Sheet Arrangements and Aggregate Contractual Obligations*, Release No. 34–47264 (Jan. 28, 2003) [68 FR 5982] (the "Oft-Balance Sheet Disclosure Release").

[93] See, *e.g.* letter from the American Bar Association Committee on Federal Regulation of Securities to the Director of the Division of Corporation Finance, Aug. 22, 2001 (available at *www.abanet.org*); comment letters in File No. S7–30–98 from Gerald S. Backman, et. al.; Fried Frank; Service Employees International Union Master Trust; and S&C. See also Edward F. Greene and Linda C. Quinn, "Building on the International Convergence of the Global Markets: a Model for Securities Law Reform," presented at *A Major Issues Conference: Securities Regulation in the*

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- The multiplicity of means of communication has led us to recognize that restricting written offers to a statutory prospectus inhibits desirable methods of timely communication of information;
- There are many more offerings of increasingly complex securities where written communications, such as detailed descriptions of securities and offerings, would enhance significantly the offering process for the benefit of investors;[94] and
- The continuing trends towards globalization of securities markets and multinationalization of issuers and offerings and corresponding increase in information and information requirements increase the need for a regulatory framework that accommodates more flexible communications.

As we discussed in the Proposing Release, in view of the many recent changes to the Exchange Act reporting system that are designed to produce more timely and extensive disclosures and greater scrutiny of, and confidence in, those reports, it is appropriate at this time to adopt communications and offering reforms.[95]

2. Definition of Written Communication

a. "Written Communication" and "Graphic Communication"

As a starting point for reform, we are defining all methods of communication, other than oral communications, as written communications for purposes of the Securities Act. While we have addressed the issue of electronic communications in a number of different contexts, at this time we are adopting rules making it clear that all electronic communications (other than telephone and other live, in real-time communications to a live audience, as discussed below) are graphic and, therefore, written communications for purposes of the Securities Act. In this manner, we intend to encompass new technologies. Accordingly, we are adopting new definitions of "graphic communication" and "written communication" to promote consistent understanding of what constitutes such a communication in view of the technological developments since the enactment of the Securities Act and to significantly reduce remaining uncertainty regarding the permitted means for delivery of information under the Securities Act.

We are adopting the proposed revisions to the definition of "graphic communication" with some modifications. As adopted, the definition of "graphic communication" includes any form of electronic media, such as audiotapes, videotapes, facsimiles, CD–ROM, electronic mail, Internet web sites, and computers, computer networks, and other forms of computer data compilation.[96]

The definition of graphic communication does not include a communication that, at the time of the communication, originates live, in real-time, to a live audience and does not originate in recorded form or otherwise as a graphic communication.[97] Any such communication is not a graphic communication even if it is transmitted through a means of graphic communication. A basic concept of the definition we adopt today is that communications that are graphic communications when they are transmitted are treated as graphic communications under the definition and communications that are live, in real-time communications to a live audience when they are transmitted are not treated as graphic communications. We believe that live, in real-time communications to a live audience, including those transmitted by graphic means, have less of the permanence of communications that originate in graphic form or that appear on the printed page. Accordingly, we believe that the distinctions in the definitions we are adopting today are appropriate updatings of the Securities Act's distinctions between oral and written communications.

As adopted, "written communication" means any communication that is written, printed, or television or radio broadcast (regardless of the transmission means), or a graphic communication. All communications that fall outside the definition are oral communications, including for purposes of Securities Act Section 12(a)(2). It also excludes live telephone calls (through whatever means by which they are transmitted, including the Internet) and, as discussed above, other live, in real-time communications to a live audience transmitted by graphic means. The definition as adopted clarifies that television or radio broadcasts will be covered regardless of the transmission means.

We thus make a clearer distinction between communications that are broadcast and those that are graphic communications. We have clarified that a television or radio broadcast in Securities Act Section 2(a)(10) and in our definition of written communication encompasses all radio or television broadcasts, regardless of the means of transmission of the signals. For example, a cable television show will be considered a television broadcast that is a written communication, and a television show or radio program that may be seen or heard through the Internet on a computer will also be considered a television or radio broadcast that is a written communication. A communication may fall outside the definition of graphic communication because it originates live, in real-time to a live audience but such communication (for example, a live business news program broadcast by traditional means or on cable) may be a television or radio broadcast. On the other hand, a live, in real-time communication that is transmitted by graphic means to a live audience would be an oral communication. Given the potentially unlimited and uncontrolled nature of dissemination of broadcast communications and the language of the Securities Act, we believe that this is an appropriate distinction.

The following are examples of the application of these definitions:

- A live telephone call is not a written communication;
- A live telephone call that is recorded by the recipient is not a written communication;
- E-mails, facsimiles, and electronic postings on web sites, by their nature,

Global Internet Economy, Washington, D.C., Nov. 14–15, 2001 (available at *www.law.northwestern.edu*).

[94] For example, we and the staff have already recognized the usefulness of descriptions of securities and related materials in offerings of asset-backed securities. See the Asset-Backed Securities Adopting Release, note 82.

[95] We have considered communications reform in other contexts for a number of years. With our adoption of the communications reforms for business combination transactions in 1999, we reduced the regulation of offers and brought the regulatory structure closer to the practices in those offerings while ensuring continued investor protection. See *Regulation of Takeovers and Security Holder Communications*, Release No. 33–7760 (Oct. 22, 1999) [64 FR 61408] (the "Regulation M–A Release"). We recently have adopted communications reforms for asset-backed securities offerings as well. See the Asset-Backed Securities Adopting Release, note 82.

[96] The forms of media that are described in the definition encompass the forms of media that are addressed in our interpretive guidance on the use of electronic media. See, *e.g.*, Use of Electronic Media, Release No. 33–7856 (Apr. 28, 2000) [65 FR 25843] (the "2000 Electronics Release"). In recognition of continuing developments in technology, the forms of electronic media described in the definition are intended to be illustrative rather than exhaustive.

[97] Written communications will not include individual telephone voice mail messages from live telephone calls but will include broadly disseminated or "blast" voice mail messages, including those that originate in graphic form. The latter is included in the definition because we believe they are not to a live audience and therefore more closely resemble graphic communications than oral communications.

originate in graphic form and, therefore, are graphic communications;

- A live, in-person road show to a live audience is not a written communication;
- A live, in real-time road show to a live audience that is transmitted graphically is not a graphic communication;
- A live, in real-time road show to a live audience that is transmitted to an "overflow room" is not a graphic communication;
- A webcast or video conference that originates live and in real-time at the time of transmission and is transmitted through video conferencing facilities or is webcast in real-time to a live audience is not a graphic communication;
- The ability of a member of the audience to record a webcast or video conference that is presented live and in real-time to a live audience would not affect the status of that webcast or video conference;
- A live telephone call or video or webcast conference that is recorded by or on behalf of the originating party or parties and then transmitted, or is otherwise transmitted other than live and in real-time, will be a graphic communication and therefore a written communication;
- A live telephone call or video or webcast conference that is recorded by the recipient and then re-transmitted by the recipient is a graphic communication by the recipient when it is re-transmitted; and
- An interview with an issuer's chief executive officer conducted live as part of a television program is a written communication regardless of how the television signal is transmitted (whether over the airwaves, or through cable, satellite, or Internet) and regardless of how it is received by the recipient (whether a television set or a computer).

With respect to road shows, as explained below, we also have added a Note to Rule 433 that states that a communication that is provided or transmitted simultaneously with a road show and is provided or transmitted in a manner designed to make the communication available only as part of the road show and not subsequently is deemed to be part of the road show.

b. Comments Regarding Proposals

Commenters raised several questions about the proposed definitions, particularly as the definitions affected live audio transmissions, live telephone calls, and live road shows transmitted over the Internet.[98] Commenters were concerned that the definitions of written communication and graphic communication did not explicitly address the treatment of live telephone calls, regardless of the medium of transmission, although the Proposing Release provided that live telephone calls (other than blast voice mails) would not be considered written communications.[99]

We believe that the modifications that we made to the definitions of graphic communication and written communication will address commenters' issues regarding live, in real-time communications, including telephone calls, conference calls, videocasts, and live webcasts.

C. Overview of Communications Rules

Today, we are adopting rules that relate to the following:

- Regularly released factual business information;
- Regularly released forward-looking information;
- Communications made more than 30 days before filing a registration statement;
- Communications by well-known seasoned issuers during the 30 days before filing a registration statement;
- Written communications made in accordance with the safe harbor in Securities Act Rule 134; and
- Written communications (other than a statutory prospectus) by any eligible issuer after filing a registration statement.

The following table provides a brief overview of the operation of the new and amended rules. While the table clearly does not include the level of detail necessary to explain the rules, we have included it to help readers in understanding the basic scope of the new communications scheme.

	Could it be an "offer" as defined in Section 2(a)(3)?	Is it a "prospectus" as defined in Section 2(a)(10)?	Is it a prohibited pre-filing offer for purposes of Section 5(c)?	Is it a prohibited prospectus for purposes of Section 5(b)(1)?
Regularly Released Factual Business Information.	Yes	No	Rule defines it as not an offer for Section 5(c) purposes.	Section 5(b)(1) relates only to "prospectuses"—it is not applicable.
Regularly Released Forward-Looking Information.	Yes	No	Rule defines it as not an offer for Section 5(c) purposes.	Section 5(b)(1) relates only to "prospectuses"—it is not applicable.
Communications Made More than 30 Days Before Filing of Registration Statement.	Yes	Possibly, based on facts and circumstances.	Rule defines it as not an offer for Section 5(c) purposes.	Section 5(b)(1) does not apply in the pre-filing period—it is not applicable.
Well-Known Seasoned Issuers—Oral Offers Made Within 30 Days of Filing of Registration Statement.	Yes	No	Is exempted from prohibition of Section 5(c).	Section 5(b)(1) does not apply in the pre-filing period—it is not applicable.
Well-Known Seasoned Issuers—Written Offers Made Within 30 Days of Filing of Registration Statement.	Yes	Yes. It also is a free-writing prospectus.	Is exempted from prohibition of Section 5(c).	Section 5(b)(1) does not apply in the pre-filing period—it is not applicable.

[98] See, *e.g.*, letters from Citigroup; Cleary; Davis Polk; S&C; and SIA.

[99] See, *e.g.*, letters from Citigroup; Merrill Lynch & Co., Inc. ("Merrill Lynch"); S&C; and SIA.

	Could it be an "offer" as defined in Section 2(a)(3)?	Is it a "prospectus" as defined in Section 2(a)(10)?	Is it a prohibited pre-filing offer for purposes of Section 5(c)?	Is it a prohibited prospectus for purposes of Section 5(b)(1)?
Well-Known Seasoned Issuers—Free Writing Prospectuses Used Before Filing of Registration Statement.	Yes	Yes	Is exempted from prohibition of Section 5(c).	Section 5(b)(1) does not apply in the pre-filing period—it is not applicable.
Identifying Statements in Accordance with Rule 134.	Yes	No	Section 5(c) is not applicable, as Rule 134 relates only to the period after the filing of a registration statement.	Section 5(b)(1) relates only to "prospectuses"—it is not applicable.
All Eligible Issuers—Free Writing Prospectuses Used After Filing of Registration Statement.	Yes	Yes	Section 5(c) is not applicable, as it does not apply in the post-filing period.	Section 5(b)(1) will be satisfied, as the free writing prospectus will be a permitted Section 10(b) prospectus.

The communications rules we are adopting recognize the value of ongoing communications as well as the importance of avoiding unnecessary restrictions on offers during a registered offering. In particular, the new and revised rules will eliminate requirements that can interrupt unnecessarily an issuer's normal and routine communications into the market while an issuer is engaging in a securities offering, and will enhance the ability of issuers and other offering participants to make written offers outside the statutory prospectus.

The new and revised rules we are adopting establish a communications framework that, in some cases, will operate along a spectrum based on the type of issuer, its reporting history, and its equity market capitalization or recent issuances of fixed income securities. Thus, under the rules we are adopting, eligible well-known seasoned issuers will have freedom generally from the gun-jumping provisions to communicate at any time, including by means of a written offer other than a statutory prospectus. Varying levels of restrictions will apply to other categories of issuers. We believe these distinctions are appropriate because the market has more familiarity with large, more seasoned issuers and, as a result of the ongoing market following of their activities, including the role of market participants and the media, these issuers' communications have less potential for conditioning the market for the issuers' securities to be sold in a registered offering. Disclosure obligations and practices outside the offering process, including under the Exchange Act, also determine the scope of communications flexibility the rules give to issuers and other offering participants.[100]

The cumulative effect of the rules under the gun-jumping provisions is the following:

- Well-known seasoned issuers are permitted to engage at any time in oral and written communications, including use at any time of a free writing prospectus,[101] subject to enumerated conditions (including, in specified cases, filing with us).[102]
- All reporting issuers are permitted, at any time, to continue to publish regularly released factual business information and forward-looking information.[103]
- Non-reporting issuers are permitted, at any time, to continue to publish regularly released factual business information that is intended for use by persons other than in their capacity as investors or potential investors.[104]
- Communications by issuers more than 30 days before filing a registration statement are not prohibited offers so long as they do not reference a securities offering that is or will be the subject of a registration statement.[105]
- All issuers and offering participants are permitted to use free writing prospectuses after the filing of the registration statement, subject to enumerated conditions (including, in specified cases, filing with us).[106]
- A broader category of routine communications regarding issuers, offerings, and procedural matters, such as communications about the schedule for an offering or about account-opening procedures, are excluded from the definition of "prospectus."[107]
- The exemptions for research reports are expanded.[108]

As discussed below, a number of these rules include conditions of eligibility. Most of the new and amended rules, for example, are not available to blank check companies, penny stock issuers, or shell companies.[109]

The rules we are adopting today ensure that appropriate liability standards are maintained. For example, all free writing prospectuses have liability under the same provisions as apply today to oral offers and statutory prospectuses.[110] Written communications not constituting prospectuses will not be subject to disclosure liability applicable to prospectuses[111] under Securities Act Section 12(a)(2). This result will not affect their status for liability purposes under other provisions of the federal

[100] See, *e.g.*, Regulation FD, Regulation G [17 CFR 244.100 *et seq.*], and Form 8–K [17 CFR 249.308].

[101] A "free writing prospectus" is defined in Securities Act Rule 405. This definition is discussed in Section III.D.3 below under "Definition of Free Writing Prospectus."

[102] See Rule 163.

[103] See Rule 168. Certain asset-backed issuers and non-reporting foreign private issuers also will be able to rely on the Rule.

[104] See Rule 169.

[105] See Rule 163A.

[106] See Rules 164 and 433.

[107] See amendments to Securities Act Rule 134.

[108] See amendments to Securities Act Rules 137, 138, and 139.

[109] We have adopted rules that contain a definition of shell company. See *Use of Form S–8, Form 8–K, and Form 20–F by Shell Companies*, Release No. 33–8587 (July 15, 2005) ("Shell Company Release"). For purposes of the rules we are adopting today, we have excluded business combination related shell companies from the restrictions otherwise applicable to shell companies. Therefore, all references to shell companies in this release excludes business combination related shell companies.

[110] These liability provisions include Securities Act Section 12(a)(2) and 17(a), Exchange Act Section 10(b) [15 U.S.C. 78j(b)], and Exchange Act Rule 10b–5 [17 CFR 240.10b–5].

[111] See Securities Act Section 2(a)(10) and Rule 134.

securities laws, including the anti-fraud provisions.[112]

D. Communications Rules

1. Permitted Continuation of Ongoing Communications During an Offering

a. Overview

We are adopting substantially as proposed two separate, non-exclusive safe harbors from the gun-jumping provisions for continuing ongoing business communications. The first safe harbor permits a reporting issuer's continued publication or dissemination of regularly released factual business and forward-looking information at any time, including around the time of a registered offering.[113] The second safe harbor permits a non-reporting issuer's continued publication or dissemination of regularly released factual business information that is intended for use by persons other than in their capacity as investors or potential investors.[114] The safe harbors are not exclusive and do not create a presumption that any communication that falls outside the safe harbor is an offer. Accordingly, reliance on one of the safe harbors does not affect the availability of any other exemption or exclusion under the Securities Act. Further, attempted compliance with one of the safe harbors does not act as an exclusive election. For example, attempted reliance on one of the exemptive rules or exclusions we adopt today will not preclude reliance on another available exemption or exclusion. In particular, it will not preclude reliance on the argument that under general securities law principles and our earlier interpretive guidance the communication in question is not an offer under Securities Act Section 2(a)(3).

Investment companies registered under the Investment Company Act of 1940 and business development companies are ineligible to use the safe harbors for factual business information and forward-looking information. These issuers are subject to a separate framework governing communications with investors.[115]

b. Exception for Regularly Released Factual Business and Forward-Looking Information—Available to Reporting Issuers

We are adopting substantially as proposed the safe harbor for reporting issuers, as well as asset-backed issuers and certain non-reporting foreign private issuers, from the gun-jumping provisions for continued publication or dissemination of communications of regularly released factual business and forward-looking information.[116] This safe harbor is a "use" safe harbor in that it applies to communications of factual business and forward-looking information that have been regularly released in the ordinary course by or on behalf of a reporting issuer.[117]

Commenters supported the proposed safe harbor with certain suggested changes to its scope.[118] Commenters suggested that the safe harbor should be available to voluntary filers, non-reporting foreign private issuers, asset-backed issuers, registered investment companies, and business development companies.[119] As adopted, the rule is available to non-reporting foreign private issuers meeting certain conditions and to asset-backed issuers (and to a depositor, sponsor, servicer, or affiliated depositor, whether or not the issuer) with regard to registered offerings of asset-backed securities.[120] We believe that non-reporting foreign private issuers qualifying under the safe harbors, like reporting issuers in the United States, are providing information to the markets even though they are not reporting companies in the United States. Similarly, asset-backed issuers and issuers that are affiliated depositors provide and are encouraged to provide information on an ongoing basis in a manner consistent with that covered by Rule 168. The reference to depositors, sponsors, servicers, and affiliated depositors, whether or not the issuer, is intended to permit communication of information regarding pre-existing transactions or asset pools within the safe harbor where its conditions are satisfied.

As we note above, voluntary filers are not required to report under the Exchange Act and therefore do not fall within Rule 168. Voluntary filers will have available to them the safe harbor for non-reporting issuers in new Rule 169.[121] We also note above that registered investment companies and business development companies are subject to a separate framework governing communications with investors, and we believe that it would be more appropriate to consider investment company issues in the context of a broader reconsideration of this separate framework.

i. Factual Business Information

(A) Scope of the Safe Harbor

We believe it is important to provide increased certainty regarding when the gun-jumping provisions will be inapplicable to the continuing ongoing communication of specified factual business information. We are adopting Securities Act Rule 168, which provides a non-exclusive safe harbor that such a communication is not an impermissible prospectus and does not violate the prohibition on pre-filing offers.[122] We want to encourage reporting issuers and other issuers eligible to rely on the safe harbor to continue to provide this information. For purposes of Rule 168,

[112] See, *e.g.*, Securities Act Section 17(a), Exchange Act Section 10(b) and Exchange Act Rule 10b–5.

[113] See Rule 168.

[114] See Rule 169.

[115] See, *e.g.*, Securities Act Rules 156, 482, and 498 [17 CFR 230.156; 17 CFR 230.482; 17 CFR 230.498[; Investment Company Act Rule 34b–1 [17 CFR 270.34b–1[.

[116] The safe harbor also covers communications that incorporate regularly released factual business or forward-looking information.

[117] See Rule 168.

[118] See, *e.g.*, letters from ABA; Cleary; Davis Polk; Fried Frank; NYSBA; and SCSGP.

[119] See, *e.g.*, letters from ABA; ABA–ABS; Allied; Alston; the Commercial Mortgage Securities Association ("CMSA"); Davis Polk; Fried Frank; Richard Hall; NYCBA; NYSBA; and S&C.

[120] The eligibility conditions for non-reporting foreign private issuers will be the same as the eligibility conditions for such issuers contained in Securities Act Rules 138 and 139 as we are amending them today.

[121] These issuers may, of course, continue to rely on existing Commission interpretations concerning ongoing business disclosures. See the discussion at note 122 below regarding the interpretive releases on factual business information.

[122] Rule 168 is a safe harbor from the definition of "prospectus" in Securities Act Section 2(a)(10) and, therefore, prevents the application of the prohibition in Securities Act Section 5(b)(1) on the use of a prospectus that is not a statutory prospectus. The Rule also is a safe harbor from the prohibitions on pre-filing "offers" in Securities Act Section 5(c).

In general, as we recognized many years ago, ordinary factual business communications that an issuer regularly releases are not considered an offer of securities. See, *e.g.*, the guidelines contained in the 2000 Electronics Release, note 96 at Section II.B.2; *Guidelines for the Release of Information by Issuers Whose Securities are in Registration*, Release No. 33–5180 (Aug. 16, 1971) [36 FR 16506]; *Publication of Information Prior to or After the Filing and Effective Date of a Registration Statement Under the Securities Act of 1933*, Release No. 33–5009 (Oct. 7, 1969) [34 FR 16870]; *Offers and Sales by Underwriters and Dealers*, Release No. 33–4697 (May 28, 1964) [29 FR 7317]; and *Publication of Information Prior to or After the Effective Date of a Registration Statement*, Release No. 33–3844 (Oct. 8, 1957) [22 FR 8359]. The non-exclusive safe harbors we are adopting today will not affect in any way the Securities Act analysis regarding ordinary course business communications that are not within the safe harbors and we have made that clear in the Preliminary Note to the Rule. Such communications will not be presumed to be offers, and whether they are offers will depend on the facts and circumstances.

factual business information is defined as:[123]

- Factual information about the issuer, its business or financial developments, or other aspects of its business;
- Advertisements of, or other information about, the issuer's products or services; and
- Dividend notices.

This information includes without limitation in each case such factual business information contained in reports or materials filed with, furnished to, or submitted to us pursuant to the Exchange Act.[124]

(B) Comments on the Scope of the Safe Harbor

Some commenters suggested broadening the categories of factual business information,[125] including the suggestion that only offering-related information be excluded from the definition of factual business information.[126] We are adopting the definition of factual business information that in substantive respects is substantially as proposed. The simplification of the definition in the Rule as adopted does not narrow the information included in the definition. We believe that the purpose of the safe harbor is to permit reporting issuers to continue their ordinary course factual business communications, not to define when an offer is considered to occur in all cases. As we have noted, whether or not a communication that is outside the safe harbor would be an offer is a facts and circumstances determination.

We have modified the definition from the proposal to make clear that factual business information may be communicated within the safe harbor by including it in any report or material filed with, furnished to, or submitted to us. The other conditions of the safe harbor, for example, the "regularly released," condition of course also must be satisfied. In addition, in response to commenters' concerns, we have made clear in a preliminary note that the safe harbor addresses use and relates to a communication, and, therefore, that another communication of the information in an offering-related manner will not affect the ability to rely on the safe harbor for the protected communication.

ii. Forward-Looking Information

(A) Scope of the Safe Harbor

As we stated in the Proposing Release, our view of the value of forward-looking information in the market has evolved through the years. Through the 1970's we were most concerned with the potentially misleading effect that forward-looking information could have on investors.[127] Since the 1980's, we have encouraged issuers to disclose forward-looking information and, in some situations (such as the disclosures in MD&A), required them to do so.[128] The existing safe harbors for the content of forward-looking statements are designed to encourage the provision of forward-looking information.[129]

Where an issuer regularly releases forward-looking information in the ordinary course, we indicated in the Proposing Release that we believe that the purpose of such communication is to keep the market informed about the issuer and its future prospects and, thus, the continued release or dissemination of this information in the ordinary course is not for the purpose of offering securities or conditioning the market for new issuances of the issuer's securities. Many issuers disclose earnings forecasts and other forward-looking information publicly to provide more information to the markets and to enable them to continue to have discussions to which Regulation FD applies. We do not believe that it is beneficial to investors or the markets to force reporting issuers to suspend their ordinary course communications of regularly released information that they would otherwise choose to make because they are raising capital in a registered offering.

We are adopting the definition substantially as proposed to provide for the use of such a communication a safe harbor from being an impermissible prospectus and from violating the prohibitions on pre-filing offers. As adopted, the safe harbor in Rule 168 will apply to the release or dissemination of communications containing some or all of the following forward-looking information if the release or dissemination satisfies the other conditions of the Rule:[130]

- Projections of the issuer's revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure, or other financial items;
- Statements about the issuer management's plans and objectives for future operations, including plans or objectives relating to the products or services of the issuer;

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[123] Under the Rule as adopted, regularly released factual business information does not include the release of information about the registered offering or the release of information as part of the offering activities in the registered offering.

[124] As we discuss below, some commenters expressed concern about the treatment of information contained in Exchange Act reports at the time they are originally filed with, furnished to, or submitted to us. See, *e.g.*, letters from ABA and Fried Frank. We believe this modification will make clear that all covered information within Exchange Act filings will be covered by the safe harbor.

Factual business information that reporting issuers release or disseminate will continue to be subject to the provisions of Regulation FD, Regulation G, Item 10 of Regulation S–K and Regulation S–B [17 CFR 229.10 *et seq.* and 17 CFR 228.10 *et seq.*], and Item 2.02 of Form 8–K.

[125] See, *e.g.*, letters from ABA and SCSGP.

[126] See, *e.g.*, letters from Davis Polk and SCSGP.

[127] Until the 1970's, the Commission prohibited disclosure of forward-looking information in any disclosure document. In 1979, the Commission adopted a safe harbor for release of forward-looking information. See *Statement by the Commission on the Disclosure of Projections of Future Economic Performance*, Release No. 33–5362 (Feb. 2, 1973) [38 FR 7220]; *Safe Harbor Rule for Projections*, Release No. 33–6084 (June 25, 1979) [44 FR 38810]. See also, the Wheat Report, note 21, at 94.

[128] See Item 303 of Regulation S–K and Regulation S–B [17 CFR 229.303 and 17 CFR 228.303]. In our 2003 MD&A Release discussed at note 38, we issued interpretive guidance on MD&A which stated:

> In addressing prospective financial condition and operating performance, there are circumstances, particularly regarding known material trends and uncertainties, where forward-looking information is required to be disclosed. We also encourage companies to discuss prospective matters and include forward-looking information in circumstances where that information may not be required, but will provide useful material information for investors that promotes understanding * * *
>
> [M]aterial forward-looking information regarding known material trends and uncertainties is required to be disclosed as part of the required discussion of those matters and the analysis of their effects. In addition, forward-looking information is required in connection with the disclosure in MD&A regarding off-balance sheet arrangements.

[129] See Securities Act Section 27A [15 U.S.C. 77z–2] and Securities Act Rule 175 [17 CFR 230.175]. Section 27A provides a safe harbor for certain forward-looking statements. See also, the Off-Balance Sheet Disclosure Release at note 92 (stating that any forward-looking information required pursuant to the off-balance sheet arrangement disclosure in Items 303(a)(4) and (a)(5) of Regulation S–K and Regulation S–B would be subject to the statutory safe harbor contained in Sections 27A of the Securities Act and 21E of the Exchange Act [15 U.S.C. 78u–5]). Rule 175 provides a limited safe harbor for the content of forward-looking statements contained in documents filed with us, including in registration statements and periodic reports.

[130] The listed categories of forward-looking information in the safe harbor are essentially the same categories of statements that are defined as forward-looking statements under the safe harbor in Securities Act Section 27A(i)(1) [15 U.S.C. 77z–2(i)(1)]. The safe harbor covering the release or dissemination is available for the regular release of earnings expectations and guidance information. Rule 168 provides a safe harbor for the use of such information, not the content of the communication. An issuer's communications of forward-looking information made in reliance on the safe harbor will still have to satisfy the conditions of Securities Act Section 27A if the issuer wishes to rely on the statutory safe harbor for the content of the information.

The comments on the definition of forward-looking information related primarily to the interplay between such information and the exclusion of offering-related information from the scope of the safe harbor and the way in which newer issuers would establish a history of regular release of such information. See letter from ABA.

• Statements about the issuer's future economic performance, including statements of the type contemplated by MD&A described in Item 303 of Regulation S–K and Regulation S–B, or Item 5 of Form 20–F; and

• Assumptions underlying or relating to any of the foregoing information.

As with factual business information, we have clarified that any such information may be communicated by including it in a report filed with, or furnished to, or submitted to us. The safe harbor for forward-looking information also addresses "use," and the preliminary note discussed above applies.

iii. Conditions of Safe Harbor in Rule 168

(A) "By or on Behalf of" the Issuer

(1) Definition

Under the Rule as adopted, factual business and forward-looking information will be considered released or disseminated by or on behalf of an issuer if the issuer or an agent or a representative of the issuer, other than an offering participant who is an underwriter or dealer, authorizes or approves the release or dissemination of the communication before it is made.[131] Satisfaction of this condition is separate from the "regularly released" condition. The safe harbor is not available for information released in a manner intended to circumvent either the conditions to use or the permitted manner of use of the information.

(2) Comments on Definition

Commenters supported the concept of "by or on behalf of" the issuer.[132] Commenters also supported placing the definition of the term in a single rule, rather than a separate definition in each safe harbor.[133] Some commenters suggested further clarifications of the definition, such as identifying the persons authorized or approved to speak on behalf of the issuer, eliminating any issuer responsibility for communications by unauthorized persons, and providing that the communication either be authorized or approved but not both.[134]

We have considered these suggestions carefully and have made some revisions to the definition of "by or on behalf of" the issuer. We have determined not to provide a single definition, instead including an appropriate definition in each relevant rule. We also have not taken the suggestions that the Rule provide that issuers are responsible only for communications made by authorized or approved speakers. The circumstances under which issuers are responsible for the acts of individuals may be determined in accordance with principles not addressed in today's rules. In addition, we have not defined further who may be considered an agent or representative of the issuer, other than to specifically exclude offering participants who are underwriters and dealers. The definition could cover legitimate representatives or agents of the issuer such as, for example, advertising agencies and public relations companies who normally release or disseminate product advertising or promotional communications containing such information on behalf of an issuer. We also have modified the definition to provide that the communication does not have to be both approved and authorized for it to be considered to be made by or on behalf of the issuer.

A few commenters suggested that the Rule not include the preliminary note that contains the "scheme to evade" language because they believed it would cause uncertainty about the ability to rely on the safe harbors.[135] The preliminary note to the Rule is substantially the same preliminary note contained in a significant number of exemptions under the Securities Act upon which market participants have relied and we are adopting the Rule with the preliminary note regarding the "scheme to evade" language as proposed.[136]

(B) Regularly Released Information

(1) Regularly Released Condition

As we discussed in the Proposing Release, the purpose of the safe harbor is to enable a reporting issuer to continue its past ordinary course practice of releasing or disseminating publicly factual business and forward-looking information. Communications of both factual business information and forward-looking information must satisfy the same conditions regarding regular release.

We are adopting the regularly released condition substantially as proposed. Under Rule 168, information will be considered regularly released or disseminated if the issuer has previously released or disseminated the same type of information in the ordinary course of its business, and the release or dissemination is consistent in material respects in timing, manner, and form with the issuer's similar past release or dissemination of such information.[137] The method of releasing or disseminating the information, thus, also must be consistent in material respects with prior practice. These conditions seek to ensure that the information is not being released to condition the market for the registered offering of the issuer's securities.

While the Rule does not establish or require any minimum time period to satisfy the regularly released element, the safe harbor requires the issuer to have some track record of releasing the particular type of information. One prior release or dissemination could establish this track record. Issuers should consider the frequency and regularity with which they have released the same type of information. For example, an issuer's release of new types of financial information or projections just before or during a registered offering will likely prevent a conclusion that the issuer regularly released that type of forward-looking or financial information in the ordinary course of its business.

(2) Comments on Regularly Released Condition

Commenters on the regularly released condition suggested that we further clarify the concept of regularly released information by elaborating on the meaning of timing, manner, and form.[138] Some of these commenters were concerned about the availability of the safe harbor for non-scheduled releases of information and information distributed using new or different technologies.[139] Other commenters on this point, however, desired greater flexibility with no definition of "ordinary course."[140]

[131] We are using a similar definition as contained in Securities Act Rule 146 [17 CFR 230.146].

As we note above, for asset-backed securities offerings, the safe harbor is available to asset-backed issuers, depositors, affiliated depositors, sponsors, and servicers. We have included a provision regarding communication by or on behalf of such persons.

[132] See, *e.g.*, letters from ABA; Cleary; S&C; and William J. Williams, Jr.

[133] See *Id.*

[134] See, *e.g.*, letters from ABA; Alston; Cleary; Davis Polk; and S&C.

[135] See, *e.g.*, letters from ABA and William J. Williams, Jr.

[136] See, *e.g.*, Regulation D [17 CFR 230.501 *et seq.*] and Rule 155 [17 CFR 230.155].

[137] In the case of asset-backed issuers, the regularly released requirement will be tested against the previous communications of those persons included in the Rule's provisions, taken together.

[138] See, *e.g.*, letters from Davis Polk; the Investment Company Institute ("ICI"); and TBMA.

[139] See *Id.*

[140] Some commenters also expressed concern about offshore communications. See, *e.g.*, letters from ABA and Fried Frank. Communications that are considered not to be offers because they are made offshore and meet other criteria we have previously discussed would be treated in the same manner as they are today. See *Statement of the*

Continued

We have not changed the "regularly released" language from the proposal because we do not believe that a bright-line test of "regularly released" is appropriate. We believe that it is more appropriate to provide issuers the flexibility to use the means and timing they believe is appropriate for their ongoing business communications. We would note, however, that there are circumstances in which communications made outside a predetermined schedule or not at regular intervals would be covered by the safe harbor. The Rule is not intended to cover only scheduled releases of information but also could cover communications, such as product advertising and product release information or earnings guidance changes, that are made on an unscheduled or episodic basis, provided that the issuer has previously provided such communications containing factual business and forward-looking information in that manner. Thus, for unscheduled or episodic releases, the nature of the event triggering the communication would be taken into account in determining whether the regularly released condition is satisfied. For example, if an issuer only gives guidance upon the occurrence of certain types of developments, a release of guidance when a materially similar event occurs could be materially consistent, even if not done at regular intervals. As another example, if an issuer launches a product only episodically, disclosure or advertising of a product launch still could be materially consistent.

Merely using new or different technologies will not be necessarily inconsistent in material respects under the conditions of the Rule. An issuer will have to determine whether its use of new or different technologies to release information falls within the safe harbor, including whether the release or dissemination is consistent in material respects with how the issuer is already releasing or disseminating its communications containing factual business or forward-looking information using analogous methods. For example, whether the new or different technology makes a material difference in terms of the breadth of dissemination to investors or other reach of the communication to investors is relevant in determining whether the manner or form is consistent in material respects.

(C) Exclusion for Offering-Related Information

(1) Scope of Exclusion

We are adopting as proposed the exclusion from the safe harbor of any information about the registered offering itself. Publication of information about a registered offering outside the registration statement or a prospectus is limited to statements allowed under other exemptions or exclusions, including Rule 134 and Rule 135.[141]

As we discussed in the Proposing Release, because the safe harbor is a "use" exemption intended to facilitate continued release or dissemination of regularly released ordinary course factual business and forward-looking communications, it also excludes the release of that information as part of the offering activities in the registered offering. For example, while the safe harbor could be available for factual business information contained in an Exchange Act report at the time it is initially filed, the safe harbor will not be available for the distribution of that information to investors or potential investors as part of offering activities, such as incorporation by reference into a prospectus that is part of a registration statement, disclosure at a road show, or disclosure in a free writing prospectus. As another example, as permitted by the "regularly released" condition, an issuer could rely on the safe harbor for the publication of an earnings release consistent with past practice, including the posting of and maintaining the release on an issuer's web site, whether or not located in a separate section of the web site for historical information. The distribution of that earnings release, however, as part of the marketing activities to potential investors will be outside the scope of the safe harbor.

(2) Comments on Exclusion

Commenters requested further clarification that release of a communication containing information in reliance on the safe harbor will not be affected by release of the same information in offering-related communications.[142] We have made clear in a preliminary note in the adopted Rule that the release of communications containing information outside the safe harbor will not affect the availability of the safe harbor for any other release or dissemination of a communication containing the same information that is (or was) within the scope of the safe harbor.

Some commenters requested that we define "offering-related" or "part of the offering activities."[143] We decline to do so. An issuer must determine, based upon the particular facts and circumstances, whether or not a communication contains information about the registered offering or is being used as part of the offering activities.

Certain commenters requested that we clarify the impact Rule 168 and Rule 169 (as discussed below) would have on our guidance regarding the filing requirement for ordinary or routine business communications that refer to a business combination transaction in a non-substantive way.[144] We believe that guidance is unaffected by the adoption of the safe harbors of Rule 168 and Rule 169, regardless of whether the communication falls within the scope of such safe harbors or our other interpretive guidance regarding ongoing factual and business communications.[145]

c. Exception for Regularly Released Factual Business Information—Available to Non-Reporting Issuers

i. Scope of the Safe Harbor

We are adopting substantially as proposed a non-exclusive safe harbor from the gun-jumping provisions for regularly released factual business information that, unlike Rule 168, is available to all eligible issuers, including non-reporting issuers.[146] The Rule provides a non-exclusive safe harbor for the issuer's release or dissemination of regularly released ordinary course factual business information intended for use by persons other than in their capacity as investors or potential investors, such as customers and suppliers.[147] Under the safe harbor, a non-reporting issuer's release or dissemination of factual business

Commission Regarding Use of Internet Web Sites to Offer Securities, Solicit Securities Transactions or Advertise Investment Services Offshore, Release No. 33–7516 (Mar. 27, 1998) [63 FR 14806]; *Offshore Press Conferences, Meetings with Company Representatives Conducted Offshore and Press-Related Materials Released Offshore*, Release No. 33–7470 (Oct. 17, 1997) [62 FR 53948].

[141] See 17 CFR 230.135. Our other rules address communications in the offering context. For example, we are amending Rule 134 to increase the amount of communication allowed under that rule about a registered offering without it being considered a prospectus.

[142] See, *e.g.*, letters from Fried Frank and SCSGP.

[141] See, *e.g.*, letters from Davis Polk and SCSGP.

[144] See, e.g., letters from ABA; Alston; and S&C.

[145] See the Regulation M–A Release, note 95, at footnote 45.

[146] See Rule 169. Because Rule 168 is available to reporting issuers and some non-reporting issuers (including asset-backed issuers and certain non-reporting foreign private issuers), the principal practical relevance of Rule 169 is to other non-reporting issuers.

[147] The fact that a customer also may be a potential investor in the issuer's securities or that the information may be received by other persons will not affect the availability of the safe harbor if the conditions are otherwise satisfied. For purposes of the safe harbor, the communication must be intended for use by an audience that is other than an investor audience.

information that satisfies the conditions of the Rule would not be an impermissible prospectus and would not violate the prohibition on pre-filing offers.[148] As we noted in the Proposing Release, because a condition of the safe harbor involves the manner and timing of the communication, the same issuer employees or agents who historically have been responsible for providing the information for intended use by customers and suppliers must communicate the information provided in reliance on this safe harbor.

Under the safe harbor, factual business information is defined as:

- Factual information about the issuer, its business or financial developments, or other aspects of its business; and
- Advertisements of, or other information about, the issuer's products or services.[149]

As with the safe harbor for reporting issuers, the safe harbor requires that the information be regularly released in the ordinary course of business, released or disseminated by or on behalf of the issuer, and not include information about the registered offering or information released or disseminated as part of the offering activities in the registered offering. We have made the same modifications to these conditions and to the preliminary note to Rule 169 as in new Rule 168 for reporting issuers.

As we discussed in the Proposing Release, because non-reporting issuers generally are not releasing information in connection with securities market activities, we believe it is appropriate to limit the scope of the safe harbor to the specified regularly released ordinary course factual business information.[150] Further, we are not adopting a safe harbor for forward-looking information for non-reporting issuers because of the lack of such information or history for these issuers in the marketplace. In those circumstances, we believe that the potential for abuse in permitting a safe harbor for the continued release of forward-looking information as a way to condition the market for the issuer's securities outweighs the legitimate utility to the issuer of the safe harbor.

ii. Comments on the Safe Harbor

Commenters supported the proposed safe harbor and suggested certain expansions and clarifications.[151] Commenters wanted us to clarify that information that was directed to customers, suppliers, etc., would be covered by the safe harbor even if the information became available to other persons, including investors or potential investors.[152] As we discuss above, the Rule is aimed at assuring that the communication is intended for use by an audience that is other than an investor audience, not at ensuring that the communication is not received by or available to an investor or potential investor. We have modified the Rule to clarify this point. For example, a widely disseminated communication (such as a press release) intended for use by a non-investor audience and otherwise meeting the conditions of the safe harbor will not lose protection if it is available to or received by investors or potential investors.

We had requested comment in the Proposing Release as to whether the safe harbor also should cover forward-looking information and whether the safe harbor for forward-looking statements contained in Securities Act Section 27A should be extended to initial public offerings. We further requested comment on whether we should require projections or other forward-looking information to be included in initial public offering registration statements. In response, some commenters supported extending the Section 27A safe harbor for forward-looking statements to initial public offerings but did not support requiring projections to be included in registration statements.[153] Some commenters were concerned that, because of the relatively untested nature of companies engaging in initial public offerings, there was limited basis to assess the reasonableness of assumptions underlying the projections about the issuer's business.[154] We appreciate commenters' input on these points and, in light of the fact that these companies are generally untested, as commenters noted, we have determined not to include forward-looking statements in the Rule 169 safe harbor we are adopting today or to extend the safe harbor for forward-looking statements in Securities Act Section 27A to initial public offerings.

2. Other Permitted Communications Prior to Filing a Registration Statement

Beyond the continuing ongoing release of information discussed above, there is an increased amount of information disseminated to the market about issuers, including through the Internet. We believe that the availability of this information should be encouraged, subject to appropriate standards of liability. At times when the risk of conditioning the market for a securities offering is sufficiently remote, it is important to provide issuers with greater certainty that the release of information will not be considered an impermissible offer under the Securities Act. Such an approach will avoid hindering issuer communications except where necessary for investor protection. We are, therefore, adopting rules that clarify the Securities Act application to communications that might not fall within the safe harbors for regularly released factual business and forward-looking information.

a. 30-Day Bright-Line Exclusion From the Prohibition on Offers Prior to Filing a Registration Statement—All Issuers

i. Scope of Exclusion

We are adopting, substantially as proposed, Rule 163A to provide all issuers a bright-line time period, ending 30 days prior to filing a registration statement, during which issuers may communicate without risk of violating the gun-jumping provisions. Such communications will be excluded from the definition of offer for purposes of Securities Act Section 5(c).[155] As we noted in the Proposing Release, a bright-line test will provide greater certainty in the offering process and avoid unnecessary limitations on issuer

[148] Rule 169 is a safe harbor from the definition of "prospectus" in Securities Act Section 2(a)(10) and therefore disapplies the prohibition in Securities Act Section 5(b)(1) on the use of a prospectus that is not a statutory prospectus. The Rule also is a safe harbor from the prohibitions on pre-filing "offers" in Securities Act Section 5(c).

[149] We have not included dividend notices within the definition because the communications covered by the Rule are those intended for use by persons other than in their capacity as investors or potential investors.

[150] These issuers will still be able to rely on our interpretive positions for the release of factual business information. See note 122. In addition, these issuers may still be able to rely on Securities Act Rules 134 and 135 and new Securities Act Rules 163A and 164.

[151] See, *e.g.*, letters from ABA; NYCBA; NYSBA; and Reuters.

[152] See, *e.g.*, letters from ABA and NYSBA.

[153] See, *e.g.*, letters from AICPA; E & Y; KPMG LLP ("KPMG"); and PricewaterhouseCoopers LLP ("PwC").

[154] See, *e.g.*, letters from AICPA and E & Y.

[155] While communications made in reliance on the Rule could, depending on the particular facts, be an "offer" as defined in Securities Act Section 2(a)(3), the Rule provides that the communication is not an "offer" for purposes of Securities Act Section 5(c). *See* Rule 163A.

As Rule 163A provides a safe harbor from the application of Securities Act Section 5(c), it necessarily applies only prior to the filing of a registration statement. This exclusion will thus not apply to issuers offering securities off a shelf registration statement on file, whether or not effective, as to which the prohibition in Section 5(c) does not apply to the offering of the securities covered by such shelf registration statement.

See also Harold Bloomenthal and Samuel Wolff, *Emerging Trends in Securities Laws* [2003–2004 ed.], "Securities Act Reform—Déjà Vu All Over Again," Commissioner Roel C. Campos (the "Campos Article") at § 1:28.

communications more than 30 days prior to the filing of the registration statement. Further, we believe that the 30-day timeframe adequately assures that these communications will not condition the market for a securities offering by providing a sufficient time period to cool any interest in the offering that might arise from the communication.[156]

As adopted, the 30-day bright-line exclusion from the gun-jumping provisions is subject to the following conditions:

- A communication made in reliance on the Rule cannot reference a securities offering that is or will be the subject of a registration statement; [157]
- A communication made in reliance on the Rule will have to be made "by or on behalf of the issuer"; and
- The issuer will have to take reasonable steps within its control to prevent further distribution or publication of the communication during the 30-day period immediately before the issuer files the registration statement.

We have made minor revisions to the Rule from the proposals. We have made clear that the exemption is non-exclusive. In addition, we have revised the definition of "by or on behalf of" the issuer in the same manner as in Rules 168 and 169 to explicitly exclude offering participants who are underwriters or dealers from being considered agents or representatives of the issuer for purposes of the Rule. We have narrowed the restriction on references to securities offerings to apply to a securities offering that is or will be the subject of a registration statement.

The Rule is designed to preclude issuers and offering participants from circumventing the registration requirements of the Securities Act. Because the Rule does not permit information about a securities offering that is or will be the subject of a registration statement, the communications made in reliance on the Rule are less likely to be used to condition the market for the issuer's securities. In addition, the communications are still subject to provisions addressing deficient disclosure, including the anti-fraud provisions.[158] Finally, the safe harbor is available only for communications made by or on behalf of the issuer so that other potential offering participants cannot use the exemption. Communications within the scope of Rule 163A made prior to the 30 days before filing are protected by the safe harbor. Communications made during the 30 days before the filing are outside the safe harbor. Because of these factors and the bright-line nature of the Rule, we have eliminated the proposed preliminary note that indicated that the exemption was not available for schemes to evade the registration requirements of the Securities Act because we do not believe it is necessary.

The 30-day bright-line exclusion is not available for enumerated categories of offerings and for specified issuers that pose the greatest risk of abuse of that exclusion. Specifically, Rule 163A is not available to communications made in connection with:

- Offerings by a blank check company;
- Offerings by a shell company; or
- Offerings of penny stock by an issuer.[159]

The Rule as adopted also excludes communications regarding business combination transactions from being able to rely on the exclusion, as those communications are regulated separately.[160] The Rule also is not available for communications regarding offerings made by a registered investment company or a business development company.

ii. Comments on 30-day Bright-Line Exclusion

Commenters expressed strong support for the Rule and suggested certain expansions and clarifications.[161] Some commenters wanted the Rule to provide an exemption from the definition of offer for all purposes under the Securities Act.[162] We do not believe that it is appropriate to exclude from the definition of offer for all purposes any communications occurring more than 30 days from the date of filing the registration statement. The Rule contains no content restriction, other than a prohibition against referencing a securities offering that is or will be the subject of a registration statement. The intent of the Rule is to provide certainty that an issuer will not be considered to be "gun jumping" by engaging in communications more than 30 days before it files its registration statement, not to provide certainty that it will not be liable for material disclosure deficiencies in its communications.[163]

Commenters also suggested that we provide more guidance as to what actions will constitute "reasonable steps within the issuer's control," particularly with respect to information posted on web sites prior to 30 days before the filing of the registration statement.[164] The "reasonable steps" condition is already contained in Rule 165 for business combination transactions. We do not believe that it is appropriate to provide bright lines as to when an issuer will be considered to have taken reasonable steps within its control to prevent further dissemination of the communication.[165] As to the treatment

[156] We chose a 30-day timeframe because it is consistent with the timeframe in Securities Act Rule 155 regarding integration of abandoned offerings and Securities Act Rule 254 regarding pre-filing solicitations of interest in Regulation A offerings [17 CFR 230.254].

[157] Securities Act Rule 155, relating to integration of abandoned offerings, permits issuers to register a securities offering immediately following the abandonment of a private offering made to accredited or sophisticated persons and not involving general solicitation and general advertising. The 30-day exclusion, on the other hand, applies to public communications made prior to a registered offering. Because Rule 155 treats any private offers made in the abandoned private offering as not part of the subsequent registered offering, issuers relying on Rule 155 in connection with a subsequently registered offering would continue to rely on Rule 155 and need not rely on the 30-day bright-line exclusion for public communications before a registration statement is filed.

[158] Communications made in reliance on Rule 163A safe harbor also would not be made in connection with a registered securities offering for purposes of the exclusion in Regulation FD. See Rule 100(b)(2)(iv) of Regulation FD.

[159] See Securities Act Rule 419(a)(2) [17 CFR 230.419(a)(2)], Exchange Act Rule 3a51–1 [17 CFR 240.3a51–1], and amendments to Rule 405 defining "shell" company. *See* the Shell Company Release, note 109. The Rule also excludes issuers who were or any of whose predecessors in the prior three years were blank check companies, shell companies (other than business combination related shell companies), or issuers that issued penny stock. Other than for well-known seasoned issuers, Rule 163A also excludes offerings registered on Form S–8 [17 CFR 239.16b].

[160] See the Regulation M–A Release, note 95. The Rule excludes any business combination transaction, including an exchange offer.

[161] See, *e.g.*, letters from ABA; Davis Polk; Fried Frank; IBA; ICI; NYCBA; NYSBA; and Reuters.

[162] See, *e.g.*, letters from ABA; Alston; Cleary; and NYSBA.

[163] Commenters also asked that we clarify further that information released during the 30 days before the registration statement filing in reliance on another exemption would not affect the ability of the issuer to rely on the 30-day safe harbor. See, *e.g.*, letters from ABA; Alston; Cleary; Fried Frank; and TBMA. We have clarified that the Rule is a non-exclusive safe harbor and issuers can rely on other available exemptions, exclusions, or safe harbors from the gun-jumping provisions for the communications. Conversely, reliance on other safe harbors, exemptions, and exclusions during the 30-day period does not preclude reliance on the 30-day safe harbor.

[164] See, *e.g.*, letters from ABA; Alston; Cleary; and Fried Frank.

[165] The Rule as adopted limits the exclusion to issuers. While we do not expect an issuer to be able to control the republication or accessing of previously published press releases, we expect issuers and persons acting on their behalf to be able to control their own involvement in any subsequent redistribution or publication and, therefore, believe that it is an appropriate condition to the ability to

of information posted on an issuer's web site, we do not expect that an issuer will necessarily remove the information from the Web site and, provided that the information is appropriately dated, otherwise identified as historical material, and not referred to as part of the offering activities, we will not object to an issuer maintaining the information on the Web site.

Commenters also suggested that registered investment companies and business development companies should be permitted to rely on Rule 163A.[166] We are not adopting this suggestion because we believe that it would be more appropriate to consider changes to our requirements as they apply to registered investment companies and business development companies in the context of a broader reconsideration of the separate framework applicable to such issuers.

b. Permitted Pre-Filing Offers for Well-Known Seasoned Issuers

i. Overview

The rules we are adopting today, when taken together, provide exemptions generally from the applicability of the gun-jumping provisions for eligible well-known seasoned issuers. The safe harbors for regularly released factual business and forward-looking information and the exemption from the prohibition on offers for purposes of Securities Act Section 5(c) for communications more than 30 days prior to filing of a registration statement are available to well-known seasoned issuers. In addition, as discussed below, the broadened exemption for routine offering-related communications and the availability of an exemption for eligible issuers from the gun-jumping provisions for free writing prospectuses, in both cases after filing of a registration statement, also are available to well-known seasoned issuers. However, because the gun-jumping provisions prohibit all offers—written or oral—before the filing of a registration statement, we believe well-known seasoned issuers could be unnecessarily constrained in their capital formation activities.[167]

ii. Exemption for Pre-Filing Offers

To address communications made in the 30 days prior to filing a registration statement that are not otherwise excluded from the gun-jumping provisions and to complete the set of rules permitting all communications by well-known seasoned issuers under the gun-jumping provisions, we are adopting essentially as proposed an exemption from the prohibition on offers before the filing of a registration statement for offers made by or on behalf of eligible well-known seasoned issuers.[168] The exemption permits these issuers to engage in unrestricted oral and written offers before a registration statement is filed without violating the gun-jumping provisions. These communications, while exempt from the gun-jumping provisions, are still considered offers and subject to liability standards applicable to such offers.[169] The exemption is available only for communications made "by or on behalf of" the issuer.[170] Moreover, any communication for which disclosure is required under Securities Act Section 17(b) will be deemed to be a communication that is an offer for purposes of the Rule and, if written, the communication will be a free writing prospectus of the issuer.[171] As with the other exemptions, exclusions, and safe harbor rules we are adopting today, we have made clear that the exemption is non-exclusive.

We also have modified the Rule to eliminate the preliminary note regarding the unavailability of the exemption if it is part of a scheme to avoid or evade the requirements of the gun-jumping provisions. We have not included this preliminary note in the adopted Rule because we believe that the Rule provides an exemption for the communication from the gun-jumping provisions only for well-known seasoned issuers and because the disclosure liability and anti-fraud provisions of the federal securities laws continue to apply.

In view of the automatic shelf registration process we describe below, we expect that well-known seasoned issuers usually will have a registration statement on file that it can use for any of its registered offerings. Consequently, it generally will be unusual for these issuers to make offers prior to the filing of a registration statement;[172] however, we have provided this exemption from the prohibition on pre-filing offers to liberalize communications for these issuers to the appropriate extent. A written offer made by or on behalf of a well-known seasoned issuer under the exemption will, however, meet our definition of "free writing prospectus" and will need to include a legend and be filed promptly by the issuer when and if the issuer files its registration statement.[173] We also have provided in the Rule as adopted that filing is not required if the communication has previously been filed with or furnished to us (for example pursuant to Regulation FD on Form 8–K). The Rule as adopted also provides that filing is not required if filing would not be required under Rule 433 regarding free

rely on the exclusion. For example, if an issuer or its representative gives an interview to the press prior to the 30-day period, it will not be able to rely on the exclusion if the interview is published during the 30-day period. We have addressed the same issues in the context of free writing prospectuses discussed below.

[166] See letters from ABA; Allied; and Fried Frank.

[167] See Securities Act Section 5(c).

[168] See Rule 163. The exemption is not available to communications involving registered business combination transactions or communications in offerings by registered investment companies or business development companies.

[169] Any written offer will be a prospectus under Securities Act Section 2(a)(10) relating to a public offering of the securities to be covered by the registration statement to be filed. All oral communications that are offers and all prospectuses will be subject to liability under Securities Act Section 12(a)(2). The communications also will be subject to other provisions addressing deficient disclosure, including Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b–5.

Communications made in reliance on the Rule also will not be considered to be in connection with a registered securities offering for purposes of the exclusion from Regulation FD. See Rule 100(b)(2)(iv) of Regulation FD.

The Rule is different from Securities Act Rule 254. Securities Act Rule 254 permits solicitations of interest in Regulation A offerings provided the conditions of the rule, including pre-use submission of the materials to the Commission, are satisfied, and does not treat the materials as prospectuses. Rule 163 does not require pre-filing of the communications and written offers will be prospectuses.

[170] In addition, as with the other exemptions and safe harbors that are available only to the issuer, the definition of by or on behalf of the issuer explicitly excludes offering participants who are underwriters or dealers.

[171] See Rule 163(d). Securities Act Section 17(b) [15 U.S.C. 77q(b)] generally requires persons who make statements describing an issuer's securities to disclose the receipt (and the amount) of consideration given, directly or indirectly, by an issuer, underwriter, or dealer in exchange for making the statements.

[172] See the discussion in Section V.B.2 below under "Automatic Shelf Registration for Well-Known Seasoned Issuers," with regard to the availability of an "automatic shelf" registration process for these issuers.

[173] The legend is similar to the one we are providing as a condition for free writing prospectuses used after a registration statement is filed. We have made minor modifications to the legend, including eliminating issuer-specific language and references to risk factors. We also have provided that the legend may include an e-mail address and web site where the prospectus can be requested or is available. See the discussion in Section III.D.3 below under "Legend Condition" with regard to the conditions for use of a "free writing prospectus." Under Rule 163 and Rule 433, all issuer free writing prospectuses must be filed unless exempt from the filing condition. Under Rule 163 as adopted, free writing prospectuses must be filed only if the issuer files a registration statement or amendment to the registration statement covering the securities offered by the free writing prospectus.

writing prospectuses, discussed below, if the communication was a free writing prospectus used after filing of the registration statement. Finally, the filing conditions of Rule 163 will be satisfied if the filing conditions of Rule 433 (other than timing of filing) are satisfied. As a result, for example, the accommodations provided in Rule 433 regarding media publications that are free writing prospectuses also will apply under Rule 163.[174]

Any written communication used in reliance on this exemption will be subject to the same provisions applicable to free writing prospectuses used after a registration statement is filed with regard to the ability to "cure" a failure to meet the legend or filing condition in reliance on our rules governing free writing prospectuses discussed below.[175]

iii. Comments on Exemption for Pre-Filing Offers

Commenters broadly supported the proposed exemption for pre-filing offers by well-known seasoned issuers.[176] One commenter thought the exemptions should be expanded to cover all seasoned issuers, not just well-known seasoned issuers.[177] Some commenters suggested that the filing condition for free writing prospectuses apply only when and if the registration statement is filed.[178] In addition, commenters wanted clarification that the availability of the exemption does not depend on the issuer filing the free writing prospectus within a particular time frame.[179] Finally, commenters requested clarification that media publications, as with other free writing prospectuses, do not need to be filed until the registration statement is filed.[180] One commenter also suggested that Regulation FD should not apply to offering-related information communicated in reliance on the exemption.[181]

We believe it is appropriate at this time to limit the exemption for pre-filing offers to well-known seasoned issuers only and not expand the benefits to all seasoned issuers. The level of following of well-known seasoned issuers by market participants lessens our concerns that these issuers, in general, will use the exemption to evade the registration requirements of the Securities Act. Accordingly, we are limiting this exemption to well-known seasoned issuers.

We have not made any revisions to the provisions of Rule 163 regarding the applicability of Regulation FD to offering-related information. Well-known seasoned issuers thus must comply with the provisions of Regulation FD with regard to communications made pursuant to Rule 163 to which Regulation FD would apply.[182]

In response to commenters' suggestions, we have clarified the filing condition to apply only when and if a registration statement or amendment covering the offered securities is filed. Accordingly, if no such registration statement or amendment is filed, a free writing prospectus used pursuant to Rule 163 does not have to be filed. Finally, media publications that are permissible free writing prospectuses pursuant to Rule 433 will be treated the same as other communications under Rule 163, and will therefore only be subject to filing if a registration statement is filed.

3. Relaxation of Restrictions on Written Offering-Related Communications

The rules we are adopting today will expand the amount and types of permitted written offering-related communications that may be made by offering participants under the gun-jumping provisions after a registration statement is filed.[183] The two main elements of these rules are expansion of information that Securities Act Rule 134 permits to be communicated and the permitted use of free writing prospectuses in connection with a registered offering.

a. Rule 134

Rule 134 provides a safe harbor from the gun-jumping provisions for limited public notices about an offering made after an issuer files its registration statement.[184] The Rule was intended originally to provide an "identifying statement" that could be used to locate persons that might be interested in receiving a prospectus. All issuers, including well-known seasoned issuers, are precluded from relying on Rule 134 until the issuer files a registration statement that includes a statutory prospectus.[185]

i. Expansion of Permitted Information

We are modifying and expanding the information permitted under Rule 134 to include information that issuers, underwriters, and investors will find helpful and to permit the types of written communications during an offering that we do not consider raise the risk of offering abuses. We are adopting a limited expansion of the information permitted in the notice about the issuer and the registered offering. The amendments to Rule 134 will:

- Permit increased information about an issuer and its business, including where to contact the issuer;
- Permit more information about the terms of the securities being offered;[186]
- Expand the scope of permissible factual information about the offering

[174] For example, the issuer could satisfy its filing condition under Rule 163 for a media publication for which an issuer could file an interview transcript under Rule 433 by similarly filing such a transcript, as described below.

[175] See discussion in Section-III.D.3 below under "Cure for Unintentional or Immaterial Failure to Include a Legend" and "Unintentional Failures to File" regarding Rules 164 and 433 with respect to the cure provisions.

[176] See, *e.g.*, letters from ABA, Cleary; NYSBA, S&C: SIA; and TBMA.

[177] See letter from ABA.

[178] See, *e.g.*, letters from Fried Frank and NYSBA.

[179] See, *e.g.*, letters from ABA and Davis Polk.

[180] See, *e.g.*, letters from Davis Polk and NYSBA.

[181] See letter from ABA.

[182] We note the recent cases regarding private investment in public equity (PIPE) offerings that have involved trading on the basis of inside information, including the existence of a private offering. See Hilary L. Shane, Lit. Rel. 19227 (May 18, 2005); *SEC* v. *Hilary L. Shane*, Civ. Action No. 05 CIVIL 4772 (S.D.N.Y.). See also Guillaume Pollet, Lit. Rel. 19199 (Apr. 21, 2005); *SEC* v. *Guillaume Pollet*, Civ. Action No. 05–CV–1937 (SLT/RLM) (E.D.N.Y.).

[183] As noted previously, Securities Act Section 5(b)(1) limits the means by which written offers may be made following the filing of a registration statement. Section 5(b)(1) does not include a limitation on oral offers after the filing of a registration statement.

[184] The safe harbor operates by excluding such notices from the definition of prospectus under Securities Act Section 2(a)(10). See Rule 134 and *Adoption of Rules 134 and 135*, Release No. 33–3568 (Aug. 29, 1955) [20 FR 6523]. Rule 134 does not apply to communications relating to a registered investment company or a business development company. See Rule 134(e) [17 CFR 230.134(e)].

[185] Rule 134 is not available until a preliminary prospectus, or in the case of shelf registration, a base prospectus, has been filed. This does not mean, however, that a final prospectus meeting the requirements of Securities Act Section 10(a), including a price, is required as a condition to Rule 134. Further, the prospectus required for reliance on Rule 134(d) is a statutory prospectus that satisfies the requirements of Securities Act Section 10, including a price range where required (other than a free writing prospectus), and it need not be a prospectus that satisfies Section 10(a).

If a well-known seasoned issuer makes a written communication of information of the type covered by Rule 134 prior to filing its registration statement, and that communication constitutes an offer, the communication will be a free writing prospectus and the issuer will need to look to the Rule 163 exemption of pre-filing offers from the gun-jumping provisions.

[186] For example, for fixed income securities, the changes will allow greater information about final interest rates and yield information, including yield information on fixed income securities with comparable maturities and credit ratings. We believe that yield disclosure also covers disclosure of the anticipated spread over a benchmark. We also have revised the Rule to allow issuers to disclose whether securities are convertible, exercisable, or exchangeable, and the ranking of the securities. The revised Rule also allows disclosure of the permissibility or status of the investment under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 *et seq.*] ("ERISA").

itself, including underwriter information, more details about the mechanics of and procedures for transactions in connection with the offering process, the anticipated schedule of the offering, and a description of marketing events;[187]

- Allow more factual information about procedures for account opening and submitting indications of interest and conditional offers to buy the offered securities;[188]
- Allow more factual information regarding procedures for directed share plans and other participation in offerings by officers, directors, and employees;
- Permit the correction of inaccuracies in permissible information previously disclosed pursuant to the Rule;
- Expand the disclosure permitted regarding credit ratings to include the security rating that is reasonably expected to be assigned.

While we have expanded the amount of information regarding the terms of an offering that may be included in a Rule 134 notice, the expansion does not permit use of a Rule 134 notice to provide a detailed description of securities being offered. There is increased ability under our rules to provide such a detailed description, such as a term sheet, as a free writing prospectus, as discussed below.

Commenters suggested a number of additional items of information that they believed should be included in the Rule 134 safe harbor.[189] This additional information generally focused on more extensive information about the terms of the securities being offered. As we have noted, Rule 134 is not intended as a substitute for a detailed description of the securities, such as a term sheet, or information included in a prospectus. We have expanded the information categories from those in the proposal to include items that provide more procedural information about the offering or the securities.[190]

[187] The information on marketing events, such as road shows, can include greater detail on the date, time, location, and procedures for attending or otherwise accessing the events.

[188] For example, a broker or dealer can inform investors of the procedural aspects of an auction or a directed share program. The changes will not include written notices of allocations of securities, including those delivered electronically. These notices will be a type of written confirmation of sale and, thus, prospectuses. The rules we are adopting regarding prospectus delivery reforms, as discussed later, will apply to these notices.

[189] See, *e.g.*, letters from ABA; ABA–ABS; Alston; ASF; Citigroup; Cleary; CMSA; Fried Frank; Merrill Lynch; Morgan Stanley; NYCBA; S&C; SIA; and TBMA.

[190] Rule 134 and the other communications safe harbors are non-exclusive; therefore, if a communication falls outside of the safe harbor it still may, depending on the facts and circumstances, not be deemed an "offer."

[191] See, *e.g.*, letters from ABA; Citigroup; Cleary; Davis Polk; Fried Frank; Merrill Lynch; Morgan Stanley; NYCBA; NYSBA; and SIA.

[192] See, *e.g.*, letters from ABA and SIA.

[193] The Rule also provides that identities of selling security holders and the type of underwriting can be provided if the information has been included in the registration statement.

[194] See paragraphs (a)(13) and (a)(16) of the amendments to Rule 134.

[195] See letter from NYCBA.

[196] See, *e.g.*, letters from ABA; Alston; Cleary; and S&C.

[197] Rule 134 requires in some cases that the notice must be accompanied or preceded by a written prospectus meeting the requirements of Section 10 of the Securities Act, which may be satisfied in an electronic notice by including an active hyperlink to such a prospectus. The notice itself cannot, however, include information beyond that permitted by the Rule, and, as such, the notice cannot include a hyperlink or URL for an address

Continued

ii. Section 10 Prospectus Requirement

We have modified the changes to Rule 134 from the proposals in one significant regard. We had proposed that Rule 134 explicitly condition the availability of the Rule on the issuer filing a statutory prospectus meeting the requirements of Securities Act Section 10 which, in the case of an initial public offering, would include a bona fide estimate of the initial offering price range and the maximum amount of securities to be offered. While commenters recognized that the registration statement had to be filed, a number of commenters were concerned that including an explicit requirement of a bona fide price range and maximum amount of securities to be offered would change current practice and would not permit a number of communications, including press releases announcing the filing of the registration statement and naming underwriters, or even lead managers, and other notices that would be appropriate before the commencement of marketing efforts.[191] These commenters noted that, in many cases, the bona fide price range is not included in registration statements for initial public offerings until a later point in time that is closer to the commencement of marketing activities for the offering.[192]

We are modifying the Rule to provide that much of the information permitted under the Rule may be disclosed under the Rule before the inclusion of a bona fide price range in the registration statement. This modification does not mean, however, that the prospectus in an initial public offering satisfies Section 10 without the bona fide price range. Rather, the purpose of the modification is to permit notices to contain information that is not dependent on the price range or amount of securities being offered prior to inclusion of that information. In addition, information related to the pricing and rating of the security can be provided only if a price range is included where required.

The amended Rule also provides that the Rule is available for certain other information only if it also is disclosed at that time in the filed registration statement. For example, notices including information about the use of proceeds of the offering can be provided only after information about the use of proceeds is included in the filed registration statement.[193] Rule 134(d) continues to require that a price range be included where required. We are not modifying the provisions of Rule 134(d). The procedures that market participants have developed with the staff of the Division of Corporation Finance to facilitate offerings of securities using Internet facilities are not affected by the amendments to Rule 134 that we are adopting today.

iii. Changes to Required Information

We are modifying the information that must be included in a Rule 134 notice, as proposed. First, we are eliminating the reference in the legend to state securities laws, as we believe that other provisions of the Rule already address any state securities law requirements, as applicable.[194] Second, we are eliminating the requirement to specify whether the financing is a new financing or refunding, as we believe that such information is no longer necessary because it will be provided where appropriate by the issuer's disclosure of the use of the proceeds of the offering.

One commenter suggested that the Rule 134 requirement that issuers alert investors where they can obtain a copy of the statutory prospectus should include a means for receipt of a prospectus by electronic delivery.[195] Several commenters also suggested that we allow issuers to satisfy the requirement that certain Rule 134 notices be accompanied or preceded by a statutory prospectus through the inclusion of a hyperlink in the Rule 134 notice to the statutory prospectus.[196] While we are not expanding "access equals delivery" to Rule 134, we are amending Rule 134(c)(1) to allow persons providing notices relying on Rule 134 to include a uniform resource locator ("URL") address to the statutory prospectus that alerts investors where they can obtain a statutory prospectus.[197] For purposes of Rule 134,

including a URL address to the statutory prospectus that is not an active hyperlink in an electronic communication does not mean that the prospectus has been delivered. However, an active hyperlink to a statutory prospectus in an electronic Rule 134 notice will satisfy the requirement that the prospectus accompany or precede that notice.[198]

b. Permissible Use of Free Writing Prospectuses

i. Overview

After the filing of a registration statement, the gun-jumping provisions permit issuers and other offering participants to make written offers only in the form of a statutory prospectus. After effectiveness of a registration statement, written offers other than a statutory prospectus may be made only if a final prospectus meeting the requirements of Securities Act Section 10(a) is sent or given prior to or at the same time as the written offer.[199] We believe that written communications during the offering process are unnecessarily restricted, even with the substantial relaxations in restrictions on communications resulting from the rules we discuss above. The rules we are adopting permit written offers, including electronic communications, outside the statutory prospectus beyond those currently permitted by the Securities Act, if certain conditions are met. We are defining such a written offer outside of the statutory prospectus as a "free writing prospectus."[200]

Under the rules we are adopting today, a free writing prospectus that satisfies specified conditions can be used by a well-known seasoned issuer at any time.[201] Further, a free writing prospectus that satisfies the specified conditions can be used by any other eligible issuer or offering participant after a registration statement has been filed.[202] In general, the rules we are adopting will allow offering participants to use free writing prospectuses in conjunction with most registered primary and secondary offerings, although we do not treat all issuers and offerings the same.[203]

The issuer and any other offering participant in an eligible issuer's registered securities offering satisfying the conditions of our rules can use a free writing prospectus after a registration statement is filed to communicate information about a registered offering of securities.[204] This will permit affiliates, underwriters, dealers, and others acting on behalf of the parties to the transaction to use a free writing prospectus without violating the gun-jumping provisions. The conditions to the use of a free writing prospectus will depend on the nature of the issuer and the offering. A free writing prospectus can take any form and is not required to meet the informational requirements otherwise applicable to prospectuses.

ii. Definition of Free Writing Prospectus

(A) Scope of Definition

We are adopting the proposed definition of "free writing prospectus." A free writing prospectus is, except as otherwise provided specifically or otherwise required by the context, a written communication that constitutes an offer to sell or a solicitation of an offer to buy securities that are or will be the subject of a registration statement and is not:

- A prospectus satisfying the requirements of Securities Act Section 10(a);
- A prospectus satisfying our rules permitting the use of preliminary or summary prospectuses or prospectuses subject to completion;
- A communication made in reliance on the special rules for asset-backed issuers permitting the use of ABS informational and computational materials; [205] or
- A prospectus because a final prospectus meeting the requirements of Section 10(a) was sent or given with or prior to the written communication.[206]

Further, the definition makes clear that, although a free writing prospectus will not be filed as part of a registration statement, it will still be considered to relate to a registered public offering of securities that is or will be the subject of a registration statement, regardless of the method of its use or distribution.

A written communication will be a free writing prospectus only where it constitutes an offer by an offering participant of a security under the Securities Act. Whether a particular communication constitutes such an offer will continue to be determined based on the particular facts and circumstances.[207] While the definition of "offer" is broad, not all communications relating to an offering are offers or offers by an offering participant. As a non-exclusive illustration, the gun-jumping provisions have been administered in a manner that excludes from categorization as an offer a media publication or television or radio broadcast that is based solely

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containing information beyond that permitted by Rule 134. See the 2000 Electronics Release, note 96, at II.B.2.

[198] See example (19) under Section II.D. of *Use of Electronic Media for Delivery Purposes*, Release No. 33–7233 (Oct. 6, 1995) [60 FR 53458] (the "1995 Electronics Release"), which states that a URL address can be included in an electronic Rule 134 notice.

[199] See Securities Act Section 2(a)(10).

[200] We are adding this definition to Securities Act Rule 405.

[201] As we discuss above, a free writing prospectus can be used by a well-known seasoned issuer prior to filing the registration statement pursuant to Rule 163.

[202] The rules provide that such a free writing prospectus is a permitted prospectus for purposes of Securities Act Section 10(b) [15 U.S.C.77j(b)] and, as such, can be used without violating Securities Act Section 5(b)(1). A free writing prospectus used other than in accordance with our new rules will continue to be a prospectus.

[203] The rules do not extend to business combination transactions, for which we have already adopted rules. See Securities Act Rule 162 [17 CFR 230.162], Rule 165, Rule 166, and Rule 425 [17 CFR 230.425]. Rule 162 relates to submission of tenders in registered exchange offers. Communications relating to business combinations are covered by Rule 165 and Rule 166. Rule 425 relates to the filing of certain prospectuses and communications in connection with business combination transactions. See also the Regulation M–A Release note 95; and *Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings*, Release No. 33–7759 (Oct. 22, 1999) [64 FR 61382] (exemptive rules for cross-border tender and exchange offers, business combinations, and rights offerings relating to the securities of foreign issuers). Where appropriate, we have included provisions that are intended to ensure consistency among the rules and, with respect to filing conditions, permit a single filing to satisfy the conditions under both regulatory schemes. See Rule 425 and Rule 433.

[204] Prior to filing a registration statement, only a well-known seasoned issuer will be able to use a free writing prospectus. This use of a free writing prospectus by a well-known seasoned issuer is permitted by Rule 163.

[205] See Rules 167 and 426 [17 CFR 230.167 and 17 CFR 230.426]. Asset-backed issuers also may use free writing prospectuses as discussed below. We have excluded free writing prospectuses used in reliance on Rule 164 and Rule 433 (including the filing requirements) from the filing requirements for ABS informational and computational materials. See the amendments to Rule 426. The content of ABS free writing prospectuses may include, but is not limited to, the same information as material used pursuant to Rule 167 and Rule 426.

[206] See clause (a) of Securities Act Section 2(a)(10). After effectiveness of a registration statement, any written offer that is accompanied or preceded by a final prospectus that meets the requirements of Securities Act Section 10(a) (such as sales literature used after effectiveness) will continue to be permitted without having to satisfy the requirements of any safe harbor or other rule permitting its use or Rule 433. Such a written offer is excluded from the definition of "prospectus" under the Securities Act by reason of clause (a) of Securities Act Section 2(a)(10) if a final prospectus meeting the Section 10(a) information requirements is sent or given before or at the same time as the written offer. A base prospectus included in a shelf registration statement that omits information is not a final prospectus meeting the requirements of Section 10(a).

[207] In addition, communications that are not considered offers or prospectuses for purposes of the gun-jumping provisions, such as Rule 134 notices, Rule 135 communications, regularly released factual business information and forward-looking information falling within the new safe harbors, and research reports falling within the safe harbors provided by our rules, will not be free writing prospectuses.

on information that is filed with us or available on an unrestricted basis or on other information the dissemination of which did not represent an offer by an issuer or other offering participant, where there is no other involvement or participation by an offering participant. On that basis, for example, a newspaper article about an initial public offering that is based on the filed registration statement, on a press release that is filed with or furnished to us, on a filed free writing prospectus, or on filed issuer information where the issuer and other offering participants have refused to comment and not otherwise been involved, would not be categorized as an offer under the gun-jumping provisions.

(B) Comments on Definition

Commenters supported the concept of free writing prospectuses.[208] Commenters suggested that we exclude offshore communications and rating agency reports from the scope of the definition.[209] We are not including any specific provision in the rules regarding offshore communications and, as such, the treatment of offshore communications under the free writing prospectus rules will be no different than the treatment of any offshore communication prior to the Rules we adopt today.[210] We also have not revised the Rule in response to commenters' request for clarification of the treatment of rating agency reports. Our treatment of NRSROs is currently the subject of rulemaking and other consideration.[211]

iii. Permitted Use of a Free Writing Prospectus After the Filing of a Registration Statement Under Rule 433

(A) Overview

We are adopting Rule 164 and Rule 433 substantially as proposed. Rule 164 will permit the use of a free writing prospectus where an eligible issuer has filed a registration statement, the other requirements of Rule 164 are met, and the conditions of Rule 433 are satisfied.[212] The Rules permitting the use of free writing prospectuses are not available for any communication that, while in technical compliance with the Rule, is part of a plan or scheme to evade the requirements of Securities Act Section 5.[213]

(B) Issuer Eligibility

For any offering participant to use free writing prospectuses, other than free writing prospectuses that consist only of descriptions of the securities in the offering or of the offering, the issuer may not be an ineligible issuer.[214] We have modified the consequences of ineligibility in the context of use of free writing prospectuses to permit ineligible issuers, other than blank check companies, shell companies, and penny stock issuers, to use free writing prospectuses that are limited to descriptions of the terms of the securities being offered and the offering because we believe that the permitted use of such free writing prospectuses can provide advantages to investors that justify the risks of use of such materials by some classes of ineligible issuers. Such use would be subject to all of the other requirements of the new rules.

We have revised the definition of ineligible issuer from the proposals in response to comments. As adopted, ineligible issuers are, as of the relevant date of determination:[215]

- Reporting issuers who are not current in their Exchange Act reports and other materials required to be filed during the prior 12 months (or such shorter period that the issuer was required to file such reports and materials), other than reports on Form 8–K required solely pursuant to an item specified in General Instruction I.A.3(b) of Form S–3;[216]
- In the case of asset-backed issuers, the depositor, or any issuing entities previously established, directly or indirectly by the depositor who are not current in their Exchange Act reports and other materials required to be filed during the prior 12 months (or such shorter period that the issuer was required to file such reports and materials), other than reports on Form 8–K required solely pursuant to an item specified in General Instruction I.A.4 of Form S–3;[217]
- Issuers who are or during the prior three years were or any of their predecessors were:
  - Blank check companies;
  - Shell companies (other than business combination related shell companies);
  - Issuers for an offering of penny stock;
- Issuers who are limited partnerships offering and selling their securities other than through a firm commitment underwriting;[218]

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[208] See, *e.g.*, letters from Cleary; NYSBA; and SIA.

[209] See, *e.g.*, letters from ABA; ABA-ABS; ASF; Fried Frank; NYSBA; S&C; SIA; and TBMA. But see letter from State Street Global Advisors ("SSGA").

[210] Whether an offshore communication is considered an offer in the United States subject to the federal securities laws will depend on when and how the communication is made and the availability of other exemptions, such as those for offshore press conferences. See Rule 135e [17 CFR 230.135e] and note 140 above. See also Rule 902(c)(3)(vii) [17 CFR 230.902(c)(3)(vii)].

[211] In addition, as we have said previously, whether information prepared and distributed by third parties that are not offering participants is attributable to an issuer or other offering participant depends upon whether the issuer or other offering participant has involved itself in the preparation of the information or explicitly or implicitly endorsed or approved the information. The courts and we have referred to the first line of inquiry as the entanglement theory and the second as the adoption theory. See the 2000 Electronics Release, note 96, at fn. 48 and accompanying text. We think these theories are equally applicable with respect to issuer or offering participant involvement regarding rating agency reports. For example, if an issuer or underwriter distributes the rating agency report in connection with an offering of the securities, it is appropriate to conclude that such party has adopted that report and should be liable for its contents. Liability under the entanglement theory depends upon the level of pre-publication involvement in the preparation of the information. See the Asset-Backed Securities Adopting Release, note 82, at part III.C.3.

[212] The discussion in this section relates to the use of free writing prospectuses after the filing of a registration statement. For a discussion of the use of free writing prospectuses by well-known seasoned issuers prior to filing a registration statement, see the discussion in Section III.D.2 above under "Permitted Pre-Filing Offers for Well-Known Seasoned Issuers."

[213] As with certain of the safe harbors and other exemptions we are adopting today, we have included language in the Preliminary Note to Rule 164 making clear that the exemption in that Rule is non-exclusive.

[214] These descriptions cannot be used in any case if the issuer is or it or any of its predecessors in the last three years was a blank check company, a shell company (other than a business combination related shell company), or a penny stock issuer.

[215] We have adopted as proposed a waiver provision that will allow us to grant or deny a request to waive an issuer's ineligibility if we find good cause to provide the waiver. We are adopting rules today delegating authority to the Division of Corporation Finance to grant or deny waivers from any of the ineligibility provisions. See revisions to Rule 30–1 of the Rules of Organization and Program Management Governing Delegations of Authority to the Director of the Division of Corporation Finance [17 CFR 200.30–1].

[216] The exception for reports solely for specified items of Form 8–K from the requirement that issuers be current effectively applies only for purposes of the ineligible issuer definition in the context of the use of free writing prospectuses. In the context of the determination of status as a well-known seasoned issuer, the requirement that the issuer be current at the determination date applies separately (without the Form 8–K exceptions) by virtue of the requirement that the issuer be eligible for Form S–3. (The Form 8–K exceptions in the Form S–3 requirements apply in determining whether an issuer is timely for purposes of Form S–3 eligibility, but not in determining whether it is current.)

[217] The requirements for Form S–3 eligibility for asset-backed issuers include not only this condition, but also the condition that filings be timely, and extend the requirements to reports of affiliated depositors regarding the same asset class. The timeliness condition and extension to affiliated depositors do not apply here.

[218] These issuers are subject to our interpretations in *Limited Partnership Reorganizations and Public Offerings of Limited Partnership Interests*, Release No. 33–6900 (June 17, 1991) [56 FR 28979].

• Issuers who have filed for bankruptcy or insolvency during the past three years; [219]

• Issuers who have been or are the subject of refusal or stop orders under the Securities Act during the past three years, or are the subject of a pending proceeding under Securities Act Section 8 [220] or Section 8A; [221] or

• Issuers who, or whose subsidiaries at the time they were subsidiaries of the issuer, have been convicted of any felony or misdemeanor described in certain provisions of the Exchange Act, have been found to have violated the anti-fraud provisions of the federal securities laws, or have been made the subject of a judicial or administrative decree or order (including a settled claim or order) prohibiting certain conduct or activities regarding the anti-fraud provisions of the federal securities laws [222] during the past three years. The definition as adopted provides that ineligibility of an issuer based on a settlement will be prospective only and thus arise only for settlements entered into after the effective date of the new rules.[223]

The categories of ineligible issuers include issuers that at the time of the eligibility determination are not current (with specified Form 8-K exceptions) for 12 months in their Exchange Act reporting obligations, issuers that may raise greater potential for abuse, and issuers that have violated the anti-fraud provisions of the federal securities laws. Certain of these issuers have been viewed historically as unsuited for short-form registration or ineligible for disclosure-related relief. For instance, we have repeatedly stated our belief that blank check companies, shell companies, and penny stock issuers may give rise to disclosure abuses.[224] In addition, Congress determined not to extend the safe harbors for forward-looking statements to issuers of blank check and penny stock securities, as well as issuers previously convicted of certain felonies and misdemeanors and issuers subject to a decree or order involving a violation of the anti-fraud provisions of the federal securities laws.[225]

We are adopting as proposed the exclusion of registered investment companies and business development companies from eligibility for use of Rules 164 and 433 because they are already subject to separate rules permitting use of a Section 10(b) prospectus.[226] Securities Act Rule 482 permits investment companies to advertise investment performance data and other information, and Securities Act Rule 498 permits open-end management investment companies to use a profile. We also are adopting as proposed the exclusion of offerings that are business combination transactions subject to Regulation M–A. We also are excluding all offerings registered on Form S–8, except for those by well-known seasoned issuers.

We have revised the Rules from the proposal to change the time of determination of status as an ineligible issuer. We have concluded that eligibility, in most cases, should not be determined at the time of reliance on our new Rules for each free writing prospectus. We have adopted an approach to eligibility determination that generally looks to the commencement of an offering and will not result in a change of status during an offering. As adopted, eligibility determinations will be made:

• If the offering is registered pursuant to Rule 415, our shelf registration rule, the earliest time after the filing of the registration statement covering the offering at which the issuer, or in the case of an underwritten offering the issuer or another offering participant, makes a *bona fide* offer, including without limitation through the use of a free writing prospectus, in the offering; or

• Otherwise at the time of filing of a registration statement covering the offering.

This timing of determination as to eligibility to use a free writing prospectus (with the enumerated exceptions from the prohibition) applies to all issuers, including well-known seasoned issuers. The timing of determination of whether an issuer is a well-known seasoned issuer, described above, is different and is made on an approximately annual basis.

(1) Comments on Ineligible Issuer Definition

Commenters expressed a number of concerns about the ineligibility conditions, including those relating to prior securities law violations and settlements,[227] going concern opinions in audit reports covering financial statements,[228] and certain involuntary bankruptcy petitions.[229] Commenters also requested clarification of the time frame for which the issuer must be current in its reports for purposes of the definition.[230] Commenters did not believe that issuers should be ineligible based on disclosure of material weaknesses in internal controls over financial reporting.[231] Commenters also stated that offering participants should be able to rely on the various exemptions based on a reasonable belief that the issuer was not an ineligible issuer.[232]

With regard to the ineligibility based on securities law violations or settlements of alleged violations, commenters believed that the disqualifying violations were too broad and should be limited to violations of the anti-fraud provisions, not any provision of the federal securities laws.[233] Moreover, commenters stated

[219] Ineligibility based on an involuntary bankruptcy filing arises on the earlier of 90 days after the date of filing of an involuntary petition (if the case was not earlier dismissed) or the conversion of the case to a voluntary proceeding under federal bankruptcy or state insolvency laws. As a result, issuers will not immediately be considered ineligible because an involuntary bankruptcy petition has been filed. In addition, ineligibility tied to bankruptcy will no longer apply after an issuer files an annual report with audited financial statements after emergence from bankruptcy.

[220] 15 U.S.C. 77h.

[221] 15 U.S.C. 77h–1.

[222] The covered decrees or orders (including settlements) are prohibitions on future violations of the anti-fraud provisions of the federal securities laws, orders requiring issuers to cease and desist from violating the anti-fraud provisions of the federal securities laws, and determinations of violations of the anti-fraud provisions of the federal securities laws. The settlements include settlements in which the issuer or its subsidiary neither admits nor denies that it violated the anti-fraud provisions of the federal securities laws.

[223] See amendments to Securities Act Rule 405.

[224] See, *e.g.*, *Penny Stock Definition for Purposes of Blank Check Rule*, Release No. 33–7024 (Oct. 25, 1993) [58 FR 58099] (the Commission stated that Congress found blank check companies to be common vehicles for fraud and manipulation in the penny stock market, and concluded that the Commission's disclosure-based regulation and review of such offerings protects investors); *Delayed Pricing for Certain Registrants*, Release No. 33–7393 (Feb. 20, 1997) [62 FR 9276] (blank check and penny stock issuers would be ineligible to use rule providing for delayed pricing because of "prior substantial abuses"); and the Shell Companies Release, note 109.

[225] See Securities Act Section 27A and Exchange Act Section 21E.

[226] Two commenters suggested that business development companies should be permitted to rely on the rules permitting the use of a free writing prospectus. See letters from Allied and Fried Frank. A third commenter suggested that Securities Act Rule 482 should be conformed to Rule 433 for registered investment companies and business development companies. See letter from ABA.

[227] See, *e.g.*, letters from ABA; Alston; the Business Roundtable ("BRT"); Citigroup; Credit Suisse First Boston, LLC ("CSFB"); Davis Polk; Merrill Lynch; Morgan Stanley; NYSBA; Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul Weiss"); S&C; and SCSGP.

[228] See, *e.g.*, letters from ABA; AICPA; Davis Polk; Deloitte; E & Y; and KPMG.

[229] See, *e.g.*, letters from Davis Polk and TBMA.

[230] See, *e.g.*, letters from ABA–ABS; ASF; CMSA; Davis Polk; and TBMA.

[231] See, *e.g.*, letters from ABA; AICPA; E & Y; and KPMG.

[232] See, *e.g.*, letters from ABA–ABS and ASF.

[233] See, *e.g.*, letters from ABA; Alston; BRT; Citigroup; Richard Hall; Merrill Lynch; Morgan Stanley; the NYSBA; Paul Weiss; SCSGP; and SIA.

that the disqualification based on settled allegations of violations of the securities laws should be prospective only, because the settling parties would not have known, at the time of the negotiated settlement, also to negotiate a waiver of the ineligible issuer disqualifications.[234] Commenters did not believe that the settlement of an alleged violation should be a disqualification.[235] Other commenters did not believe that a securities law violation or settlement by a subsidiary should affect the eligibility of an issuer to use the various exemptions and safe harbors that we proposed.[236]

Commenters addressing ineligibility based on bankruptcy were concerned that an involuntary bankruptcy disqualification could disadvantage issuers in their relationships with their creditors.[237] They were concerned that a creditor could cause an issuer to be an ineligible issuer by filing an involuntary bankruptcy petition against the issuer. These commenters suggested that the involuntary bankruptcy petition be a disqualification only after the lapse of a period of time or conversion of the petition to a voluntary petition, enabling issuers to attempt to resolve the issues with their creditors.

We have revised the definition of "ineligible issuer" to address many of commenters' concerns. Under the definition we are adopting, an issuer must be current, but not necessarily timely, in its required filings under the Exchange Act for the past twelve months or such shorter period that the issuer is subject to the Exchange Act reporting requirements. We have limited the ineligibility condition for securities law violations to those involving the anti-fraud provisions and have eliminated the separate provision regarding settlements because they are subsumed within the ineligibility provision based on a settled judicial or administrative decree or order. In addition, we have provided that ineligibility based on actions of a subsidiary must have arisen at the time that the entity was a subsidiary of the issuer. We also have eliminated the ineligibility condition based on a going concern opinion covering the issuer's most recent audited financial statements. In addition to the revisions to the specific ineligibility provisions, we also have revised Rule 164 and Rule 433 to provide that persons relying on those Rules, other than issuers, must have a reasonable belief that an issuer is not ineligible.[238] We also have provided that ineligibility based on settlements will apply only to judicial or administrative decrees or orders entered into after the effective date of the new rules.

(C) Conditions to Permitted Use of a Free Writing Prospectus

Rule 164 as adopted provides that, after the filing of a registration statement, a free writing prospectus that meets the requirements of Rule 164 and satisfies the conditions of Rule 433 will be a permitted prospectus under Section 10(b) for purposes of Securities Act Section 5(b)(1). The Rule 433 conditions on the use of free writing prospectuses relate to:

- The delivery or availability of the statutory prospectus at the time the free writing prospectus is used;
- The information contained in the free writing prospectus;
- The legend that is to be included in the free writing prospectus;
- Filing of the free writing prospectus; and
- Record retention for the free writing prospectus.

(1) Prospectus Delivery or Availability

The ability of any person participating in the offer and sale of the securities to use free writing prospectuses under Rules 164 and 433 generally is conditioned on the filing of a registration statement that includes a prospectus satisfying the requirements of Securities Act Section 10.[239] Further, in specified cases, Rule 433 conditions the use of a free writing prospectus on prior or concurrent delivery of the issuer's most recently filed statutory prospectus.

(a) Prospectus Delivery Conditions for Non-Reporting Issuers and Unseasoned Issuers

In an offering of securities of an eligible non-reporting issuer, including an initial public offering, or securities of an eligible unseasoned issuer, the use by an offering participant of free writing prospectuses is conditioned on:

- Filing of the registration statement for the offering; and
- The free writing prospectus being preceded or accompanied by the most recent statutory prospectus that satisfies the requirements of Section 10 if:[240]

The free writing prospectus is prepared by or on behalf of or used or referred to by an issuer or prepared by or on behalf of or used or referred to by other offering participants;

Consideration has been or will be given by the issuer or an offering participant for the dissemination (in any format)[241] of any free writing prospectus (including any published article, publication, or advertisement); or

Securities Act Section 17(b)[242] requires disclosure that consideration has been or will be given by the issuer or an offering participant for any activity described therein in connection with the free writing prospectus.

In these cases, issuers and offering participants must assure that the most recent statutory prospectus is actually provided to anyone who might receive a free writing prospectus. Accordingly, the use of broadly disseminated free writing prospectuses in registered offerings by these types of issuers and offering participants in these offerings may not be feasible unless they are in electronic form and contain a hyperlink to the statutory prospectus. We believe that this is an appropriate result, as conditioning the use of the free writing prospectus on its being preceded or accompanied by the statutory

[234] See, *e.g.*, letters from ABA; Alston; BRT; Citigroup; Cleary; CSFB; Davis Polk; Intel Corporation ("Intel"); Morgan Stanley; NYSBA; SCSGP; S&C; SIA; and TBMA.

[235] See, *e.g.*, letters from Richard Hall; Paul Weiss; and TBMA.

[236] See, *e.g.*, letters from Alston; Morgan Stanley; NYSBA; Paul Weiss; S&C; and SIA. Some commenters were concerned that acquired subsidiaries that had securities law violations prior to the acquisition would cause the acquiring issuer to be ineligible. See, *e.g.*, letters from Alston; Intel; NYSBA; S&C; and SCSGP.

[237] See, *e.g.*, letters from Davis Polk and TBMA.

[238] In addition, we believe that the new check box on the Form 10–K and Form 20–F for issuers to indicate whether they are well-known seasoned issuers should facilitate an offering participant's ability to develop such a reasonable belief with respect to an issuer's status as a well-known seasoned issuer.

[239] Base prospectuses, preliminary prospectuses, summary prospectuses, and prospectuses subject to completion that are permitted under our rules are not prospectuses that satisfy the requirements of Securities Act Section 10(a), but they are statutory prospectuses that satisfy the requirements of Securities Act Section 10. Rule 433 makes clear that the prospectus condition may be satisfied by any Section 10 prospectus, other than a summary prospectus permitted by Securities Act Rule 431 [17 CFR 230.431] or a free writing prospectus.

[240] For purposes of the prospectus delivery condition, Rule 433 provides that a prospectus will be deemed to accompany a free writing prospectus that is an electronic communication if the free writing prospectus contains an active hyperlink to the statutory prospectus. In initial public offerings, a preliminary prospectus that does not contain a price range does not satisfy our rules or, therefore, the requirements of Section 10.

[241] "In any format" is meant to encompass all means of dissemination of the materials, including graphic, television or radio broadcast, or written.

[242] The rules we are adopting provide that written materials for which Securities Act Section 17(b) requires disclosure will be treated as free writing prospectuses of the issuer or other offering participant on whose behalf the payment has been or will be made or consideration has been or will be given.

prospectus will assure that an investor has a balanced disclosure document of an issuer with no or limited reporting history against which to evaluate the free writing prospectus and to place the statements made in context. The condition that the statutory prospectus precede or accompany the free writing prospectus will not require that it be provided through the same means, so long as it is provided at the required time. Referring to its availability will not satisfy this condition.

In the following situations, for example, the most recent statutory prospectus must precede or accompany the free writing prospectus or the communication cannot be made in reliance on Rules 164 and 433:[243]

- A direct written communication by an issuer or offering participant;
- A written communication or a television or radio broadcast prepared by or on behalf of or used or referred to by an issuer or an offering participant;
- The dissemination, in any format including publication or broadcast, of any free writing prospectus (including any published article, publication, or advertisement) for which
  - Consideration is or will be given by the issuer or an offering participant; or
  - Securities Act Section 17(b) requires disclosure of a payment made or consideration given by an issuer or other offering participant; or
- A paid published or broadcast advertisement by an issuer or offering participant.

Once the required statutory prospectus is provided to an investor, additional free writing prospectuses can be provided to that investor without having to provide an additional statutory prospectus, unless there is a material change in the most recent statutory prospectus from the provided prospectus.[244] For example, once an investor has been sent a preliminary prospectus, absent a material change, the Rule permits subsequent e-mail communications to that investor by an offering participant that constitute free writing prospectuses without the user having to hyperlink to or otherwise redeliver a statutory prospectus with each communication. After effectiveness and availability of a final prospectus meeting the requirements of Securities Act Section 10(a), no earlier statutory prospectus may be provided, and such final prospectus, as revised or supplemented, must precede or accompany any free writing prospectus provided after such availability, whether or not an earlier statutory prospectus has been previously provided to the recipient.[245]

(b) Prospectus Availability Condition for Seasoned Issuers and Well-Known Seasoned Issuers

In offerings of securities of eligible seasoned issuers (including asset-backed issuers eligible to use Form S–3) and eligible well-known seasoned issuers, we are adopting as proposed the provision that these issuers and other offering participants in their offerings can use a free writing prospectus after the filing of a registration statement containing a statutory prospectus.[246] For shelf offerings, this statutory prospectus can be a base prospectus.[247] For offerings of securities of eligible seasoned issuers (including eligible well-known seasoned issuers), the Rule does not condition use of the free writing prospectus on actual delivery of the most recent statutory prospectus. Instead, the user of the free writing prospectus must notify the recipient, through a required legend, of the filing of the registration statement and the URL for our web site where the recipient can access or hyperlink to the preliminary or base prospectus. The Rule as adopted permits the use of a generic rather than an issuer-specific legend. The legend must contain a toll-free telephone number, and may contain an e-mail address, through which the statutory prospectus may be requested.[248]

(c) Comments on Prospectus Delivery or Availability Conditions

Some commenters believed that the requirement that a statutory prospectus precede or accompany a free writing prospectus in offerings of securities of non-reporting or unseasoned issuers should be able to be accomplished by the availability of the prospectus on our Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR"),[249] while others thought it should be limited only to non-reporting companies engaging in their initial public offerings[250] or that there should be cure provisions for failure to provide timely a statutory prospectus.[251] We do not believe that it is appropriate at this time to have access or filing of a registration statement on EDGAR satisfy this delivery obligation for statutory prospectuses in all cases. In addition, as we note above, we believe that investors should have the statutory prospectus for unseasoned issuers when they evaluate free writing prospectuses involving offerings of securities of such issuers.

(2) Information in a Free Writing Prospectus

(a) Information Conditions

We are adopting substantially as proposed the provisions that will permit a free writing prospectus meeting the conditions of Rule 433 to be a Section 10(b) prospectus without having line-item disclosure requirements or otherwise requiring that the free writing prospectus contain any particular information, other than the legend. The Rule permits information in a free writing prospectus to go beyond information the substance of which is contained in the prospectus included in the registration statement. However, the information in the free writing prospectus must not conflict with the information in the registration statement, including Exchange Act reports incorporated by reference into the registration statement. We believe that exempting free writing prospectuses meeting the conditions of

[243] See the discussion below regarding the treatment of media publications. See Section III.D.3 below under "Media Publications and Broadcasts."

[244] If there are material changes in a preliminary prospectus, or preliminary prospectus supplement, the issuer and offering participants generally will recirculate the revised preliminary prospectus or supplement to potential purchasers.

[245] If a final prospectus is given or sent prior to or with a written offer, under the exception in clause (a) of Securities Act Section 2(a)(10), the written offer is not a prospectus and therefore will not be a free writing prospectus and Rules 164 and 433 will not apply.

[246] Under Rule 433 as adopted, the following offerings are included in this category:

(a) Offerings of securities registered on Form S–3 pursuant to General Instruction I.B.1, I.B.2, I.B.5, I.C., or I.D. thereof;

(b) Offerings of securities registered on Form F–3 pursuant to General Instruction I.A.5, I.B.1, I.B.2, or I.C. thereof;

(c) Any other offering not excluded from reliance on Rule 164 and Rule 433 of a well-known seasoned issuer; and

(d) Any other offering not excluded from reliance on Rule 164 and Rule 433 of an issuer eligible to use Form S–3 or Form F–3 for primary offerings pursuant to General Instruction I.B.1 of such forms.

[247] See Rule 430B, described in Section V.B.1 below, which is intended, among other things, to locate within one rule the information requirements for a base prospectus in a shelf registration statement.

[248] In the event that a well-known seasoned issuer does not have a registration statement on file, Rule 163 provides that an eligible well-known seasoned issuer's written offers are exempt from Section 5(c). While it will be exempt from the requirements of Section 5(c), a written offer made under the exemption in Rule 163 will fall within our definition of "free writing prospectus." Rule 163 conditions the Section 5(c) exemption for that free writing prospectus on the satisfaction of the conditions in Rule 163 including filing and legend conditions. As discussed above, the filing conditions of Rule 163 apply only if a registration statement is filed and otherwise are largely determined by those set forth under Rule 433 if the communication was a free writing prospectus used after filing a registration statement.

[249] See, *e.g.*, letters from ABA; Alston; and Cleary.

[250] See, *e.g.*, letters from NYSBA and S&C.

[251] See, *e.g.*, letters from ABA; Cleary; Merrill Lynch; S&C; and SIA.

Rule 433 from limitations on any particular content should not diminish investor protection. In that regard, we believe that the liability provisions applicable to free writing prospectuses, particularly Securities Act Section 12(a)(2) and the anti-fraud provisions of the federal securities laws, provide protection against material misstatements in and material omissions from information contained in such free writing prospectus.

Although the proposal stated that the information in the free writing prospectus did not have to be in the registration statement, some commenters requested further clarification of the proposed condition that the free writing prospectus cannot contain information that is "inconsistent" with the information in the prospectus filed as part of the registration statement.[252] In revising the provision to preclude information that "conflicts" with that in the registration statement, we have clarified that information in the free writing prospectus may be different from or additional or supplemental to that in the registration statement, so long as it does not "conflict" with the latter.

Commenters requested clarification as to how information in the free writing prospectus would be treated in relation to other information that was filed with us or was otherwise publicly available.[253] Commenters believed that liability for free writing prospectuses should not be considered in isolation but should take into account other information that is conveyed for purposes of the total mix of information available.[254] Free writing prospectuses may incorporate or refer investors to other information, so that investors will be advised to consider the information presented in the free writing prospectus in context. We note that the legend that must be included in a free writing prospectus will direct investors to the filed prospectus contained in the registration statement. As we discuss below, a free writing prospectus cannot include language that deems an investor to have read or have knowledge of or rely on the content of other documents incorporated in or referred to in the free writing prospectus. Whether such other information is conveyed to the investor will be determined based on the facts and circumstances.[255]

Treating a free writing prospectus satisfying the conditions of Rule 433 as a Section 10(b) prospectus provides for additional continuing Commission oversight and enforcement authority over the contents and use of the free writing prospectus. As we discussed in the Proposing Release, we will retain the ability to halt the use of any materially false or misleading free writing prospectus in accordance with Section 10(b). Under the amendments to Securities Act Rule 418 we are adopting today, our staff will be able to request any free writing prospectus that has been used in connection with a securities offering.

(b) Amendment to Rule 408

Finally, we are amending Securities Act Rule 408 as proposed to make clear that not including information that is included in a free writing prospectus in a prospectus filed as part of a registration statement will not, solely by virtue of inclusion of the information in a free writing prospectus, be considered an omission of material information required to be included in the registration statement.

(c) Legend Condition

(i) Discussion

We are not adopting any content requirement for free writing prospectuses other than to condition the use of a free writing prospectus on inclusion of a legend indicating where a prospectus is available for the offering to which the communication relates and recommending that potential investors read the prospectus (including Exchange Act documents incorporated by reference).[256] In addition, the legend also advises investors that they can obtain the registration statement including the prospectus and any incorporated Exchange Act documents for free through the Commission's web site at www.sec.gov, and that they may request the prospectus from the issuer, any underwriter or any dealer by calling a toll-free number.[257] The legend also indicates that the free writing prospectus relates to a registered public offering. As suggested by commenters, we are adopting a generic, rather than issuer-specific legend condition.[258] We believe this modification should assist issuers and offering participants in including a legend in a free writing prospectus without much added cost.[259]

(ii) Cure for Unintentional or Immaterial Failure To Include a Legend

Rule 164 permits a user to cure an unintentional or immaterial failure to include the specified legend in any free writing prospectus, as long as a good faith and reasonable effort is made to comply with the condition and the free writing prospectus is amended to include the specified legend as soon as practicable after discovery of the omitted or incorrect legend.[260] In addition, if a free writing prospectus has been transmitted to potential investors without the specified legend, the free writing prospectus must be retransmitted, with the appropriate legend by substantially the same means as and directed to substantially the same investors to whom it was originally transmitted.[261]

The legend condition is intended to identify more clearly materials as free writing prospectuses used in relation to a registered offering. We believe that this legend will put investors on notice and assist them in evaluating the content of the free writing prospectus.

(iii) Impermissible Legends or Disclaimers

As we discussed in the Proposing Release, we understand that issuers or other users of written communications may sometimes include legends or disclaimers in offering materials that may be inappropriate. In particular, disclaimers of responsibility or liability that are impermissible in a statutory prospectus or registration statement also are impermissible in free writing prospectuses. Examples of impermissible legends or disclaimers, which are not exclusive, that will cause the materials not to be permissible free writing prospectuses or not to be

[252] See, *e.g.*, letters from ABA; Merrill Lynch; and S&C.

[253] See, *e.g.*, letters from ABA; Citigroup; Cleary; CSFB; Davis Polk; Deloitte; Goldman, SachS&Co. ("Goldman Sachs"); ICI; Morgan Stanley; and SIA.

[254] *Id.*

[255] See, *e.g.*, *Starr* v. *Georgeson Shareholder, Inc.*, 2005 U.S. App. LEXIS 11250 (2d Cir. 2005).

[256] See Rule 433(c). We have eliminated any issuer-specific information as well as the reference to risk factors.

[257] Rules 163 and 433 permit offering participants to include an e-mail address at which the documents can be requested, a statement that the documents are available on the issuer's web site, and the Internet address and particular location where the documents can be found.

[258] See, *e.g.*, letters from Citigroup; Cleary; CSFB; Morgan Stanley; S&C; and SIA.

[259] For example, a single toll-free telephone number could be used to request a copy of the prospectus.

[260] See Rule 164(c).

[261] Rule 163 contains similar cure provisions. Some commenters were concerned that the cure provision would require the redelivery of the free writing prospectus with the correct legend to all potential purchasers. See letters from ABA and Fried Frank. While the proposal did not require that the free writing prospectus be delivered to all potential purchasers, we have revised the language to clarify that the free writing prospectus with the specified legend must be retransmitted by substantially the same means as and directed to substantially the same prospective purchasers to whom it was originally transmitted. For example, if a free writing prospectus without a legend was sent by e-mail to a distribution list, it would have to be retransmitted with the specified legend by e-mail to the same distribution list.

effective as to any purchaser for liability purposes include:

- Disclaimers regarding accuracy or completeness or reliance by investors;
- Statements requiring investors to read or acknowledge that they have read or understand the registration statement or any disclaimers or legends;
- Language indicating that the communication is neither a prospectus nor an offer to sell or a solicitation or an offer to buy; and
- For information that must be filed with us, statements that the information is confidential.[262]

(3) Filing Conditions

(a) General Conditions

(i) Scope of General Conditions

We are adopting substantially as proposed the provisions conditioning use of a free writing prospectus on the filing of that prospectus or information contained in that prospectus,[263] unless exempt from filing, in the following circumstances:[264]

- Where a free writing prospectus is prepared by or on behalf of, or used or referred to by, the issuer, known as an "issuer free writing prospectus," the issuer shall file that free-writing prospectus;
- Where a free writing prospectus prepared by or on behalf of or used by an offering participant other than the issuer contains material information about the issuer or its securities that has been provided by or on behalf of an issuer, known as "issuer information," that is not already included or incorporated in the prospectus or a filed free writing prospectus, the issuer shall file the issuer information;[265]
- Where a free writing prospectus used or referred to by an offering participant other than the issuer is distributed by or on behalf of such offering participant in a manner reasonably designed to lead to its broad unrestricted dissemination, the offering participant shall file the free writing prospectus; and
- Where a free writing prospectus or portion thereof prepared by or on behalf of the issuer or other offering participant comprises a description of the final terms of the issuer's securities in the offering or of the offering, the issuer must file such free writing prospectus or portion thereof after such terms have been established for all classes of the offering.[266]

In most cases, there is no condition that underwriters and dealers file the free writing prospectuses that they prepare, use, or refer to. This includes information prepared by underwriters and others on the basis of or derived from, but not containing, issuer information. Such information can be, but is not limited to, information that is proprietary to the preparer.

We are adopting as proposed the exception to the general principle that underwriter free writing prospectuses do not need to be filed where a free writing prospectus is used or referred to by and distributed by or on behalf of an offering participant, other than the issuer, in a manner that is reasonably designed to lead to its broad unrestricted dissemination. Accordingly, such use of a free writing prospectus is conditioned on such person filing the free writing prospectus on or before the date of first use. For example, the filing condition applies where:

- An underwriter includes a free writing prospectus on an unrestricted web site or hyperlinks from an unrestricted web site to information that would be a free writing prospectus;[267] or
- An underwriter sends out a press release regarding the issuer or the offering that is a free writing prospectus.

Offering participants include selling security holders. A selling security holder who is unaffiliated with the issuer and who uses a free writing prospectus is treated for purposes of Rule 164 and Rule 433 as any other offering participant who may be an underwriter of the issuer's securities. If the selling security holder is an affiliate of the issuer and the selling security holder prepares, uses, or refers to a free writing prospectus, it should consider, in addition to underwriter status, whether it is acting by or on behalf of the issuer. Further, the issuer and such affiliated selling security holder should evaluate whether the selling security holder has access to material information about the issuer and whether it is including such material issuer information in that free writing prospectus.[268]

(ii) Conditions Specific to Final Terms of the Securities or Offering

We also have adopted with modifications the provision that a description of the final terms of the securities in the offering or of the offering contained in a free writing prospectus must be filed by the issuer, regardless of whether it was prepared by or on behalf of the issuer or other offering participant prepared or used it. As modified, the provision applies to final terms of the securities in the offering and of the offering, whether or not they are the only matters included in the free writing prospectus. Terms are required to be filed only if they reflect the final terms of the securities or of the offering. The issuer has to file the description of the terms contained in the free writing prospectus within two days after the later of the date such terms became final for all classes of the offering or the date of first use.[269] We believe this filing condition is appropriate for the final terms of a security or offering contained in a free writing prospectus. Preliminary term sheets and other descriptive material containing only the terms of the securities or the offering that do not reflect final terms of securities or transactions are not subject to filing. All such written offering materials, whether or not filed, are, however, free writing prospectuses. As we note above, we have revised the Rule as adopted to permit most issuers, whether or not ineligible issuers, to use free writing prospectuses that consist only of descriptions of the terms of the issuer's

[262] Language indicating that the material is not a prospectus or offer would make the material not a permitted prospectus allowed pursuant to Rule 164 and thus preclude reliance on Rules 164 and 433. See also the Asset-Backed Securities Adopting Release., note, at III.C.1.d.

[263] See Rule 433(d). Under Rule 433, Rule 134 notices and Rule 135 notices are not considered free writing prospectuses and, therefore, are not subject to the conditions to use in the Rule. This differs from Securities Act Rule 425, which is applicable to business combination transactions and covers all communications, including Rule 135 notices.

[264] Under Rule 433, electronic road shows that are written communications are not subject to the filing condition in certain circumstances. See Section III.D.3 below under "Electronic Road Shows."

[265] This condition only provides that the issuer information contained in the offering participant's free writing prospectus be filed, not necessarily the free writing prospectus itself. In addition, this condition does not apply where a free writing prospectus prepared by or on behalf of an offering participant, other than the issuer, contains information prepared on the basis of or derived from issuer information but not issuer information.

[266] The description of the final terms of the issuer's securities and of the offering will either be contained in an issuer free writing prospectus or, if contained in another party's free writing prospectus, will be issuer information.

[267] Conversely, a web site with access restricted to customers or a subset of customers will not require filing, nor will an e-mail by an underwriter to its customers, regardless of the number of customers.

[268] While an unaffiliated selling security holder could, depending on the facts and circumstances, be acting on behalf of an issuer or have access to material information about the issuer, those situations would be more likely to arise with affiliates.

[269] This is essentially the same timing for filing for final term sheets as we adopted for asset-backed securities. The filing condition under this provision of Rule 433 will not be satisfied by the timely filing of a prospectus supplement under Rule 424.

securities in the offering or of the offering.[270]

(iii) Asset-Backed Issuers

Asset-backed issuers and other parties to asset-backed transactions specified in Rule 167(c) potentially have two sets of rules on which they may rely in using written offering materials. Under the special rules for asset-backed securities we adopted in December 2004, if the offering is registered on Form S–3, these persons may use ABS informational and computation materials as defined in Item 1101 of Regulation AB as permitted by Rule 167 and Rule 426. Rule 426 in particular includes filing conditions for the use of such materials using a Form 8–K. The filed materials become part of the registration statement for the offering of asset-backed securities in question.

These persons may also use free writing prospectuses as permitted by Rules 164 and 433 that we are adopting today. Use of free writing prospectuses is not limited to offerings registered on Form S–3. Free writing prospectuses are prospectuses subject to the provisions of Section 12(a)(2) of the Securities Act but are not filed as part of or included in the registration statement. The contents of free writing prospectuses are not limited to ABS informational and computational materials. Rule 433 requires filing by issuers of free writing prospectuses prepared by or on behalf of or used or referred to by, issuers or, depositors, sponsors, servicers, or affiliated depositors, whether or not the issuer, but not by underwriters or dealers, unless they contain issuer information or are distributed in a manner reasonably designed to lead to its broad unrestricted dissemination. Issuers also must file issuer information contained in other free writing prospectuses.[271]

Under Rule 426, filing is required for ABS informational and computational materials provided to prospective investors after final terms of all classes of securities in the offering have been established. Filing also is required of such materials relating to a class of securities, whether or not final terms of all classes had been established, as to which a prospective investor had indicated an interest. Filing is required by the later of the due date for filing the final prospectus with us under Rule 424(b) or two days after the date of first use.

Under Rule 433, the issuer must file a free writing prospectus or portion thereof comprising a description of final terms of securities in the offering or of the offering within two days after the later of the date final terms have been established for all classes of the offering or the date of first use. Filing is not required of descriptions of securities or of the offering that do not reflect final terms, even if a prospective investor had indicated an interest.

Under Rule 164, ineligible issuers may not use free writing prospectuses, except that most categories of ineligible issuers may use free writing prospectuses comprising only descriptions of terms of securities and offerings. Rule 164 provides that for offerings of asset-backed securities, ineligible issuers may use free writing prospectuses limited to certain categories of ABS informational and computational materials.[272] There is no such ineligible issuer restriction on the use of ABS informational and computational materials under Rules 167 and 426.

To coordinate the operation of the two available approaches to use of written offering communications, Rule 433 as adopted today provides that a free writing prospectus or portion thereof required to be filed under Rule 433 containing only ABS informational and computational materials, as defined in Item 1101(a) of Regulation AB, may be filed under Rule 433 but within the time frame required for satisfaction of the conditions of Rule 426, and that such filing will satisfy the conditions of Rule 433.

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[270] The issuers who are not permitted to use these free writing prospectuses are issuers who are, or during the prior three years were or any of their predecessors were, blank check companies, shell companies (other than business combination related shell companies), and penny stock issuers. Issuers registering business combination transactions also may not use these free writing prospectuses. Registered investment companies and business development companies may not use these descriptions as free writing prospectuses.

[271] In the case of asset-backed issuers certain information comprehended within the definition of ABS informational and computational material is analogous to the terms of securities and is therefore issuer information. For example, we would expect that the following categories of such material, which are derived from the definition of ABS informational and computational materials, are generally issuer information:

(1) Factual information regarding the asset-backed securities being offered and the structure and basic parameters of the securities, such as the number of classes, seniority, payment priorities, terms of payment, the tax, ERISA or other legal conclusions of counsel, and descriptive information relating to each class (*e.g.*, principal amount, coupon, minimum denomination, price or anticipated price, yield, weighted average life, credit enhancements, anticipated ratings, and other similar information relating to the proposed structure of the offering);

(2) Factual information regarding the pool assets underlying the asset-backed securities, including origination, acquisition and pool selection criteria, information regarding any prefunding or revolving period applicable to the offering, information regarding significant obligors, data regarding the contractual and related characteristics of the underlying pool assets (*e.g.*, weighted average coupon, weighted average maturity, delinquency and loss information and geographic distribution) and other factual information concerning the parameters of the asset pool appropriate to the nature of the underlying assets, such as the type of assets comprising the pool and the programs under which the loans were originated;

(3) Identification of key parties to the transaction, such as servicers, trustees, depositors, sponsors, originators and providers of credit enhancement or other support, including information about any such party;

(4) Static pool data, as referenced in Item 1105 of Regulation AB [17 CFR 229.1105], such as for the sponsor's and/or servicer's portfolio, prior transactions or the asset pool itself; and

(5) To the extent that the information is provided by the issuer, depositor, affiliated depositor, or sponsor, statistical information displaying for a particular class of asset-backed securities the yield, average life, expected maturity, interest rate sensitivity, cash flow characteristics, total rate of return, option adjusted spread or other financial or statistical information relating to the class or classes under specified prepayment, interest rate, loss or other hypothetical scenarios. (Where such information is prepared by an underwriter or dealer, it is not issuer information, even when derived from issuer information.)

[272] In asset-backed offerings by ineligible issuers, free writing prospectuses used by ineligible issuers are limited to the following information:

(1) Factual information regarding the asset-backed securities being offered and the structure and basic parameters of the securities, such as the number of classes, seniority, payment priorities, terms of payment, the tax, ERISA or other legal conclusions of counsel, and descriptive information relating to each class (*e.g.*, principal amount, coupon, minimum denomination, anticipated price, yield, weighted average life, credit enhancements, anticipated ratings, and other similar information relating to the proposed structure of the offering);

(2) Factual information regarding the pool assets underlying the asset-backed securities, including origination, acquisition and pool selection criteria, information regarding any prefunding or revolving period applicable to the offering, information regarding significant obligors, data regarding the contractual and related characteristics of the underlying pool assets (*e.g.*, weighted average coupon, weighted average maturity, delinquency and loss information and geographic distribution) and other factual information concerning the parameters of the asset pool appropriate to the nature of the underlying assets, such as the type of assets comprising the pool and the programs under which the loans were originated;

(3) Identification of key parties to the transaction, such as servicers, trustees, depositors, sponsors, originators and providers of credit enhancement or other support, including a brief description of each such party's roles, responsibilities, background and experience;

(4) Static pool data;

(5) The names of underwriters participating in the offering of the securities, and their additional roles, if any, within the underwriting syndicate;

(6) The anticipated schedule for the offering (including the approximate date upon which the proposed sale to the public will begin) and a description of marketing events (including the dates, times, locations, and procedures for attending or otherwise accessing them); and

(7) A description of the procedures by which the underwriters will conduct the offering and the procedures for transactions in connection with the offering with an underwriter or participating dealer (including *procedures* regarding account-opening and submitting indications of interest and conditional offers to buy).

Rule 433 as adopted today also provides that where a free writing prospectus is used in reliance on Rules 164 and 433 and the conditions of those Rules (including the special filing election for free writing prospectuses or portions thereof comprising ABS informational and computational materials) are satisfied, the conditions of Rules 167 and 426 do not need to be satisfied. It similarly provides that where ABS informational and computational materials are used in reliance on Rules 167 and 426 and the conditions of those Rules are satisfied, the conditions of Rules 164 and 433 do not need to be satisfied.

Special considerations apply with respect to providing static pool information in offerings of asset-backed securities. Rule 312 of Regulation S–T[273] provides that static pool information provided on an Internet web site can be included in the prospectus included in the registration statement if certain conditions are satisfied, including the inclusion of the specific web site address in the prospectus.

Static pool information also can be provided on an Internet web site as part of ABS informational and computational materials if certain conditions are satisfied, including provision of the specific web site address in the materials. Those materials are filed on Form 8–K and become part of the registration statement pursuant to Rule 167.

In addition, static pool information provided on an Internet web site can be included in a free writing prospectus. The web site address can be referred to in a written communication, and in the case of an electronic communication an active hyperlink can be provided. In either case the static pool information will be part of the free writing prospectus. Where filing is required under Rule 433, the Rule provides that filing of the free writing prospectus containing the address or hyperlink satisfies the filing requirement. Where static pool information provided in a free writing prospectus is separately included in the prospectus included in the registration statement, the filing in the prospectus included in the registration statement is accomplished pursuant to Rule 312 of Regulation S–T.

(iv) Comments on Filing Condition

Some commenters did not believe there should be any filing requirements for free writing prospectuses.[274] Other commenters did not believe that filing should be a condition to the use of a free writing prospectus because the failure to comply with the filing requirements would give rise to a Section 5 violation with related rescission rights.[275] Some commenters requested further clarification of the cure provisions, including what constitutes "unintentional," a "good faith and reasonable effort" to comply with the filing conditions, and a "discovery" of a failure to file a free writing prospectus.[276] We have retained the filing condition and cure provisions as noted. We have not provided further elaboration of the terms in the cure provisions which also are contained in the rules affecting business combination transactions and asset-backed securities offerings.[277]

With regard to filing descriptions of the final terms of the securities in the offering or of the offerings, some commenters expressed concern that issuers and offering participants would not know when the terms were final to be able to file the final term sheet in a timely manner.[278] We believe that because a description of the final terms of the securities or the offering does not have to be filed until after the deal terms are final for all classes, there will not be a situation where there is uncertainty when a description of the final terms is a final term sheet. In addition, some commenters thought that only issuer prepared term sheets should have to be filed.[279] Because the final terms represent the description of the issuer's securities and of the offering, we have retained the condition that the issuer must file the final terms, regardless of who has prepared it.

Commenters also requested clarification of the interplay between new Rule 433 and the rules applicable in business combination transactions where there is a capital formation transaction occurring at the same time as a business combination transaction, whether or not related.[280] Rule 165, which is applicable to communications in connection with business combination transactions, is not available for a communication whose primary purpose or effect relates to a capital formation transaction. The rules we are adopting today applicable to registered capital formation transactions generally will apply to registered capital formation transactions even if they have some connection to or are proximate in time to a business combination transaction. As a result, if an issuer undertakes a registered capital formation transaction that is related to, or takes place at around the same time as, a business combination transaction, then the issuer can, if the conditions to the applicable rules are satisfied, rely on the rules we adopt today that apply to the registered capital formation transaction and Rules 165 and 166 for the business combination transaction. This is true whether the two transactions are connected (for example, the purpose of the capital formation transaction is to finance a contemporaneous business combination transaction) or independent of each other. If a communication relates to both a capital formation and business combination transaction, then the communication may be subject to both Rules 425 and 433.[281] We have revised the filing condition of Rule 433 to provide that the filing condition of the Rule will be satisfied if a filing is made pursuant to Rule 425 and the Rule 425 filing includes the Rule 433 legend and indicates on the cover page the registration statement number for the capital formation transaction and that it also is being filed pursuant to Rule 433.

Some commenters addressed issues regarding asset-backed securities offerings. Some commenters questioned the interplay between the free writing prospectus rules and rules affecting communications in asset-backed offerings, particularly as it affected the use of informational and computational materials and final term sheets.[282] These commenters were concerned about filing deadlines and the treatment of certain disclosures, such as static pool data disclosed on a website, under the

[273] 17 CFR 232.312.

[274] See, *e.g.*, letters from ABA; Alston; and NYSBA.

[275] See, *e.g.*, letters from ABA and S&C.

[276] See, *e.g.*, letters from ABA; Citigroup; Goldman Sachs; Merrill Lynch; S&C; and SIA.

[277] See Rules 165(e) and 167(e).

[278] See, *e.g.*, letters from ABA–ABS; ASF; the Bond Market Association's comment letter on asset-backed securities ("BMA–ABS"); and CMSA.

[279] See, *e.g.*, letters from Cleary and Davis Polk.

[280] See, *e.g.*, letters from ABA and Alston.

[281] In 2001, the staff of the Division of Corporation Finance provided guidance as to how to analyze communications made in connection with contemporaneous capital raising and business combination transactions in order to determine whether reliance on the provisions of Regulation M–A was appropriate. See Question C.1 (Scope of Rule 165) of Section I (Regulation M–A) from the Third Supplement, dated July 2001, of the Division of Corporation Finance's Manual of Publicly Available Telephone Interpretations. *http://www.sec.gov/interps/telephone/phonesupplement3.htm.* Such guidance may continue to be helpful to this analysis. Of course, the issuer or other offering participant can determine to comply with both Rule 425 and Rule 433.

[282] See, *e.g.*, letters from ABA–ABS; ASF; BMA–ABS; CMSA; and FMR.

definition of free writing prospectus.[283] As noted above, we are revising Rule 433 and have provided additional guidance as appropriate to address these issues.

(b) Immaterial or Unintentional Failures To File

(i) Scope of Cure Provision

We are adopting as proposed the ability to cure any unintentional or immaterial failure to file free writing materials.[284] Rule 164 provides that the material must be filed as soon as practicable after discovery of the failure to file.

Rule 164 provides an issuer and any other person relying on the Rule the ability to cure any immaterial or unintentional failure to file or delay in filing the free writing prospectus, without losing the ability to rely on the Rule. This cure provision is available if a good faith and reasonable effort is made to comply with the filing condition and the free writing prospectus is filed as soon as practicable after the discovery of the failure to file. As in the business combination rules, we are including the cure provision to avoid potential chilling of communications due to uncertainty over filing status.

(ii) Comments on Cure Provision

Some commenters requested further clarification of the cure provisions, including what constitutes "unintentional," a "good faith and reasonable effort" to comply with the filing conditions, and a "discovery" of a failure to file a free writing prospectus.[285] The filing cure provisions are the same as those contained in the asset-backed rules we adopted in 2004 and in the business combination rules, which have operated without further elaboration on these issues since we adopted the rules in 1999.[286] As we discuss above under Rule 163, we are not including any further clarification of what constitutes the elements of the cure provisions.[287]

(4) Record Retention Condition

(a) Discussion

We are adopting, with some modifications, the proposed record retention condition in Rule 433. As adopted, Rule 433 conditions the use of a free writing prospectus on issuers and offering participants retaining for three years any free writing prospectuses they have used from the date of the initial *bona fide* offering of the securities in question that have not been filed with us. This record retention condition applies to all offering participants.[288] The three-year retention period is consistent with retention periods for brokers and dealers to retain securities sale confirmations.[289]

We believe this record retention condition is appropriate for several reasons. First, it will give us the ability to review free writing prospectuses used in reliance on Rules 164 and 433 under our authority in Securities Act Section 10(b) and the amendments to Rule 418, among other rules. Second, offering participants and purchasers will benefit from the availability of the free writing prospectuses.

(b) Immaterial or Unintentional Failure To Retain a Free Writing Prospectus

Some commenters were concerned that the lack of a cure provision for failure to retain free writing prospectuses could cause retroactive violations of Securities Act Section 5 for three years.[290] In response to these concerns, we have included a provision in Rule 164 that provides that solely for purposes of that Rule, but not any other record retention obligation of any issuer or other offering participant, an immaterial or unintentional failure to retain a free writing prospectus will not result in a violation of Securities Act Section 5(b)(1) or the loss of the ability to rely on the exemption so long as a good faith and reasonable effort was made to comply with the record retention condition. Whether or not there has been a good faith and reasonable effort to comply with the record retention condition will be a facts and circumstances determination. We have included this provision because we believe that there can be circumstances in which a free writing prospectus is inadvertently not retained even after a good faith and reasonable effort. We also have modified the record retention condition so that it does not apply in cases where the free writing prospectus is filed with us.

(D) Road Shows

(1) Definition of Electronic Road Show

Issuers and underwriters frequently conduct presentations known as "road shows" to market their offerings to the public. These road shows are a primary means by which issuers are involved directly and actively in a selling effort to investors. Historically, these presentations were conducted in person and limited to institutional investors. Today, due to advances in electronic media, road shows also are being conducted or re-transmitted over the Internet or other electronic media and in some cases to broader audiences.

We indicated in the Proposing Release that we intended to clarify the treatment of all electronic communications, including electronic road shows, as graphic communications under the Securities Act. Under the proposed rules, all electronic road shows would have been written offers and prospectuses, but also would have been permitted subject to conditions, as free writing prospectuses.

As discussed above, we have revised the definition of graphic communication from the proposal to exclude a communication that, at the time of the communication, originates live, in real-time to a live audience and does not originate in recorded form or otherwise as a graphic communication, although it may be transmitted through graphic means. This revision applies in the context of road shows. Under the definition, a live, in real-time road show to a live audience that is transmitted graphically will not be a graphic communication, and therefore not a written communication, or a free writing prospectus. It will still, however, be an offer subject to Securities Act Section 12(a)(2) and the other liability provisions of the federal securities laws.[291] Thus, as we discuss below, information that is presented as part of the live, in real-time road show to a live audience will not be a free writing prospectus. As discussed below, we have added a note to the effect that where a communication (such as slides or other visual aids) is provided or

[283] See letter from ABA–ABS.

[284] Such a "cure" provision is included in Regulation M–A. See Securities Act Rule 165(e). See also the Campos Article, note 155, at § 1:30.

[285] See, *e.g.*, letters from ABA; Citigroup; Goldman Sachs; Merrill Lynch; S&C; and SIA.

[286] See also Regulation D.

[287] See discussion in Section III.D.2 above under "Permitted Pre-Filing Offers for Well-Known Seasoned Issuers."

[288] For example, the record retention policy applies to free writing prospectuses prepared by underwriters and not containing issuer information and descriptions of the terms of securities or of the offering not reflecting final terms not required to be filed. To the extent the record retention requirements of Exchange Act Rule 17a–4 [17 CFR 240.17a–4] apply to free writing prospectuses required to be retained by broker-dealers under Rule 433, such free writing prospectuses are required to be retained in accordance with such requirements.

[289] See Exchange Act Rule 17a–3(a)(8) [17 CFR 240.17a–3(a)(8)].

[290] See, *e.g.*, letters from ABA; Cleary; and TBMA.

[291] In addition, while we have revised the definition of graphic communication to exclude certain presentations that originate live, in real-time to a live audience, we have retained in the definition of written communications the statutory concept of radio or television broadcasts, regardless of the transmission means. Thus, a communication that is a television or radio broadcast, whether or not live, would still be a written communication.

transmitted simultaneously as part of a live road show that is not a written communication, including a live, in real-time graphically transmitted road show, and that communication is provided or transmitted in a manner designed to make it available only as part of the road show and not separately, that communication is deemed part of the road show. Such a communication is thus deemed also not to be a written communication.[292]

Road shows that do not originate live, in real-time to a live audience and are graphically transmitted are electronic road shows that will be considered written communications and, therefore, free writing prospectuses. Under our new Rules, they are, of course, permitted if the conditions of our new Rules for free writing prospectuses are satisfied. As we noted in the Proposing Release, issuer involvement or participation in an electronic road show that is a written communication will make it an issuer free writing prospectus.[293]

(2) Treatment of Electronic Road Shows

Electronic road shows have to date proceeded in reliance on a series of no-action letters granted by the staff of the Division of Corporation Finance.[294] The rules we are adopting today permit the use of electronic road shows without many of the conditions in the electronic road show no-action letters.[295] As we discussed in the Proposing Release, the electronic road show no-action letters for registered public offerings are withdrawn as of the effective date of Rule 433.[296]

For road shows that are free writing prospectuses, the filing conditions of Rule 433 do not apply, with one exception. In the case of an issuer that is not required to file reports under Exchange Act Section 13 or Section 15(d) at the time of filing the registration statement and is registering an offering of common equity or convertible equity securities, the filing condition applies to a road show that is a free writing prospectus unless the issuer makes at least one version of a *bona fide* electronic road show [297] for the offering in question readily available without restriction electronically to any potential investor. If there is more than one version of a road show that is a written communication, the unrestrictedly available *bona fide* electronic road show must be available no later than the other versions.

We also have modified the filing conditions from the proposal to eliminate the specific obligation to file any material issuer information provided at an electronic road show. The filing condition for electronic road shows is as described above. We have added a note that a where a communication that is provided or transmitted simultaneously with a live road show that is not a written communication and that communication is provided or transmitted in a manner designed to make it available only as part of the road show and not separately, that communication is deemed to be part of the road show.[298] Therefore, as discussed above, if the road show is not a written communication, such a communication, such as slides or visual aids, even if it would otherwise be a graphic or other written communication is deemed to be part of the road show and thus not to be written. This provision also would cover, for example, a communication of visual aids provided in a separate feed from a live, in real-time road show to a live audience transmitted by graphic means, where the separate communication is provided or transmitted in a manner such that the separate communication can only be seen as part of the road show. If the road show is written and not required to be filed, such a simultaneous communication is also not required to be filed. This provision also would cover visual aids transmitted in a manner designed to make them available simultaneously only as part of an electronic road show. If the electronic road show is not subject to filing, neither are the visual aids. Otherwise, graphic or other written communications provided separately, for example by graphic means in a separate file designed to be available to be copied or downloaded separately, will be treated as a written communication and, if an offer, will be a free writing prospectus.

Whether or not road shows are written communications, all road shows

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[292] In-person road shows will continue to be considered oral communications. As we note, we have excluded road shows that originate and are presented live, in real-time to a live audience from the definition of graphic communication. The exclusion for presentations to a live audience that originate live, in real-time also covers overflow rooms at live, in-person road shows. The rules we are adopting today do not affect the treatment of written communications or road shows regarding business combination transactions to which Rule 425 and Regulation M–A apply.

[293] We recognize that road shows may be used in marketing the issuer's securities in certain private placement transactions, as well. Our rules do not address these offerings, although the treatment of electronic communications in the definitions of graphic communication and written communication apply to private placement transactions. For example, in an offering made in reliance on Securities Act Rule 505 or Rule 506 of Regulation D [17 CFR 230.505 and 17 CFR 230.506], an electronic road show or other communication that is a written communication would implicate the provisions of Securities Act Rule 502 [17 CFR 230.502] regarding information that must be provided to non-accredited investors and restrictions on general solicitation and general advertising.

[294] See Division of Corporation Finance no-action letters to *Private Financial Network* (Mar. 12, 1997); *Net Roadshow, Inc.* (July 30, 1997); *Bloomberg L.P.* (Oct. 22, 1997); *Thompson Financial Services, Inc.* (Sep. 4, 1998); *Activate.net Corporation* (June 3, 1999); *Charles Schwab & Co., Inc.* (Nov. 15, 1999); and *Charles Schwab & Co., Inc.* (Feb. 9, 2000).

[295] For example, under the rules we are adopting today for road shows that are free writing prospectuses, the road show audience does not have to be limited in any way, and the road show does not have to be the re-transmission of a live presentation in front of an audience and the electronic road show may be edited. In addition, those distributing the road show do not have to limit viewers to seeing it either within a 24-hour period or twice. They also can allow viewers to copy, print or download the road show. Multiple versions of the electronic road show are permitted. Each will be a separate free writing prospectus.

[296] See discussion of Staff no-action letters in note 182 of the Proposing Release.

[297] We are adding a definition of "road show" and adopting substantially as proposed the definition of "*bona fide* electronic road show." For purposes of Rule 433, a "road show" is an offer (other than a statutory prospectus or a portion of a statutory prospectus filed as part of a registration statement) that contains a presentation regarding an offering by one or more members of the issuer's management and includes discussion of one or more of the issuer, such management, and the securities being offered. In the case of asset-backed offerings, road shows can include presentations by management involved in the securitization or servicing by the depositor, sponsor, or servicers. For purposes of Rule 433, a "*bona fide* electronic road show" is a road show that is a written communication transmitted by graphic means that contains a presentation by one or more officers of an issuer or other persons in an issuer's management and, if the issuer is using or conducting more than one road show that is a written communication, includes discussion of the same general areas of information regarding the issuer, such management, and the securities being offered as such other issuer road show or road shows for the same offering that are written communications. To be *bona fide*, the version need not address all of the same subjects or provide the same information as the other versions of an electronic road show. It also need not provide an opportunity for questions and answers or other interaction, even if other versions of the electronic road show do provide such opportunities.

A few commenters asked for further guidance on which categories of information could be properly excluded from the *bona fide* version. See, *e.g.*, letters from Fried Frank and TBMA. One commenter thought that the *bona fide* electronic road show should be identical to the other electronic road shows that were being presented. See letter from Harrisdirect. We have not further revised the definition of *bona fide* electronic road show in response to these comments as we believe that the definition that we are adopting provides the flexibility to offering participants to use different versions of road shows depending on the particular facts and circumstances of their offering. As we indicated in the Proposing Release and note above, the *bona fide* version must only cover the same general areas regarding the issuer, its management, and the securities being offered and need not address all the same subjects or provide the same information as other versions.

[298] See the Note to Rule 433(d)(8).

that are offers are subject to Securities Act Section 12(a)(2) liability. In addition, all road shows that are offers that are written communications are free writing prospectuses, whether or not required to be filed.

(3) Comments on Electronic Road Shows

Commenters generally supported permitting electronic road shows.[299] While commenters supported the filing exclusion for electronic road shows, a significant number of commenters were concerned about the proposed rules conditions affecting electronic road shows.[300] Most of the comments related to the treatment of live, real-time road shows transmitted electronically as graphic communications.[301] These commenters believed that all live, real-time road shows, including those that are transmitted graphically to "overflow rooms," should be treated as oral communications.[302] The commenters also argued that all materials provided or made available at these live graphically transmitted road shows, including slides and other materials used but not retained by participants should be treated as oral communications and should not be required to be filed with us under Rule 433.[303] Many commenters were concerned that putting greater restrictions on these road shows would eliminate the ability of out of town investors to participate in these road shows and view PowerPoint® and similar presentations which would, therefore, reduce the amount of information that these investors receive.[304]

We have addressed many of these comments and concerns through our modification of the definition of graphic communications, which as adopted excludes communications originating live, in real time to a live audience, even if transmitted by graphic means. The materials presented as part of these road shows, such as slides or PowerPoint® presentations will similarly not be graphic communications unless they are separately transmitted as graphic communications. As a result, live communications, such as live road shows transmitted electronically (whether to an overflow room or another city) are not graphic communications and thus not free writing prospectuses. They will be treated as oral communications and will be subject to liability under Securities Act Section 12(a)(2) and the anti-fraud provisions.

We also have revised the filing conditions applicable to electronic road shows in response to certain suggestions of commenters. Commenters generally supported the definition of "*bona fide* electronic road show,"[305] although two commenters suggested limiting the requirement for a *bona fide* electronic road show only to initial public offerings[306] and another suggested limiting it to equity but not debt offerings.[307]

Within the category of road shows that are graphic under our rules as adopted, we have retained the concept of *bona fide* electronic road show only for initial public offerings of common equity or convertible equity securities. We have excluded the concept for all other registered securities offerings. We believe that it is appropriate to limit the filing condition to require a *bona fide* electronic road show to initial public offerings of common equity or convertible equity securities, due to the greater potential for involvement and interest of the retail investor in these types of offerings and securities of the issuer. We believe this change addresses commenters' concerns that an unrestricted *bona fide* electronic road show should not be required in what are essentially registered institutional offerings. Finally, we believe the note added to Rule 433(d)(8) as adopted will clarify the characterization and treatment of materials provided or transmitted as part of or simultaneously with road shows, oral or written.

Some commenters also did not support requiring the filing of any issuer information used at any road show,[308] while two commenters thought that all electronic road shows should be filed and available to anyone.[309]

We believe that our treatment of road shows, including electronic road shows, strikes the appropriate balance between the need to market an issuer's securities to institutional investors and the desires of retail and other investors to have access to issuer information, such as management presentations, that are normally available only at road shows that often have not been open to retail investors generally. We also believe that the Rule as adopted addresses some of the concerns that important information about an issuer or an offering can be communicated at electronic (as well as live) road shows, rather than in the statutory prospectus. In this regard, as we noted in the Proposing Release, the Report and Recommendations of the NASD/NYSE IPO Advisory Committee recommended that issuers be required to make a version of their IPO road show available electronically to unrestricted audiences.[310] While we are not requiring that road shows be made available to unrestricted audiences, issuers and underwriters are free to make road shows available to all investors and we believe that our new rules will encourage issuers to do so where retail interest justifies such unrestricted availability.

(E) Treatment of Communications on Web Sites and Other Electronics Issues

(1) General

The communications rules we are adopting will enable issuers and market participants to take significantly greater advantage of the Internet and other electronic media to communicate and deliver information to investors. We have addressed previously the circumstances under which an issuer

[299] See, *e.g.*, letters from ABA; Alston; NetRoadshow; and Thomson Financial ("Thomson").

[300] See, *e.g.*, letters from ABA; Alston; E. Price Ambler; Kenneth Arnot; Lisa Baudot; Barry C. Bruneer; Harold Candland; Matt Crouse; Rick Dowdle; Robert Evans; Goldman Sachs; Marvin D. Lutz; Merrill Lynch; NetRoadShow; F. Thomas O'Halloran; Paul J. Rasplicka; Eric Ribner; Jeffrey A. Schaffer; Alison Shatz; SIA; Bob Smith; Steve Smart; Chris D. Wallace; WR Hambrecht + Co. ("WR Hambrecht"); and Kevin Yorke.

[301] See, *e.g.*, letters from ABA; Alston; Bloomberg L.P. ("Bloomberg"); Goldman Sachs; Merrill Lynch; NetRoadShow; Jeffrey A. Schaffer; SIA; and Thomson.

[302] See, *e.g.*, letters from Alston; Morgan Stanley; S&C; and SIA.

[303] See, *e.g.*, letters from ABA; Alston; Lisa Baudot; Citigroup; Cleary; Morgan Stanley; S&C; SIA, David Thickens; Douglas Workman; and WR Hambrecht.

[304] See, *e.g.*, letters from ABA; Alston; E. Price Ambler; Kenneth Arnot; Lisa Baudot; Barry C. Bruneer; Harold Candland; Matt Crouse; Rick Dowdle; Robert Evans; Goldman Sachs; Marvin D. Lutz; Merrill Lynch; NetRoadShow; F. Thomas O'Halloran; Paul J. Rasplicka; Eric Ribner; Jeffrey A. Schaffer; Alison Shatz; SIA; Bob Smith; Steve Smart; Chris D. Wallace; WR Hambrecht; and Kevin Yorke.

[305] See, *e.g.*, letters from ABA; Davis Polk; and WR Hambrecht.

[306] See, *e.g.*, letters from Alston and NetRoadshow.

[307] See letter from Bloomberg.

[308] See, *e.g.*, letters from ABA; Alston; Lisa Baudot; Citigroup; Cleary; Morgan Stanley; S&C; SIA; David Thickens; and WR Hambrecht.

[309] See, *e.g.*, letter from Harris*direct* and Renaissance Capital. In addition, many commenters thought that more information should be made available to retail investors, particularly in connection with initial public offerings. See, *e.g.*, letters from Trevor Boswell; Lyle Fell, Sr.; Eileen Fuls; Corey Gorman; Ronald Ricketts, Jr.; and Justin Swearingen.

[310] *Report and Recommendations of a Committee Convened by the New York Stock Exchange, Inc. and NASD at the Request of the U.S. Securities and Exchange Commission*, available at *www.nasdr.com/pdf-text/iporeport.pdf* (May 29, 2003). Consistent with the Committee's suggestion, different versions of electronic road shows for initial public offerings of common equity or convertible equity securities are permitted for different audiences under the filing exemption, so long as at least one version of a *bona fide* electronic road show, where applicable, is available to all potential investors.

retains responsibility for information included on its web site;[311] however, the rules we are adopting today expand possibilities in this regard due to the ability to communicate outside the statutory prospectus, including posting information on web sites that will be free writing prospectuses.

We are adopting Rule 433(e) as proposed to make clear that an offer of an issuer's securities that is contained on an issuer's web site or that is contained on a third party web site hyperlinked from the issuer's web site is considered a written offer of such securities made by the issuer and, unless otherwise exempt, will be a free writing prospectus of the issuer. Accordingly, the requirements of Rule 433 will apply to these free writing prospectuses.[312]

(2) Historical Information on an Issuer Web Site

As we discussed in the Proposing Release, we recognize the importance of an issuer's web site as a means to communicate with the public, not just with potential investors in an offering, about its business. In this regard, commenters on our 2000 Electronics Release expressed concerns regarding the possibility that historical issuer information on an issuer's web site that is accessed at a later time would be considered "republished" at that later date, with attendant securities law liability.[313]

We believe that the availability of historical issuer information provides investors with more readily accessible information about the issuer. We also believe that issuers in registration should be able to maintain historical information on their web site in a manner by which that information will remain accessible to the public but will not be considered to be reissued or republished for purposes of the Securities Act.

Historical information that is not an offer under the Securities Act, either because its use and content are such that it does not fall within the Securities Act definition of that term or, for example, because it falls within a safe harbor (such as those we are adopting today), will not become an offer if accessed at a later time, unless it is updated or used or referred to (by hyperlink or otherwise) in connection with the offering.[314] We believe it is appropriate, however, to provide additional certainty regarding the treatment of historical information on web sites as "offers" under the Securities Act. Accordingly, Rule 433, as adopted, includes an exception to its general standard. This exception, contained in Rule 433(e)(2), provides that historical information will not be considered a current offer of the issuer's securities and, therefore, will not be a free writing prospectus, if that historical information is:

- Separately identified as such; and
- Located in a separate section of the issuer's web site containing historical information.

The use of that historical information will become a current offer if it is:

- Incorporated by reference into or otherwise included in a prospectus of the issuer for the offering; or
- Otherwise used or referred to in connection with the offering.

While Rule 433(e)(2) addresses particular situations in which information retained on a web site will not be considered a free writing prospectus, other information located on or hyperlinked to a web site might similarly not be considered a current offer of the issuer's securities and, therefore, not a free writing prospectus, where it can be demonstrated that the information was published previously.[315] For example, certain information that, while not contained in a separate section of an issuer's web site, is dated or otherwise identified as historical information and is not referred to in connection with the offering activities may not be a current offer, depending on the particular facts and circumstances.

(3) Comments on Treatment of Communications on Web Sites and Other Electronics Issues

Commenters supported the provisions of proposed Rule 433 clarifying the treatment of information contained on or hyperlinked to web sites of issuers and offering participants.[316] Some commenters requested that the Commission provide greater explanation of what might constitute "historical" information, including whether and how information is archived.[317] Commenters also desired further clarification of the treatment under the free writing prospectus rules of information on an issuer's web site hyperlinked from a third party's web site.[318]

Rule 433(e)(2) addresses particular situations in which information on an issuer's web site will not be considered a current offer or a free writing prospectus. Whether or not other information is historical information of the issuer will depend on the facts and circumstances. Further, we have not provided additional detail regarding the nature of "archiving" information because we believe that the provision in Rule 433(e)(2) regarding separately located, identified historical information provides issuers with the necessary flexibility in operating their web sites within the federal securities laws. Finally, information that is an offer and is contained on the web site of an offering participant or contained on the web site of another person hyperlinked from the web site of an offering participant could be a free writing prospectus of that offering participant.

(F) Media Publications or Broadcasts

(1) Overview

As we discussed in the Proposing Release, we believe it is important to identify the circumstances under which information released or disseminated to the media by an issuer or offering

[311] In our 2000 Electronics Release, we noted that the federal securities laws apply equally to information contained on an issuer's web site as they do to other communications made by or attributed to the issuer. Web site content differs from traditional methods of distribution, however, in several important aspects. First, information that is placed on a web site can be continuously accessed as long as the information remains posted. Second, issuers are able to hyperlink to other documents, information, and web sites, thereby allowing instant access to such documents, information, and web sites. See 2000 Electronics Release, note 96, at II.B.

[312] In this regard, if an issuer or other offering participant includes a hyperlink within a written communication offering the issuer's securities, such as an electronic free writing prospectus, to another web site or to other information, the hyperlinked information will be considered part of that written communication. For example, while a research report published or distributed by a broker or dealer around the time of an offering may not be considered an offer by the broker or dealer under Rule 139, an issuer hyperlinking to that research report will not be able to rely on Rule 139. The research report could, therefore, be a free writing prospectus of the issuer. See the 2000 Electronics Release, note 96, at II.B.2.

[313] See, *e.g.*, comment letters in File No. S7–11–00 from the American Corporate Counsel Association ("ACCA"); The Council of Infrastructure Financing Authorities; and the Florida Division of Bond Finance.

[314] See discussion in Section III.D.1 above under "Permitted Continuation of Ongoing Communications During an Offering" regarding Rules 168 and 169.

[315] See also the 2000 Electronics Release regarding retention of information on a web site during an offering. The 2000 Electronics Release contains a list of information that we believed could be retained on a web site without the information being considered an offer and we again concur that such information will not raise a concern. See the 2000 Electronics Release, note 96, at part II.B.2.

Although such information may not be considered an offer and therefore not subject to liability under Section 12(a)(2), it may still be subject to the anti-fraud provisions of the federal securities laws.

[316] See, *e.g.*, letters from ABA; Davis Polk; and S&C.

[317] See, *e.g.*, letters from Davis Polk; Merrill Lynch; and S&C.

[318] See, *e.g.*, letters from ABA and S&C.

participant in connection with a registered offering will be considered the use of a free writing prospectus under the new rules. We recognize that the financial news media are a valuable source of information about issuers to the public at large. Issuers and offering participants use the media to disseminate important information about themselves, such as through the use of press releases and interviews. The media plays an integral role, therefore, in providing information about issuers to the market.

We want to encourage the role of the media as an important communicator of information and some media publications regarding an offering are not categorized as offers, under the gun-jumping provisions, by issuers or other offering participants. However, we do not want issuers and offering participants to avoid responsibility for their offering or marketing efforts by using the media. We, therefore, believe that it is appropriate to address in our new rules offers that take place using the media as a communication vehicle. Under the rules we are adopting today, where an issuer or any offering participant provides information about the issuer or the offering that constitutes an offer, whether orally or in writing, to a member of the media and where the media publication of that information is an offer by the issuer or other offering participant, we will consider the publication to be a free writing prospectus of the issuer or offering participant in question.

(2) Application of Rule 164 and Rule 433 to Media Publications

As we proposed, under the rules we are adopting today, the treatment of a media publication that constitutes an offer and therefore a free writing prospectus of the issuer or other offering participant will depend on whether the issuer or other offering participant prepares the publication or television or radio broadcast or pays for or provides other consideration for the publication or broadcast, or whether unaffiliated media prepares and publishes or broadcasts the communication for no consideration or payment from an issuer or offering participant.

(a) Prospectus Delivery or Availability

(i) Where Media Publications Are Prepared or Consideration Paid by Issuer or Offering Participant

If an issuer or offering participant prepares, pays for, or gives consideration for the preparation, publication or dissemination of or uses or refers to a published article, television or radio broadcast, or advertisement, the issuer or other offering participant will have to satisfy the conditions to the use of any other free writing prospectus of that offering participant at the time of the publication or broadcast. For example, in the case of a non-reporting issuer or reporting unseasoned issuer a statutory prospectus will have to precede or accompany the communication. As a consequence of this requirement, in offerings by non-reporting and unseasoned issuers, issuers and offering participants will not be able to prepare or pay for published or broadcast written advertisements, "infomercials," or broadcast spots or similar written communications about the issuer, its securities, or the offering that includes information beyond that permitted by Rule 134. Well-known seasoned and other seasoned issuers and offering participants will have to comply with the other applicable conditions for the free writing prospectus. For seasoned issuers that are not well-known seasoned issuers and offering participants, a registration statement including a statutory prospectus (which can be a base prospectus) will have to be on file with us. These conditions may also include filing with us not later than the date of first use.

(ii) Unaffiliated Media Publications

Where, however, the free writing prospectus is prepared and published or broadcast by persons in the media business that are unaffiliated with the issuer and another offering participant,[319] and the preparation, publication, or broadcast is not paid for by the issuer or other offering participant, our rules include certain accommodations. In these cases, an issuer or offering participant would not have to have a statutory prospectus precede or accompany the media communication, although a filed registration statement including a statutory prospectus would be necessary, except in the case of a well-known seasoned issuer.[320] Therefore, an interview or other media publication or television or radio broadcast where an issuer or offering participant participates (but does not prepare or pay for the event or article) could be a free writing prospectus, but because of the media intervention, we conclude that its use should not be conditioned on prior or simultaneous delivery of the statutory prospectus. For example, an underwriter or issuer will be permitted to invite the press to a live road show or an electronic road show, but, in most cases, we will consider an article including information obtained at that road show to be a free writing prospectus of the issuer or underwriter and subject to the rules regarding free writing prospectuses.[321] As another example, if a chief executive officer of a non-reporting issuer gives an interview to a financial news magazine without payment to the magazine for the article, the publication of the article after the filing of the registration statement will be a free writing prospectus of the issuer that will be subject to the filing conditions by the issuer after publication. In that case, there will be no requirement that a statutory prospectus precede or accompany the article at the time of the publication.

(b) Filing

We are adopting the filing condition applicable to free writing prospectuses that are media publications or television or radio broadcasts with some modifications from the proposals in response to comments. Rule 433(f) provides that the filing condition of Rule 433(d) will be satisfied where a free writing prospectus including information about the issuer, its securities, or the offering provided, authorized, or approved by or on behalf of the issuer or an offering participant, that is prepared and published or disseminated by persons in the media business who are not affiliated with or paid by the issuer or an offering participant (with certain exceptions for issuers in the media business), is filed by the issuer or offering participant involved within four business days after

[319] We have revised the provision from the proposals to address concerns of issuers that are media companies. See the discussion below under "Issuers in the Media Business."

[320] We believe that in a situation where a written communication is not prepared or paid for by an offering participant but rather by independent media, it still may be an offer and thus a free writing prospectus. There is less need in this situation, however, to have a statutory prospectus precede or accompany the free writing prospectus if a registration statement containing a statutory prospectus is on file with us and available. A media publication that is a free writing prospectus of a well-known seasoned issuer may also be published or broadcast prior to filing of the registration statement, as described above. In such a case, where another exemption is not available, the filing conditions would have to be satisfied by the issuer promptly after filing a registration statement covering the offering if one is filed.

[321] Assuming that the road show in question is an offer, an article published based on information obtained from a road show with a limited audience could be a free writing prospectus depending on its content. An article published based solely on information provided at a readily accessible electronic road show open to an unrestricted audience may not be an offer as discussed above where there is no other involvement by an issuer or offering participant.

the issuer or offering participant becomes aware of its publication or first broadcast.[322] Persons in the media have no filing or other responsibilities under these provisions.[323]

We have made certain modifications to the filing conditions from the proposals. First, Rule 433 permits issuers and offering participants to satisfy the filing condition by filing:

- The media publication;
- All of the information provided to the media in lieu of the publication; or
- A transcript of the interview or similar materials that the issuer or other offering participant provided to the media, provided that all the information provided is filed.

We also have provided that an issuer or other offering participant does not have to file the media publication if the substance of the written communication has been previously filed with us. Finally, the issuer or offering participant may file, together with or after the media publication is filed, information that the issuer reasonably believes is necessary or appropriate to correct information included in the media publication.[324] We believe that these additional provisions will give issuers and offering participants the ability to file the publications on a timely basis, to file the underlying materials in lieu of the publication, and to file correcting materials after publication, television or radio broadcast, or other dissemination, if there is concern about the accuracy of the publication.[325]

[322] In media publications eligible for this accommodation, the inclusion of the necessary legend in the fling of the media publication will satisfy the legend condition of Rule 433(c)(2) with regard to that media publication. See Rule 433(f)(1)(ii). Further, the free writing prospectus will have to be filed only once, regardless of the number of publications in which the information is included. In addition, the publication will only have to be filed if, as discussed above, it is an offer.

[323] As we note above, press releases that are offers sent out by issuers are free writing prospectuses of the issuer at the time of the issuer distribution.

[324] Language that, while arguably in the notice of a correction, is in fact an impermissible disclaimer (such as a disclaimer regarding liability or reliance) or waiver is not permitted.

[325] The provisions of Rule 433 apply only to free writing prospectuses, which by definition must involve a written offer. Whether or not the media publication is an offer and therefore a free writing prospectus of the issuer or the other offering participant providing the information will depend as today on the facts and circumstances. In addition, because the exception for free writing prospectuses is non-exclusive and does not preclude reliance on other exclusions or exemptions from the gun-jumping provisions, compliance with the conditions of Rule 433 for the use of a free writing prospectus, including filing, does not preclude reliance on the argument that the communication is not an offer.

(c) Issuers in the Media Business

In response to comments about the impact the condition that the media entity is unaffiliated with the issuer has on issuers that are in the media business,[326] we have provided a limited exclusion that would permit issuers that are in the media business to be able to rely on the unaffiliated media condition if the media issuer or its affiliated media business:

- Is the publisher of a *bona fide* newspaper, magazine, or business or financial publication of general and regular circulation or *bona fide* broadcaster of news including business and financial news; [327]
- Has established policies and procedures for the independence of the content of the publication or broadcast from the offering activities of the issuer; and
- Publishes or broadcasts the communication in the ordinary course.

(3) Responses to Comments on Treatment of Media Publications

Among the issues commenters raised, many focused on the treatment of media reports under the proposed rules regarding free writing prospectuses.[328] They expressed concern as to whether the issuer or offering participants were obligated to monitor media releases and provide correcting information.[329] These commenters were concerned about the ability to satisfy the conditions of the exemption if the media reports or publicity about the issuer or its securities occurred prior to the filing of a statutory prospectus. Commenters also suggested that the filing condition be limited to the specific publication that was granted an interview or, if statements from that interview were carried by different media outlets, the issuer or offering participant should be able to file a representative statement.[330]

[326] See, *e.g.*, letters from Davis Polk and NYSBA.

[327] This accommodation is based on the media entity being a *bona fide* media entity. We are using essentially the same definition as included in Regulation Analyst Certification [17 CFR 242.500–242.505] ("Regulation AC") and the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*], except that we have not limited the publications to financial or business publications. See Rule 505(a) of Regulation AC (17 CFR 242.505(a)) and Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) In addition, we have conditioned the accommodation on adequate policies and procedures being in place that require the media company's content decisions to be independent of the issuer's offering activities.

[328] See, *e.g.*, letters from ABA; Alston; Cleary; Fried Frank; and NYSBA.

[329] See, *e.g.*, letters from ABA; Cleary; Fried Frank; NYSBA; and Reuters.

[330] See, *e.g.*, letters from ABA; NYSBA; and Reuters.

Additionally, some commenters suggested that if the media publication was based on a press release or other specifically authorized communication, then only the press release or other authorized communication should satisfy the filing condition.[331] One commenter suggested that media publications based on publicly disseminated information should be excluded from the definition of free writing prospectuses.[332] Commenters also suggested that the filing occur after a senior officer has actual knowledge of the publication and that the filing deadline be extended to three business days.[333]

We believe that the modifications we have made to the filing conditions and other provisions of Rule 433 should address most of the commenters' concerns regarding unaffiliated media publications. We would observe first that, as discussed above, not every media publication about an offering is an offer or a free writing prospectus of the issuer or other offering participant. In particular, we have administered the gun-jumping provisions so that where there is no other involvement of an issuer or other offering participant, media publications based on information filed with us or available on an unrestricted basis are not offers of the issuer or other offering participant. This should substantially eliminate the need to monitor media publications unless offering participants are directly communicating offering information or otherwise involved with the media in connection with the offering. Further, the Rule only applies to written offers prepared, published, or disseminated by the media where an issuer or offering participant provides, authorizes, or approves the information. In addition, we have made the following modifications:

- Extended the filing due date to four business days after the issuer or other offering participant becomes aware of the publication or first broadcast;
- Permitted the filing of information reasonably believed necessary or appropriate to correct information included in the communication;
- In lieu of filing the article, permitted the filing of the transcript of the entire interview or other materials that formed the basis for the article; and
- Provided that where the substance of the information provided by or on behalf of the issuer or other offering participants contained in the

[331] See, *e.g.*, letters from Alston and NYSBA.

[332] See letter from Davis Polk.

[333] See, *e.g.*, letters from ABA and Reuters.

publication is already filed with us no filing is required.

We also have made accommodations so that issuers in the *bona fide* media business will be able to rely on these provisions.

As in the case of the safe harbors for factual business information, some commenters also requested that we revise the definition of "by or on behalf of" an offering participant to include only those communications that were made by specific authorized persons and to provide that the issuer or other offering participant is not liable for unauthorized communications.[334] For the reasons noted above, we are not modifying the definition of "by or on behalf of" to limit it to specified persons.

(G) Liability Issues Affecting Free Writing Prospectuses

(1) General

Even when filed, a free writing prospectus will not be part of a registration statement subject to liability under Securities Act Section 11, unless the issuer elects to file it as a part of the registration statement. Regardless of whether a free writing prospectus is filed, any seller offering or selling securities by means of the free writing prospectus will be subject to disclosure liability under Securities Act Section 12(a)(2). A free writing prospectus also can, of course, be the basis for liability under the anti-fraud provisions of the federal securities laws.

(2) Filed Free Writing Prospectus Not Part of Registration Statement

A free writing prospectus used after a registration statement is filed complying with Rule 433 will be governed by the provisions of Securities Act Section 10(b), which provides that a prospectus permitted under that section is filed as part of the registration statement, but is not subject to Section 11 liability. We are adopting as proposed the modification to the Section 10(b) filing requirement to provide that a free writing prospectus filed pursuant to Rule 433 must identify the registration statement to which it relates, but Rule 433 provides that it will not have to be filed as part of the registration statement. We believe that the modified filing condition will enhance investor protection because it should facilitate filing of the free writing prospectus on a timely basis and more readily identify the filed information as a free writing prospectus.[335]

(3) Cross-Liability Issues

As we discussed in the Proposing Release, we provided that the filing condition applied only to an issuer free writing prospectus and issuer information or to information in a free writing prospectus broadly disseminated, to address the concerns that commenters on our 1998 proposals had about cross liability under Securities Act Section 12(a)(2) for free writing materials of other offering participants.[336] As we discuss above, we are adopting the filing condition substantially as proposed so that it does not extend to a free writing prospectus prepared by an underwriter, even one including information prepared on the basis of or derived from issuer information that does not include issuer information, unless the free writing prospectus falls into the "broad dissemination" category. Free writing prospectuses sent directly to customers of an offering participant, without regard to number, are not broadly disseminated for purposes of the Rule.

Although we attempted in the proposals to address the cross-liability concerns by restricting the filing obligations only to limited situations, commenters on our proposals continued to express concern about cross liability for another participant's free writing prospectus, whether or not the participant used that free writing prospectus. Commenters requested clarification that use of a free writing prospectus by one offering participant will not subject other offering participants who do not use the free writing prospectus to liability under Securities Act Section 12(a)(2).[337] Some commenters recommended that the party should be considered to have offered and sold "by means of" a free writing prospectus, and liability for the free writing prospectus should arise, only if a party has used, prepared, or referred to the free writing prospectus.[338]

In response to commenters' continuing concerns about cross liability for free writing prospectuses used by an issuer and other offering participants, we have included a new provision in Rule 159A that will clarify when an offering participant, other than the issuer, is considered to offer and sell securities "by means of" a free writing prospectus. Under the new provisions of Rule 159A, an offering participant other than the issuer will not be considered to offer or sell securities to a person "by means of" a free writing prospectus unless:

- The offering participant used or referred to the free writing prospectus in offering or selling the securities to that person;
- The offering participant offered or sold the securities to that person and participated in planning for the use of that free writing prospectus by other offering participants and such free writing prospectus was used or referred to in offering or selling securities to that person by one or more of such other offering participants; [339] or
- Under the conditions for use of the free writing prospectus in Rule 433, the offering participant is required to file the free writing prospectus with us pursuant to Rule 433.[340]

The Rule, as revised, also provides that a person will not be considered to offer or sell securities by means of a free writing prospectus solely because another person has used or referred to the free writing prospectus or filed the free writing prospectus with us. As a result of these provisions, we believe that offering participants will be able to determine when they will be considered to have offered or sold securities by means of any particular free writing prospectus.

c. Interaction of New Communications Rules With Regulation FD

i. Amendments to Regulation FD

As a consequence of our new rules to liberalize communications during the offering process and encourage continuing ongoing regular

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[334] See, *e.g.*, letters from ABA and Alston.

[335] A free writing prospectus filed pursuant to Rule 433 will be filed as a separate filing similar to the way in which Rule 425 filings are made. A free writing prospectus will not have to be filed under Exchange Act Form 8–K. Issuers, of course, may file a free writing prospectus on Form 8–K if they wish to have the information incorporated by reference into the registration statement. The free writing prospectus also can be filed as part of the registration statement or, where permitted, included in an Exchange Act report incorporated by reference into the registration statement. In such case, the free writing prospectus would be subject to Securities Act Section 11 liability. Once a communication or other document is made part of or incorporated by reference into a registration statement, Section 11 applies to it as part of the registration statement, whether or not it is an offer.

[336] See, *e.g.*, comment letters in File No. S7–30–98 from ABA; Ford Motor Credit Company; ICI; Merrill Lynch; and S&C.

[337] See, *e.g.*, letters from ABA; Citigroup; Cleary; CSFB; Davis Polk; Deloitte; Goldman Sachs; ICI; Morgan Stanley; SIA; and TBMA.

[338] See, *e.g.*, letters from ABA and Goldman Sachs.

[339] We do not intend that the typical inter-syndicate arrangement providing for sales out of the syndicate "pot" falls within this provision, unless the arrangement contemplates use of free writing prospectuses in a manner described in the provision.

[340] The Rule does not address when an issuer offers or sells "by means of" a free writing prospectus. The Rule does address when an issuer is considered to be a seller for purposes of Securities Act Section 12(a)(2). See discussion in Section IV.B below under "Issuer as Seller."

communications by reporting issuers, we are revisiting the exclusions from Regulation FD for communications made during a registered offering of securities.[341] The communications regime that we are adopting today contemplates that, in connection with an offering, certain material non-public issuer information can be made public through the prospectus filed as part of a registration statement or the issuer's filing of free writing prospectuses. Oral communications of an issuer made in connection with a registered offering after the registration statement is filed will continue not to be subject to any filing or public disclosure requirement. As we stated in the Proposing Release, we continue to believe that subjecting oral communications that occur in connection with a registered offering in a capital formation transaction to a public disclosure requirement could adversely affect the capital formation process.

We are amending Regulation FD substantially as proposed to specify the circumstances, both in terms of the type of offering and the means of communication, in which issuer communications will be excluded from the operation of that Regulation in connection with a registered securities offering.

First, as amended, Regulation FD will not apply to disclosures made in the following communications in connection with a registered securities offering that is of the type excluded from the Regulation:

- A registration statement filed under the Securities Act, including a prospectus contained therein;
- A free writing prospectus used after filing of the registration statement for the offering or a communication falling within the exception to the definition of prospectus contained in clause (a) of Securities Act Section 2(a)(10);
- Any other Section 10(b) prospectus;
- A notice permitted by Securities Act Rule 135;
- A communication permitted by Securities Act Rule 134; or
- An oral communication made in connection with the registered securities offering after filing of the registration statement for the offering under the Securities Act.

Second, prior to our actions today, Regulation FD applied to offerings of the types described in Rule 415(a)(1)(i) through (vi).[342] Rule 415(a)(1)(i) provides for offering by selling security holders. We are amending Regulation FD to clarify that, as to offerings of the type described in Rule 415(a)(1)(i) where the registered offering also includes a registered offering, whether or not underwritten, for capital formation purposes for the account of the issuer, Regulation FD does not apply, unless the issuer's offering is included for the purpose of evading Regulation FD.[343] The amendments do not otherwise change the types of registered offerings that are excluded from, or subject to, the operation of the Regulation.

In view of our new rules to expand permissible communications, we believe it is appropriate to clarify that the communications excluded from the operation of Regulation FD are, in fact, those communications that are directly related to a registered securities offering. Communications not contained in our enumerated list of exceptions from Regulation FD—for example, the publication of regularly released factual business information or regularly released forward-looking information or pre-filing communications—are subject to Regulation FD.

ii. Comments on Amendments to Regulation FD

Most commenters on the proposed changes to Regulation FD supported the inclusion of the specific enumeration of communications in connection with offerings that are not subject to the provisions of Regulation FD.[344] Commenters expressed concern that the proposed changes limited the Regulation FD exclusion only to registered offerings involving capital formation transactions.[345] Some commenters believed that the Regulation FD exclusion should cover all secondary offerings (those on behalf of selling security holders), regardless of whether conducted as part of an issuer capital raising transaction.[346]

We have clarified the modifications to Regulation FD from the proposals. We have not changed the types of offerings in which disclosures are subject to Regulation FD. The only change we are making from the current language is to provide that disclosures made in connection with registered offerings by selling security holders of the type described in Rule 415(a)(1)(i) are excluded from the application of Regulation FD if the offering also includes a registered primary offering that is a capital formation transaction for the account of the issuer.

The change to Regulation FD does not, as some commenters may have misinterpreted, mandate that all registered securities offerings be for capital formation purposes as a condition of exclusion from the operation of Regulation FD. The exclusions prior to and after the change have the general effect of excluding capital formation transactions, but there was, and after the change will be, no separate "capital formation" requirement for the exclusions. Rather, the change will provide that secondary offerings will be excluded from Regulation FD if the offering also includes a registered capital formation transaction for the account of the issuer.

4. Use of Research Reports

a. Current Regulatory Treatment of Research Reports

The veracity and reliability of research reports, particularly those issued by full service broker-dealers, have received significant attention in recent years. The Sarbanes-Oxley Act,[347] Regulation AC,[348] the self-regulatory organization rules we approved,[349] and the global research analyst settlement[350] have addressed many of the abuses identified with analyst research and have required structural reforms and increased

[341] See 17 CFR 243.100(b)(2).

[342] The types of offerings under these provisions of Rule 415 are delayed or continuous offerings that are (1) securities to be offered or sold solely by or on behalf of selling security holders other than the issuer or its subsidiaries; (2) securities offered pursuant to dividend or interest reinvestment plans or an employee benefit plan of the issuer; (3) securities to be issued upon the exercise of outstanding options, warrants, or rights; (4) securities to be issued upon conversion of other outstanding securities; (5) securities pledged as collateral; and (6) securities registered on Form F–6.

[343] This provision will cover the situation, for example, where a *de minimis* issuer participation is included in what is otherwise entirely a selling security holder offering for the purpose of excluding communications in the offering from the application of Regulation FD.

[344] See, *e.g.*, letters from Cleary; Fried Frank; and NYCBA.

[345] See, *e.g.*, letters from ABA; Merrill Lynch; and TBMA.

[346] See, *e.g.*, letters from ABA and NYCBA.

[347] See Section 501 of the Sarbanes-Oxley Act [15 U.S.C. 78o–6(a)(2)].

[348] Regulation AC requires, among other things, that brokers, dealers and certain persons associated with a broker or dealer include in research reports certifications by the research analyst that the views expressed in the report accurately reflect his or her personal views, and disclose whether or not the analyst received compensation or other payments in connection with his or her specific recommendation or views. See Regulation AC, note 327.

[349] See *Order Approving Proposed Rule Changes Relating to Research Analyst Conflicts of Interest*, Release No. 34–45908 (May 10, 2002) [67 FR 34968]; *Order Approving Proposed Rule Changes Relating to Research Analyst Conflicts of Interest*, Release No. 34–48252 (Aug. 4, 2003)[68 FR 34968].

[350] See Lit. Rel. No. 18438 (Oct. 31, 2003); Press Release 2004–120 (Aug. 26, 2004).

disclosures.[351] As a direct result of these initiatives and actions, we expect that analyst research reports used by market participants will better disclose conflicts of interest relating to research of which investors should be aware.

The value of research reports in continuing to provide the market and investors with information about reporting issuers cannot be disputed. Research analysts study publicly traded issuers and provide information about the securities of those issuers, often through the issuance of research reports.

We believe it is appropriate to limit the restrictions on research under the gun-jumping provisions of the Securities Act to those we believe are appropriate to avoid offering abuses. Given the ongoing flow of information into the market, particularly with respect to reporting issuers and the enhancements to the environment for research imposed by recent statutory, regulatory, and enforcement developments, we believe it is appropriate to make measured revisions to the research rules that are consistent with investor protection but that will permit dissemination of research around the time of an offering under a broader range of circumstances.

b. Amendments to Exemptions for Research

Rules 137, 138, and 139 under the Securities Act describe circumstances in which a broker or dealer may publish research constituting an offer around the time of a registered offering without violating the Section 5 prohibitions on pre-filing offers and impermissible prospectuses. We are adopting measured amendments that will make incremental modifications to these rules.[352] As adopted, the rules will, for the first time, contain a definition of research report. The rules also expand the circumstances in which offering participants and persons who are not offering participants will have safe harbor exemptions for dissemination of research reports during a registered offering.[353]

The amendments we are adopting today are designed to ensure that appropriate investor protections are maintained. In that regard, we have maintained our current approach with respect to liability for research, which includes general anti-fraud liability, used in reliance on these rules.[354]

i. Definition of Research Report

Based on comments, we believe it is important to have a significant measure of consistency between Regulation AC and the research safe harbors contained in Rules 137, 138, and 139. We do not believe, however, that absolute consistency is appropriate in recognition of the differences in the purposes of the rules. Accordingly, we are adopting a definition of research report that builds on the definition of "research report" in Regulation AC, while preserving the purposes of Rules 137, 138, and 139.

(A) Definition

As adopted, "research report" is defined as a written communication, as defined in Securities Act Rule 405, that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.[355] This definition is intended to encompass all types of research reports, whether issuer-specific or industry research separately identifying the issuer.

Unlike the proposals, the definition does not require that the research report contain sufficient information on which to base an investment decision. As with the current research rules, the definition is limited to research, including information, opinions, or recommendations, contained in written communications.[356]

Under the definition of "research report" we are adopting today, there could be some differences in the types of communications that will constitute a research report under the research safe harbors as compared to Regulation AC. In light of the different purposes of the rules, we believe the distinctions are appropriate and will not raise investor

[351] The settlement, which involved twelve brokerage firms and two individuals, requires the settling firms to, among other things, adopt changes designed to ensure that there is a structural separation between the firm's analysts and investment bankers. The firms are required to include enhanced disclosures, including disclosure of potential conflicts of interests in research reports and public disclosure of their analysts' quarterly performance. The firms also are required to pay for independent research for a five-year period and to make this research available to the firm's customers.

The National Association of Securities Dealers and the New York Stock Exchange adopted rules, among other things, requiring separating analyst compensation from investment banking influence, prohibiting analysts from issuing research reports around the expiration of a lock-up agreement (sometimes called "booster shot" research reports), imposing quiet periods around the issuance of research reports for offering participants, prohibiting analysts from participating in "pitches" or other communications for the purpose of soliciting investment banking business, restricting prepublication review of research reports by non-research personnel, prohibiting retaliation by investment banking against analysts whose reports or public appearances may adversely affect an investment banking relationship, requiring disclosure of any compensation received from an issuer as well as client relationship with an issuer, and imposing additional registration, qualification, and continuing education requirements on research analysts.

[352] The safe harbor provisions of Securities Act Rules 137, 138, and 139 will continue to be available only to brokers and dealers. Issuers cannot use the safe harbor provisions for research reports prepared or distributed by brokers or dealers in reliance on the rules to directly or indirectly communicate with potential investors about the issuer's offering. For example, a hyperlink on an issuer's web site during its registered offering to a research report could raise concerns in this regard. Issuers using research reports in this manner could be deemed to have adopted the contents of such reports and, under our rules, the reports could be considered free writing prospectuses.

[353] The amendments to the rules will continue to permit the distribution of independent research within the safe harbor provisions. Our research rules permit the distribution of independent research provided the distribution satisfies the conditions of the rules. For brokers and dealers subject to the global research analyst settlement, their ability to continue to distribute independent research during a registered securities offering depends on concluding that the independent research distribution by the broker or dealer satisfies the conditions of the research rule at the time of the distribution or is otherwise not an offer. If a broker or dealer is not able to rely on any of the research safe harbors for their own research, they similarly cannot rely on the safe harbor to distribute independent research. For example, independent research that is prepared by an entity not participating in an offering but paid for by a broker or dealer participating in an offering will be distributed by an offering participant and thus will not satisfy the requirements of Securities Act Rule 137 and cannot be used in reliance on the safe harbor. Such research may continue to be distributed by the entity not participating in the offering that prepared it without involvement by an offering participant. A research report constituting an offer and not falling within a safe harbor will be considered a free writing prospectus. Our research rules also do not supersede the requirements of any applicable rule of a self-regulatory organization regarding the timing of the distribution of research reports. See, e.g., NYSE Rule 472(f)(1) through (4) and NASD Rule 2711(f)(1) through (4).

[354] Research reports published or distributed in reliance on Rules 138 and 139 are not offers for purposes of Securities Act Section 2(a)(10) and Section 5(c). Brokers or dealers publishing or distributing research in reliance on Rule 137 are not considered underwriters of the securities under Securities Act Section 2(a)(11). Of course, the anti-fraud provisions of the federal securities laws continue to apply to such communications. See Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b–5 thereunder.

[355] The definition of "research report" is included in each of Rules 137, 138, and 139.

[356] The twelve brokerage firms that were part of the global research analyst settlement agreed to disclose, on trade confirmations and on account statements, as well as on the firms' web sites, their research ratings, along with the research ratings of the independent research providers who cover the security. We do not believe that the continued publication of these ratings on trade confirmations and on account statements, as required under the global research analyst settlement, would raise concerns about whether the ratings were offers in that they would be provided in the ordinary course, and as to confirmations, after the sale of the securities. The continued inclusion of either the firm's own ratings or those of the independent research provider on the firms' web sites during an offering could be an offer of the issuer's securities unless the safe harbors in Rules 137, 138, or 139 are available to the firm at that time.

protection concerns. For example, for purposes of Rule 139, it is possible that particular documents, such as industry reports, will be research reports under our new definition, even if they fall outside of the definition of "research report" under Regulation AC.

The definition of research report we are adopting today retains the condition that the research be in a written communication. A publication element has been a condition of the research safe harbors since the rules were first contemplated and adopted. From the earliest Commission statements in the 1960's, the Commission did not want to discourage the ongoing publication of research reports by market professionals, provided they were provided within the scope of the restrictions of Securities Act Section 5.[357] The research safe harbors have always been aimed at written reports due to the Section 5 restrictions on written offers.

The research safe harbors are not intended to protect oral communications that might be offers from the liability provisions of Securities Act Section 12(a)(2).[358] Similarly, in our new definition, we are not expanding the scope of the research safe harbors to cover oral communications because we believe that the appropriate liability provisions should continue to apply to such oral communications. Whether oral communications relate to general research or are in connection with an offering may also involve distinctions that are too fine to be appropriate for the research exemptions. Whether a particular oral communication about an issuer or its securities by an offering participant is an offer will thus continue to depend on the facts and circumstances.

(B) Comments on Definition of Research Report

While commenters supported the proposed amendments to the research safe harbors,[359] they were concerned that the proposed definition of research report would narrow the types of research that would be eligible for the safe harbors.[360] In particular, commenters requested that the research report definition not be the same as in Regulation AC requiring that the research report contain information sufficient upon which to make an investment decision.[361] Rather, the commenters requested that, as today, the research safe harbors be available for information, opinions, and recommendations about an issuer or its securities.[362] Some commenters also requested that the definition of research permit the use of oral, rather than just written, research in reliance on the safe harbors.[363]

As we discuss above, we have revised the proposed definition of research report for purposes of Rules 137, 138, and 139 to make clear that it continues to apply to information, opinions, or recommendations contained in written communications. We agree with commenters that for purposes of Rules 137, 138, and 139 a research report does not have to contain information sufficient to make an investment decision for the research safe harbors to be available and have revised the definition accordingly. We have not, however, expanded the scope of the research safe harbors to encompass oral communications.

ii. Rule 137

Rule 137 provides that a broker or dealer that is not an offering participant in a registered offering but publishes or distributes research reports with respect to an issuer's securities will not be considered to be engaged in a distribution of the issuer's securities and would therefore not be an underwriter in the offering. We are expanding the exemption, as proposed, to apply to securities of any issuer, including non-reporting issuers, with exceptions for blank check companies, shell companies, and penny stock issuers. Rule 137 will continue to be available only to brokers and dealers who:

- Are not participating in the registered offering of the issuer's securities;
- Have not received compensation from the issuer, its affiliates, or participants in the securities distribution, among others, in connection with the research report; and
- Publish or distribute the research report in the regular course of business.

Commenters supported the proposed changes to Rule 137 but requested that the rule make clear that the prohibition on consideration from the issuer would apply only to consideration paid in connection with the publication or distribution of the research report.[364] Other commenters suggested that the safe harbor be expanded to permit dealers to rely on the safe harbor for the publication and distribution of research reports after the effectiveness of the registration statement.[365]

We are adopting as proposed, and as is in current Rule 137, the provision prohibiting compensation in connection with the publication or distribution of the research report. In response to commenters' concerns regarding compensation, however, we have clarified the compensation language in Rule 137 to provide that the prohibition on compensation applies to compensation for the particular research report. While the safe harbor covers research reports provided after effectiveness of the registration statement, it continues to be an exemption from the definition of underwriter.

iii. Rule 138

Rule 138 permits a broker or dealer participating in a distribution of an issuer's common stock and similar securities to publish or distribute research that is confined to that issuer's fixed income securities, and vice versa, if it publishes or distributes that research in the regular course of its business. We believe it is appropriate to permit research on a broader group of reporting issuers under Rule 138 in

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[357] As the Commission stated in 1983, * * * research reports containing information, opinions or recommendations with respect to a proposed offering, under certain circumstances, may be considered offers to sell under Section 5(c), particularly when a broker-dealer is a participant in the distribution. In addition, research reports disseminated by participating broker-dealers in the waiting or post-effective periods which do not meet Section 10 prospectus requirements or are not accompanied by a Section 10 prospectus may violate Section 5(b)(1).

Research Reports, Release No. 33–6492 (Oct. 5, 1983)[48 FR 46801]. See *Publicotion of Informotion and Delivery of Prospectus by Broker Deolers Prior to or After the Filing of a Registration Statement Under the Securities Act of 1933*, Release No. 33–5010 (Oct. 7, 1969) [34 FR 18130]; *Adoption of Rules Reloting to Publicotion of Informotion ond Delivery of Praspectus by Broker-Dealers Priar to ar After the Filing of a Registrotion Stotement under the Securities Act of 1933*, Release No. 33–5101 (Nov. 19, 1970) [35 FR 18457]; *Research Reports*, Release No. 33–6550 (Sept. 19, 1984) [49 FR 36719]; *Amendments to Clorify Safe Horbors for Broker-Dealer Research Reports*, Release No. 33–7120 (Dec. 13, 1994) [59 FR 31038]; and *Adoption of Amendments to Clarify Safe Harbars for Broker-Deoler Research Reports*, Release No. 33–7132 (Feb. 1, 1995) [60 FR 6965]. See also the Wheat Report, note 21.

[358] In this regard, we note that the title of each safe harbor refers to "certain publications." After a registration statement is filed, oral communications regarding a registered securities offering are not constrained by the gun-jumping provisions of the Securities Act.

[359] See, *e.g.*, letters from ABA; Davis Polk; Fried Frank; NYSBA; Richard Hall; and S&C.

[360] See, *e.g.*, letters from ABA; Citigroup; Cleary; Davis Polk; Merrill Lynch; NYSBA; Prudential Equity Group, LLC ("PEG"); S&C; and SIA.

[361] See, *e.g.*, letters from ABA; NYSBA; S&C; and SIA.

[362] See, *e.g.*, letters from ABA; Cleary; Merrill Lynch; PEG; and SIA.

[363] See, *e.g.*, letters from ABA; S&C; and SIA.

[364] See, *e.g.*, letters from Fried Frank; PEG; and S&C.

[365] See, *e.g.*, letters from ABA; Merrill Lynch; and PEG.

view of the regulatory reforms and the role of independent research. Further, we believe the current limitation on the type of issuers under this Rule is no longer necessary to protect investors.

(A) Amendments to Rule 138

We are amending Rule 138 substantially as proposed to expand the categories of eligible issuers. As adopted, the Rule generally will cover research reports on all reporting issuers that are current in their periodic Exchange Act reports on Forms 10–K, 10–KSB, 10–Q, 10–QSB, and 20–F at the time of reliance on the exemptions, rather than only issuers who are Form S–3 or Form F–3 eligible, as is currently the case. In addition, in response to commenters' suggestions, we are expanding the Rule as it applies to foreign private issuers to allow broker-dealers publishing or distributing research reports on non-reporting foreign private issuers that either have had equity securities traded on a designated offshore market or have a $700 million worldwide public float to rely on the Rule.[366] Like the amendments regarding Rules 137 and 139 that we are adopting today, the Rule excludes research reports on issuers that have historically posed certain risks of abuse, including blank check companies, shell companies, and penny stock issuers.

We also are adopting as proposed the condition to the Rule 138 exemption that the broker or dealer must have previously published or distributed research reports on the types of securities that are the subject of the reports in the regular course of its business.[367] As we stated in the Proposing Release, we believe that it is appropriate to include this condition because it is important that the broker or dealer have a history of publishing or distributing a particular type of research. This condition does not mean, however, that the broker or dealer must have a history of publishing research reports about the particular issuer or its securities. If a broker or dealer begins publishing research about a different type of security around the time of a public offering of an issuer's security and does not have a history of publishing research on those types of securities, we are concerned that such publication or distribution might be a way to provide information about the publicly offered securities in order to circumvent the provisions of Section 5 and the permissible free writing rules we are adopting today.

(B) Comments on Rule 138 Amendments

Commenters generally supported the expansion of the safe harbor to a broader class of issuers.[368] Some commenters suggested that the safe harbor also be available to research reports on voluntary filers and Schedule B issuers and that it apply to all private offerings.[369] A number of commenters requested a further change to the existing provisions of Rule 138 to eliminate the foreign private issuer eligibility condition regarding trading on a designated offshore securities market.[370] Finally, some commenters requested clarification of the condition that the broker or dealer be publishing reports on the same types of securities to be able to rely on the safe harbor, while others recommended eliminating this condition.[371]

We have adopted the amendments to Rule 138 substantially as proposed. We do not believe it is appropriate at this time to further expand the categories of eligible issuers under the Rule, other than for certain non-reporting foreign private issuers that have a significant worldwide public float. We have clarified that the broker dealer does not have to be publishing or distributing research reports about a particular issuer or its securities to rely on the Rule, only that the research reports cover the same types of securities. We have not expanded the scope of the research safe harbor to cover all private offerings.

iv. Rule 139

Rule 139 permits a broker or dealer participating in a distribution of securities by a seasoned issuer or by certain non-reporting foreign private issuers to publish research concerning the issuer or any class of its securities, if that research is in a publication distributed with reasonable regularity in the normal course of its business. Rule 139 also provides a safe harbor for industry reports covering smaller seasoned issuers, if the broker or dealer complies with restrictions on the nature of the publication and the opinion or recommendation expressed in that publication.

(A) Issuer-Specific Reports

(1) Amendments Regarding Issuer-Specific Reports

We are adopting the amendments to Rule 139 to allow reports about a specific issuer that, at the time of reliance on the Rule, is current in its Exchange Act periodic reports and:

- At the later of the time of filing its most recent registration statement on Form S–3 or Form F–3 or the time of filing of its most recent amendment to such registration statement for purposes of complying with Securities Act Section 10(a)(3), is eligible to register a primary offering of securities on Forms S–3 or F–3, based on the $75 million minimum public float eligibility provision of those forms; or
- At the time of reliance on the Rule, the issuer's registration statement covers an offering of the issuer's securities in reliance on General Instruction I.B.2 of Form S–3 or Form F–3.

As with Rule 138, we are allowing reports on a broader category of non-reporting foreign private issuers also to be covered by the Rule.[372] Research reports on penny stock issuers, blank check companies, and shell companies are excluded from Rule 139.

In the amendments we are adopting today, we are retaining the requirement that the broker or dealer publish or distribute the research report in the regular course of its business. We are not retaining the requirement of publication with reasonable regularity. As we stated in the Proposing Release, we do not believe that the reasonable regularity requirement has added any particular degree of investor protection and has raised concerns as to when the condition is satisfied. We are, however, requiring that the broker or dealer must, at the time of reliance on the Rule, have distributed or published at least one research report about the issuer or its securities, or have distributed or published at least one such report following discontinuing coverage. This requirement, we believe, retains the most important element of the "reasonable regularity" requirement, namely that the report initiating (or re-

[366] Prior to today's amendments, Rule 138 required that a foreign private issuer's securities be traded on a designated offshore securities market for at least twelve months. We are amending the Rule to specify that this requirement relates to the issuer's equity securities. Current Rule 138 covers issuers that are Form S–2 or Form F–2 eligible as well. Because we are eliminating these Forms, as discussed below, we have revised Rule 138 to eliminate the reference to those forms.

[367] Prior to today's amendments, Rule 138 required that the broker or dealer publish or distribute research in the regular course of business, but did not contain a condition that the broker or dealer have published or distributed research reports on the same types of securities.

[368] See, *e.g.*, letters from ABA and S&C.

[369] See, *e.g.*, letters from ABA; Cleary; IBA; Merrill Lynch; NYSBA; and SIA.

[370] See, *e.g.*, letters from ABA; Citigroup; Goldman Sachs; and SIA.

[371] See, *e.g.*, letters from ABA; NYSBA; and SIA.

[372] As in the changes to Rule 138, we are providing that a non-reporting foreign private issuer must either have its equity securities be traded on a designated offshore securities market for at least twelve months or have a $700 million worldwide public float.

initiating) coverage of an issuer not benefit from an exemption under Rule 139.

As we noted previously, we are not requiring any minimum time period for the broker or dealer to have distributed or published research reports, only that the particular broker or dealer have initiated or re-initiated coverage. In addition, the amendment as adopted does not require that the previously published or distributed research report cover the same securities that are the subject of the registered offering.

(2) Comments on Issuer-Specific Reports

Commenters supported extending the safe harbor to a broader class of issuers and recommended further extension to all reporting issuers, investment companies, and business development companies.[373] We have not extended the safe harbor to a broader class of issuers than we proposed, other than for certain non-reporting foreign private issuers with a significant public float. Commenters also requested clarification that the proposed changes would only require the publication or distribution of one prior research report in order to be able to rely on the safe harbor.[374] As noted above, we have clarified the Rule in this regard to require only that coverage be initiated or re-initiated.

(B) Industry-Related Reports

(1) Amendments Regarding Industry-Related Reports

As adopted, industry reports under Rule 139 can cover issuers required to file reports pursuant to Exchange Act Section 13 or Section 15(d) and issuers satisfying the conditions regarding non-reporting foreign private issuers. The safe harbor for industry reports is not available if the issuer is or during the last three years was or any of its predecessors was a blank check company, shell company (other than business combination related shell company), or penny stock issuer. As adopted, the amendments extend the safe harbor for industry reports to registered offerings of any reporting issuer.

Today's amendments remove the prohibition on a broker or dealer making a more favorable recommendation than the one it made in the last publication. As in the proposals, we are not requiring that the research report include any prior recommendations regarding the issuer or its securities. We are adopting as proposed the requirement that the research reports contain similar types of information about the issuer or its securities as contained in prior reports.

We believe that the recently adopted safeguards regarding analyst recommendations make it appropriate to remove the "no more favorable" recommendation conditions in current Rule 139. We believe the Rules, as amended, are consistent with our recent actions affecting research analysts and research reports and will result in enhanced opportunity to provide information to investors regarding issuers and their securities.

In the instruction regarding projections, we are requiring that projections be provided for substantially all the issuers listed in the comprehensive list of securities contained in the report.

(2) Comments on Industry-Related Reports

Commenters supported the safe harbor for industry-related reports for all reporting issuers and suggested expanding the safe harbor further to include all issuers, whether or not reporting, including voluntary filers.[375] Commenters also supported the elimination of the previous publication condition in the safe harbor.[376] Some commenters thought that the disqualification for research reports on blank check, shell companies, and penny stock issuers should remain at two years, not three, and that Rules 137 and 138 should have only a two-year disqualification.[377]

We have not expanded the coverage of the safe harbor to all issuers or to include voluntary filers. In addition, we have provided that the disqualification for blank check companies, shell companies (other than business combination related shell companies), and penny stock issuers is for three, rather than two, years to be consistent with all of the Rules we are adopting today that have similar disqualification provisions.

v. Rule 139a

In the Asset-Backed Securities Adopting Release, we noted that we were considering amendments to Rules 137, 138 and 139 in connection with these reform proposals and:

To the extent these existing safe harbors are modified, we also will consider similar modifications to the ABS safe harbor. We also encourage ABS market participants to comment specifically on the proposals in that release regarding any appropriate changes to the existing safe harbors or the ABS safe harbor.[378]

In light of the modifications we are making to Rule 139 today to eliminate the requirement that in an industry report a recommendation regarding the registrant or its securities can only be included if a recommendation as favorable or more favorable had appeared in the last publication of the broker-dealer, we are eliminating paragraph (c) of Rule 139a, which contains a comparable provision for recommendations in reports on asset-backed securities.

Commenters suggested the elimination of paragraph (c) and also suggested that the "reasonable regularity" requirement in Rule 139a be eliminated. While we have eliminated the latter requirement in Rule 139, we have added a requirement that the research report not represent the initiation or reinitiation of research coverage. In Rule 139a the "reasonable regularity" requirement extends to reports on multiple issuers and transactions. We have therefore decided to retain the "reasonable regularity" requirement in Rule 139a.

vi. Research Report Amendments in Connection With Regulation S and Rule 144A Offerings

We are concerned that the restrictions in Regulation S on directed selling efforts and offshore transactions[379] and in Rule 144A on offers to non-qualified institutional buyers ("QIBs") and general solicitation[380] have resulted in brokers and dealers unnecessarily

[373] See, *e.g.*, letters from ABA; Citigroup; Goldman Sachs; Morgan Stanley; NYSBA; S&C; and SIA.

[374] See, *e.g.*, letters from ABA; Citigroup; Cleary; CSFB; Merrill Lynch; Morgan Stanley; S&C; and SIA.

[375] See, *e.g.*, letters from ABA; NYSBA; S&C; and SIA.

[376] See, *e.g.*, letters from ABA and S&C.

[377] See, *e.g.*, letters from ABA and S&C.

[378] See Asset-Backed Securities Adopting Release, note at III.C.2.b.

[379] Securities Act Regulation S [17 CFR 230.901 through 230.905] provides a safe harbor from the registration requirements of the Securities Act for offshore offers and sales of securities. When a broker or dealer participates in a Regulation S offering, questions arise regarding whether research activities would conflict with the prohibition against directed selling efforts or the offshore transaction condition. The concern stems from the fact that the distribution or publication of research could be viewed as conditioning the market, which would constitute directed selling efforts, or offering the securities in the United States, which is prohibited under the "offshore transaction" requirement.

[380] Securities Act Rule 144A provides a safe harbor from the registration requirements of the Securities Act for resales of restricted securities to QIBs. When a broker or dealer is selling securities in reliance on Rule 144A, it is subject to the condition that it may not make offers to persons other than those it reasonably believes are QIBs. Where it distributes research about the issuer around the time of a Rule 144A transaction, questions arise regarding whether it may be viewed as making offers to persons that receive the research, including those who are not QIBs.

withholding regularly published research.[381] Accordingly, we are adopting as proposed amendments providing that research reports meeting the conditions of Rule 138 and Rule 139 will not be considered offers or general solicitation or general advertising in connection with offerings relying on Rule 144A.[382] The amendments also provide that these research reports will not constitute directed selling efforts or be inconsistent with the offshore transaction requirements of Regulation S.[383]

We do not believe that the publication of research in reliance on Rules 138 and 139 will jeopardize the interests of investors in transactions relying on Rule 144A or Regulation S. On the other hand, limiting the ability to rely on these exemptions when research on the issuers may otherwise be available could, we believe, negatively impact information available to investors. Commenters supported the proposals to exempt research reports meeting the conditions of the safe harbor from the restrictions in Regulation S and Rule 144A.[384]

vii. Research and Proxy Solicitations

We are adopting with one modification from the proposal a codification of a Commission staff position[385] that the publication or distribution of research under the conditions set forth in Rules 138 and 139 is permitted in connection with a transaction that is subject to the proxy rules under the Exchange Act.[386] The new Rule provides that distribution of research in accordance with Rule 138 or Rule 139 is a solicitation to which Rules 14a–3 through 14a–15 (other than Rule 14a–9) of the proxy rules[387] does not apply. Commenters supported the proposal to codify the staff position and one requested that the exemption not be restricted to use only in connection with transactions registered under the Securities Act.[388] We are adopting Rule 14a–2(b)(5) without the requirement that the exemption be limited to transactions registered under the Securities Act.

IV. Liability Issues

A. Information Conveyed by the Time of Sale for Purposes of Section 12(a)(2) and Section 17(a)(2) Liability

1. Interpretation and Rule

Under the Securities Act, purchasers of an issuer's securities in a registered offering have private rights of action for materially deficient disclosure in registration statements under Section 11 and in prospectuses and oral communications under Section 12(a)(2). Section 11 liability exists for untrue statements of material facts or omissions of material facts required to be included in a registration statement or necessary to make the statements in the registration statement not misleading at the time the registration statement became effective. Under Section 12(a)(2), sellers have liability to purchasers for offers or sales by means of a prospectus or oral communication that includes an untrue statement of material fact or omits to state a material fact that makes the statements made, based on the circumstances under which they were made, not misleading.[389] Securities Act Section 17(a) is a general anti-fraud provision which provides, among other things, that it shall be unlawful for any person in the offer and sale of a security to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.[390]

The term "sale" under the Securities Act includes any contract of sale.[391] As we discussed in the Proposing Release, we believe that we should address the discrepancies in time between the time of the contract of sale for securities (when an investor becomes committed to purchase the securities) on the one hand, and the later time of availability of a prospectus (and perhaps other information) on the other hand. The Securities Act registration regime permits final prospectuses to become available after an investor becomes committed to purchase a security.[392] This availability, therefore, does not necessarily address the receipt by an investor of information at the time of its contractual commitment.

We provided an interpretation of Section 12(a)(2) and Section 17(a)(2) in our Proposing Release and we are reaffirming that interpretation. Securities Act Section 12(a)(2) and Section 17(a)(2) do not require that oral statements or the prospectus or other communications contain all information called for under our line-item disclosure rules or otherwise contain all material information.[393] Rather, under these provisions, the determination of liability is based on whether the communication includes a material misstatement or fails to include material information that is necessary to make the communication, under the circumstances in which it is made, not misleading. Under our interpretation, the time at which an investor has taken the action the investor must take to become committed to purchase the securities, and has therefore entered into a contract of sale.

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[381] In the 1998 proposals, we expressed the interpretive view that brokers and dealers may publish and distribute research reports as described in current Rule 138 and 139 without such reports being deemed to constitute "directed selling efforts." The amendments we are adopting today codify that interpretation.

[382] See amendments to Rule 138 and Rule 139.

[383] See amendments to Regulation S.

[384] See, *e.g.*, letters from ABA and Merrill Lynch.

[385] See Division of Corporation Finance no-action letter to Merrill, Lynch, Pierce, Fenner & Smith, Inc. (Oct. 24, 1997).

[386] See Exchange Act Rule 14a–2(b)(5) [17 CFR 240.14a–2(b)(5)].

[387] 17 CFR 240.14a–3 through 240.14a–15.

[388] See, *e.g.*, letters from ABA and Merrill Lynch.

[389] Whether any particular statement or omission is material will depend on the particular facts and circumstances. Information is material if "there is a substantial likelihood that a reasonable shareholder would consider it important" in making an investment decision. *TSC Industries, Inc.* v. *Northway, Inc.*, 426 U.S. 438, 449 (1976); see also *Basic* v. *Levinson*, 485 U.S. 224, 231 (1988). To fulfill the materiality requirement, there must be a substantial likelihood that a fact "would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." *Id.*

Courts have analyzed materiality under Exchange Act Section 10(b) and Exchange Act Rule 10b–5, and Securities Act Sections 11 and 12(a)(2) in a similar fashion. See, *e.g.*, *In re Donald J. Trump Casino Sec. Litig.*, 7 F.3d 357, 368 n.10 (3d Cir. 1993) (noting that while there are substantial differences in the elements that a plaintiff must establish under these provisions, they all have a materiality requirement and this element is analyzed the same under all of the provisions).

[390] See Securities Act Section 17(a)(2).

[391] See Securities Act Section 2(a)(3). Courts have held consistently that the date of a sale is the date of contractual commitment, not the date that a confirmation is sent or received or payment is made. See, *e.g.*, *Radiation Dynamics, Inc.* v. *Goldmuntz*, 464 F.2d 876, 891 (2d Cir 1972) (holding that a purchase occurs at "the time when the parties to the transaction are committed to one another"); *In re Alliance Pharmaceutical Corp. Secs. Lit.*, 279 F. Supp. 2d 171, 186–187 (S.D.N.Y. 2003) (following the holding in *Radiation Dynamics* with respect to the timing of a contract of sale); *Pahmer* v. *Greenberg*, 926 F. Supp. 287, (citing *Finkel* v. *Stratton Corp.*, 962 F.2d 169, 173 (2d Cir. 1992) ("[A] sale occurs for Section 12[(a)](2) purposes when the parties obligate themselves to perform what they have agreed to perform even if the formal performance of their agreement is to be after a lapse of time")); *Adams* v. *Cavanaugh Communities Corp.*, 847 F. Supp. 1390, 1402 (N.D. Ill. 1994) (noting that the Seventh Circuit has followed the *Radiation Dynamics* decision). Also, as indicated in note , below, the Uniform Commercial Code no longer requires that a securities contract be in writing.

[392] For example, in a shelf offering our rules permit an issuer to file a final prospectus supplement not later than the second business day after a takedown from the shelf registration statement.

[393] Registration statements or final prospectuses or prospectus supplements would, as today, require inclusion of information necessary to satisfy our line-item requirements and other applicable requirements.

is one appropriate time[394] to apply the liability standards of Section 12(a)(2) and Section 17(a)(2).[395]

We interpret Section 12(a)(2) and Section 17(a)(2) as meaning that, for purposes of assessing whether at the time of sale (including a contract of sale) a prospectus or oral communication or statement includes or represents a material misstatement or omits to state a material fact necessary in order to make the prospectus, oral communication, or statement, in light of the circumstances under which it was made, not misleading, information conveyed to the investor only after the time of sale (including a contract of sale) should not be taken into account.[396] For purposes of Section 12(a)(2) and Section 17(a)(2), whether or not information has been conveyed to an investor at or prior to the time of the contract of sale currently is a facts and circumstances determination, and our actions today do not affect that determination. Such information could include information in the issuer's registration statement and prospectuses for the offering in question, the issuer's Exchange Act reports incorporated by reference therein or information otherwise disseminated by means reasonably designed to convey such information to investors. Such information also could include information directly communicated to investors (including, under the rules we are adopting today, through the use of free writing prospectuses).[397]

As noted above, liability under Section 12(a)(2) attaches to an oral communication or prospectus by means of which an offer or sale is made that contains a material misstatement or omits to state a material fact necessary to make the statements, in light of the circumstances in which they were made, not misleading. Liability under Section 17(a)(2) attaches to an untrue statement of a material fact or an omission to state a material fact necessary to make the statements made, in light of the circumstances in which they were made, not misleading, by means of which money or property is obtained.

Under our interpretation, the liability determination under Section 12(a)(2) or Section 17(a)(2) as to an oral communication, prospectus, or statement, as the case may be, does not take into account information conveyed to a purchaser only after the time of sale (including the contract of sale), including information contained in any final prospectus, prospectus supplement, or Exchange Act filing that is filed or delivered subsequent to the time of sale (including the contract of sale) where the information is not otherwise conveyed at or prior to that time.[398]

In furtherance of our interpretation discussed above, we also are adopting as proposed an interpretive rule, Rule 159, under Section 12(a)(2) and Section 17(a)(2). We intend that the effect of our interpretive rule will be the same as our interpretation. Our new Rule provides the following:

- For purposes of Section 12(a)(2) and Section 17(a)(2) only, and without affecting any other rights under those sections, for purposes of determining at the time of sale (including the time of the contract of sale), whether a prospectus, oral statement, or a statement,[399] includes an untrue statement of material fact or omits to state a material fact necessary in order to make the statements, in light of the circumstances under which they were made, not misleading,[400] any information conveyed to the purchaser only after that time of sale will not be taken into account; and
- For purposes of Section 12(a)(2) only, a purchaser's "knowing of such untruth or omission" in respect of a sale (including a contract of sale) means knowing at the time of such sale.

We find that our interpretation and interpretive rule are in furtherance of the objectives of Section 12(a)(2) and Section 17(a) and are necessary for the protection of the rights of investors intended to be provided by those sections.

We do not believe that our interpretation or interpretive rule should result in "speed bumps" or otherwise slow down the offering process. Particularly in light of the new rules we are adopting today regarding communications, issuers and underwriters should have sufficient flexibility to convey information in a manner that does not slow the offering process. At the same time, in our view, the interpretation that liability under Section 12(a)(2) and Section 17(a)(2) should be determined based on information conveyed at the time of sale (including a contract of sale) is unassailable.

2. Comments and Guidance Regarding Our Interpretation and Rule 159

With regard to our interpretation of Securities Act Section 12(a)(2) and Securities Act Section 17(a)(2) and proposed Rule 159, commenters raised concerns in the following areas:

- The Section 12(a)(2) and Section 17(a)(2) analysis of the information conveyed;[401]
- The manner in which the time of "sale" is determined;[402] and

[394] Under our interpretation, the time of contract of sale can be the time the purchaser either enters into the contract (including by virtue of acceptance by the seller of an offer to purchase) or completes the sale. The time of the contract of sale under our interpretation follows the statutory definition of sale in Securities Act Section 2(a)(3). Under Section 2(a)(3), sale includes "every contract of sale.".

Our interpretation is not intended to affect any rights currently existing at any other time. Section 12(a)(2) applies to oral communications and prospectuses (including final prospectuses) at other times. Section 17(a)(2) similarly applies to statements at other times. In addition, both Securities Act Section 12(a)(2) and Section 17(a) assess liability for "offers" as well as for sales.

The 1954 amendments to the Securities Act permitting the use of a preliminary prospectus recognized that the final prospectus would not always be available to investors at the time they made their investment decisions. See 1954 Amendments to the Securities Act of 1933, Pub. L. No. 83–577 68 Stat. 683 (1954). Following the 1954 amendments, the Commission adopted a number of rules that would ensure that preliminary prospectuses were sent to investors in initial public offerings at least 48 hours before the confirmation of the sale of the securities could be sent. Our interpretation and rule do not affect this requirement. See Securities Act Rule 460 [17 CFR 230.460], and Exchange Act Rule 15c2–8 [17 CFR 240.15c2–8].

[395] Article 8 of the Uniform Commercial Code was amended in 1994 to eliminate the requirement that a contract for the purchase of a security be reflected in a writing. See UCC, 1994 official text with comments, Article 8–113 (West 1994). The official comment to the rule states that the requirement that a contract be in writing is unsuited to the realities of the securities business. Thus, under state law oral contracts for sales of securities are permitted.

[396] As we discuss above, the basis for liability under Section 12(a)(2) for statements in a prospectus (including a free writing prospectus) or oral communication, and the basis for liability under Section 17(a)(2) for the statements to which the section applies, are that the statements cannot contain any misstatement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

[397] Direct communications can take various forms, including orally or through the use of electronic or other free writing prospectuses, under the new communications regime. See also *Starr* v. *Georgeson Shareholder, Inc.*, 2005 U.S. App. LEXIS 11250 (2d Cir. 2005).

[398] As we elaborate on later, this interpretation would not, of course, affect the ability of the seller and the purchaser to consider subsequently provided facts or disclosure and, among other actions, by agreement terminate their sale contract and by agreement enter into a new contract of sale with respect to the offered securities. In such case, for purposes of our interpretation and rule, the time of the contract of sale to that purchaser will be the time of the new contract of sale.

[399] These include a prospectus or oral statement in the case of Section 12(a)(2), or a statement to which Section 17(a)(2) is applicable.

[400] Or, in the case of Section 17(a)(2), any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

[401] See, *e.g.*, letters from ABA–ABS; BMA–ABS; Cleary; and CSFB.

[402] See, *e.g.*, letters from ABA; ABA–ABS; Alston; ASF; BMA–ABS; Citigroup; Cleary; CMSA; CSFB;

• The manner in which a purchaser and seller may terminate an old contract and enter into a new contract of sale based on new information.[403]

a. The Section 12(a)(2) and Section 17(a)(2) Analysis of the Information Conveyed

Securities Act Section 12(a)(2) and Section 17(a)(2) do not require that oral statements or the prospectus or other communication contain all information called for under our line-item disclosure rules or otherwise contain all material information. Rather, under these provisions, the determination of liability is based on whether the communication includes a material misstatement or fails to include material information that is necessary to make the communication not misleading in light of the circumstances in which the communication is made. In that regard, where in our discussion of our interpretation in the Proposing Release we referred to "materially accurate and complete information," we were referring to the standards contained in Securities Act Section 12(a)(2) and Section 17(a)(2)—a communication that contains no material misstatements, and no material omissions that would cause the communication to be misleading in light of the circumstances in which it is made. Accordingly, liability for omissions under Section 12(a)(2) and Section 17(a)(2) is not based on the mere omission of required prospectus information or other material information, but on the omission of material information as a result of which the information conveyed is misleading, under the circumstances in which the communication in question is made. As a result, for example, a statement prior to the time of a contract of sale that a transaction is "the same as the XYZ transaction" or "just like the XYZ transaction" with specified modifications can, if there are no material omissions that would make that statement misleading under the circumstances in which it is made, meet the standards of Section 12(a)(2) and Section 17(a)(2). As another example, in an area cited by a number of commenters,[404] in the asset-backed securities market there are a number of forward-sale transactions where contracts of sale are entered into based on "portfolio profiles" or similar communications specifying important characteristics of asset pools within given ranges or market standards. Where the characteristics enumerated in the portfolio profiles do not exclude material elements of the pool's characteristics the omission of which would make the profiles misleading and where the final pools fall within the ranges or market standards disclosed in the portfolio profiles, this kind of disclosure prior to the time of a contract of sale can, depending on the facts and circumstances and even if all disclosure required in a statutory prospectus by our line-item requirements is not included, meet the standards of Section 12(a)(2) and Section 17(a)(2).

b. Determination of Time of Sale

Some commenters argued that the parties to the transaction should be able to determine by contract, by reference to state law, when the contract of sale is entered into, without regard to any provision of the federal securities laws,[405] including the anti-waiver provisions of Securities Act Section 14.[406] Other commenters argued that the iterative nature of their particular type of offerings meant that the parties could not identify the precise point when the purchaser became bound to acquire the securities.[407]

As we discuss above, we believe that one appropriate time to assess whether a purchaser has a claim under Section 12(a)(2), or whether there has been a violation of Section 17(a)(2), is the time of the contract of sale of the securities. State law contract principles are significant with regard to contract formation, and we are not aware of any current significant conflicts between state contract law and federal law regarding the elements of formation of a contract. Of course, a contract of sale under the federal securities laws can occur before there is an unconditional bilateral contract under state law, for example when a purchaser has taken all actions necessary to be bound but a seller's obligations remain conditional under state law.[408] If such conflicts were to arise in the future, we would have to consider at that time the appropriate actions to take, if any, to preserve the important federal interests in the determination of the time of a contract of sale. Importantly, beyond the elements of formation of a contract, federal law governs any waiver of a right or claim arising under the federal securities laws.[409] Thus, contracts for sales of securities may not contain provisions that operate to waive a purchaser's substantive rights under the federal securities laws. For example, conditional contracts that bind the purchaser at an earlier date but provide that no contract of sale occurs until the final prospectus is provided would not be consistent with the definition of sale under the Securities Act nor the anti-waiver provisions of Securities Act Section 14.[410]

c. Termination of an Old Contract and Creation or Reformation of a New Contract

We recognize that there may be circumstances where a seller wishes to convey information to a purchaser after the time of a contract of sale that had not been conveyed before that time. In the Proposing Release, we made clear our view that sellers could convey additional or changed information after the time of the contract of sale, terminate the old contract by agreement with the purchaser, and enter into a new contract of sale based on the new information. Any rights to damages with respect to material defects in information in respect of the original contract of sale would cease to exist as a result of the termination and formation of a new contract. Commenters expressed uncertainty regarding how this renegotiation and new contract would be effected.[411]

In light of commenters' concerns, we are providing guidance on the circumstances under which purchasers and sellers can reassess their purchase commitment based on new or changed information and enter into a new

Deloitte; Fried Frank; Merrill Lynch; Morgan Stanley; NYSBA; and SIA.

[403] See, *e.g.*, letters from ABA; ABA–ABS; CSFB; Morgan Stanley; and NYSBA.

[404] See, *e.g.*, letters from ABA–ABS; ASF; BMA–ABS; CMSA; the Mortgage Bankers Association of America ("MBA").

[405] See, *e.g.*, letters from Cleary; CSFB; Fried Frank; Morgan Stanley; and SIA.

[406] 17 U.S.C. 77n.

[407] See, *e.g.*, letters from ABA–ABS; ASF; BMA–ABS; and CMSA. These comments were most prevalent in the asset-backed securities area. In this regard, the commenters stated that asset-backed securities offerings involved conditional contracts where investors agreed to purchase securities before they had all the prospectus information. These commenters stated that purchasers were given the opportunity to reassess their purchase decisions if new or changed information was provided. Investors who commented, on the other hand, did not believe that material changes or additional material disclosures made after their binding purchase decisions were adequately communicated to them, if at all, and they believed it was clear when they had entered into a contract of sale. See, *e.g.*, letters from FMR and SSGA.

[408] See notes 391 and 394 above.

[409] *AES Corp.* v. *Dow Chemical Co.*, 325 F.3d 174, 179 (3d Cir. 2003) *cert. denied*, 540 U.S. 1068 (2003); *Petro-Ventures, Inc.* v. *Vrable*, 967 F.2d 1337 (9th Cir. 1992).

[410] Any such contractual provision or any other contractual provision that operates as a waiver of substantive rights under the federal securities laws would be void, even if such provision was enforceable as a matter of state contract law.

[411] While commenters also requested elaboration on when and how information would be considered conveyed, as we made clear in the Proposing Release, we believe this remains a facts and circumstances determination. See, *e.g.*, letters from ABA; Alston; Citigroup; Cleary; and S&C.

contract of sale, consistent with the purchaser's rights, including under Section 12(a)(2), under the original contract and the anti-waiver provisions of the federal securities laws. Commenters expressed uncertainty regarding the termination of a contract of sale and the creation of a new contract and the ability, consistent with the federal securities laws, including the anti-waiver provisions, to agree contractually on a procedure to terminate and reform a contract of sale and thus provide a new time of sale at the time of the reformation of the contract.[412] In our view, any such procedure must be the substantive equivalent of the termination by mutual agreement of the prior contract of sale and the entering into a new contract of sale. Any such procedure would, as pointed out above, result in a right to damages under the old contract ceasing to exist. It follows from this position that any such procedure would conflict with federal law unless:

- The investor is provided adequate disclosure of the contractual arrangement;
- The investor is provided with adequate disclosure of its rights under the existing contract at the time termination is sought;
- The investor is provided with adequate disclosure of the new information that the seller seeks to convey; and
- The investor is provided with a meaningful ability to elect to terminate or not terminate the prior contract and to elect to enter into or not enter into the new contract.

Whether the investor is given such adequate disclosure and meaningful ability will depend on the particular facts and circumstances. An evaluation of the facts and circumstances would include but not be limited to the following:

- The manner and prominence of the disclosure of the contractual arrangements and the investor's rights under the old contract. Insufficient disclosure as to the provisions would not necessarily put the purchaser on notice of the arrangement and of its rights, and thus may be viewed as an unacceptable anticipatory waiver of the purchaser's substantive rights.
- The process by which the new or changed material information will be conveyed to the purchaser. As noted above, whether information is conveyed is a facts and circumstances determination. However, in our view, in the context of providing new information following a contract of sale, factors to consider in determining whether the new information has been conveyed could include whether it is identified as new or changed or is otherwise sufficiently prominent.
- The method by which the purchaser is required to make or communicate its decisions. For the contractual provision to be consistent with the anti-waiver provisions of the federal securities laws, the purchaser must knowingly terminate the prior contract if it chooses to do so. Similarly, the investor must knowingly enter into the new contract if it chooses to do so. While we are not saying that the method chosen necessarily requires an affirmative communication rather than acquiescence by silence after the lapse of a specified period of time, the concept of reaffirmation is one that earlier Commissions and Congress have struggled with since the 1940s.[413] The method chosen should give the purchaser a meaningful ability to make its contractual decisions in light of the new or changed material information.

In addition to our general observations, we note the following:

- Any contractual provision to the effect that the seller is deemed to have communicated information to the purchaser would be a violation of the anti-waiver provisions of the federal securities laws.[414]
- A non-conditional contract that moves the time of sale forward to a different time would effectively act as a waiver of substantive rights under the federal securities laws and is a violation of the anti-waiver provisions of the federal securities laws.[415]

[412] See, *e.g.*, letters from CSFB and Morgan Stanley.

[413] See, *e.g.*, Nathan D. Lobell, *Revision of the Securities Act*, 48 Colum. L.Rev. 313, 332 (1948); Clark Byse and Raymond J. Bradley, *Proposals to Amend the Registration and Prospectus Requirements of the Securities Act of 1933*, 96 U.Pa. L.Rev. 609, 635–36 (1947–1948).

[414] Moreover, a contractual provision that provides that a purchaser is deemed to have read or have constructive or actual knowledge of information or documents, generally, would act as a waiver of substantive rights under the federal securities laws and thus would be inconsistent with the anti-waiver provisions of the federal securities laws. For example, a contractual provision stating that a purchaser who has access to information is charged with knowledge of that information for purposes of Section 12(a)(2) would be impermissible. These are merely examples of language that would be inconsistent with the anti-waiver provisions of the federal securities laws and are not all-inclusive.

[415] Thus, a waiver might also be deemed to occur where an underwriter e-mails the purchaser saying that the issuer filed a prospectus supplement and provides a specified period of time in which the purchaser may contact the underwriter, after which the purchaser will be deemed to have purchased the securities as of the end of the period, which would be a new date of sale.

3. Rule 412 and Rule 430B

Under Securities Act Rule 412, information contained in a prospectus supplement or Exchange Act filing incorporated by reference into a registration statement may modify or supersede other previously disclosed information that was contained in a document incorporated or deemed to be incorporated by reference in that registration statement. We are revising Rule 412 essentially as proposed to make it consistent with the other rules we are adopting today. The revisions provide that information contained in a document that is deemed part of and included in or incorporated by reference into a registration statement or prospectus that is contained in the registration statement would modify or supersede the information contained in the registration statement or prospectus that is part of or contained in the registration statement itself.[416] Thus, the provisions of Rule 412 regarding modified or superseded information will operate regardless of whether the new information is contained in an Exchange Act report, prospectus supplement, or prospectus that is part of or included in a registration statement.

Under Rule 430B, which we are adopting today (and in the corresponding undertakings of issuers), we have provided that subsequently provided information deemed part of and included in or incorporated by reference into a registration statement or prospectus that is part of the registration statement would not modify or supersede any information conveyed to an investor at an earlier time of sale (including the time of the contract of sale) for purposes of determining the information conveyed to an investor at or prior to that time.[417]

4. Relationship of Section 12(a)(2) and Section 17(a)(2) Interpretation and Rule 159 to Section 11 Liability

Information contained in a prospectus or prospectus supplement that is part of a registration statement that is filed after the time of the contract of sale will be part of and included in a registration statement for purposes of liability under Section 11 at the time of effectiveness, which may be at or before the time of

[416] See discussion in Section V.B.1 below under "Date of Inclusion of Prospectus Supplements in Registration Statements and New Effective Dates of Registration Statements."

[417] We originally proposed to include this provision in Rule 412 but have determined, in response to comments, to include it instead in Rule 430B. See, *e.g.*, letter from William J. Williams, Jr. It also is included in undertakings of issuers provided in accordance with Item 512 of Regulation S–K and Regulation S–B [17 CFR 229.512 and 17 CFR 228.512].

the contract of sale. The date and time that the information is part of the registration statement and the time of effectiveness relate to an investor's rights under Section 11, but do not affect any rights assessed at the time of sale that the investor may have under Section 12(a)(2) or that we might enforce under Section 17(a). Thus, information that is deemed to be part of the registration statement as of the time of the contract of sale for shelf takedowns or as of effectiveness under Securities Act Rule 430A, will not, under our interpretation or Rule 159, be taken into account under Section 12(a)(2) or Section 17(a)(2), unless the information is conveyed to an investor at or prior to the time of sale (including the contract of sale). Similarly, an investor's rights under Section 11 will not be affected by information conveyed to an investor at or prior to the time of the contract of sale that is not included in or incorporated by reference into the registration statement at the time of the effectiveness of the registration statement for the securities sold to the investor.[418] The class of investors that may have a claim under Section 11 and Section 12(a)(2) may thus be different.

A free writing prospectus that is not part of a registration statement will not be subject to Section 11 liability, although it will be subject to Section 12(a)(2) and Section 17(a)(2) liability.[419] Information contained in a free writing prospectus not otherwise included in or incorporated by reference into the registration statement will not be part of the registration statement for purposes of Section 11.

B. Issuer as Seller

We believe there currently is unwarranted uncertainty as to issuer liability under Section 12(a)(2) for issuer information in registered offerings using certain types of underwriting arrangements.[420] As a result, there is a possibility that issuers may not be held liable under Section 12(a)(2) to purchasers in the initial distribution of the securities for information contained in the issuer's prospectus included in its registration statement. This also could be the case for other communications that are offers by or on behalf of an issuer, including issuer free writing prospectuses. When an issuer registers securities to be sold in a primary offering, the registration covers the offer and sale of its securities to the public. The issuer is selling its securities to the public, although the form of underwriting of such offering, such as a firm commitment underwriting, may involve the sale first by the issuer to the underwriter and then the sale by the underwriter to the public.[421] We believe that an issuer offering or selling its securities in a registered offering pursuant to a registration statement containing a prospectus that it has prepared and filed, or by means of other communications that are offers made by or on behalf of or used or referred to by the issuer can be viewed as soliciting purchases of the issuer's registered securities.[422] Therefore, we are adopting a rule providing that under Section 12(a)(2) an issuer in a primary offering of securities, regardless of the form of the underwriting arrangement, will be a seller and will be considered to offer or sell the securities to a purchaser in the initial distribution of the securities as to any of the following communications:

- Any preliminary prospectus or prospectus of the issuer relating to the offering required to be filed pursuant to Securities Act Rule 424 or Rule 497;
- Any free writing prospectus relating to the offering prepared by or on behalf of or used or referred to by the issuer and, in the case of an issuer that is an open-end management investment company, any profile relating to the offering provided pursuant to Securities Act Rule 498;
- The portion of any other free writing prospectus (or, in the case of an issuer that is a registered investment company or business development company, any advertisement pursuant to Securities Act Rule 482) relating to the offering containing material information about the issuer or its securities provided by or on behalf of the issuer; and
- Any other communication that is an offer in the offering made by the issuer to such purchaser.[423]

This definition of the issuer as a seller is not intended to affect whether any other person offers or sells a security by means of the same prospectus or oral communication for purposes of Section 12(a)(2). A communication by an underwriter or dealer participating in an offering would also not be on behalf of the issuer solely by virtue of that participation. As today, there are circumstances where the involvement of an issuer could be sufficiently extensive (for example under adoption and entanglement theories) that a communication of another person, including an offering participant, could be by an issuer.

A number of commenters were concerned that as proposed the rule was unnecessarily broad and would encompass purchasers of the issuer's securities in the aftermarket, after the initial distribution of securities in the offering was completed.[424] These commenters were also concerned that the proposed rule would encompass oral communications made by underwriters.[425] As with certain of our other proposals, some commenters wanted to limit liability only to those situations in which the communication was made by designated persons.[426]

While we have adopted the issuer as seller provisions substantially as proposed, we have included language that clarifies that it is aimed only at liability to purchasers in the initial distribution of the securities who were offered or sold the securities by means of the particular communication.[427] Thus, the Rule, as adopted, would not cover purchasers of the issuer's securities in the aftermarket. We have also provided, as noted above, that an underwriter or dealer participating in an offering is not acting on behalf of the issuer solely by virtue of that participation.

C. Due Diligence Interpretation

We requested comment in the Proposing Release as to whether we should re-evaluate the factors discussed in Securities Act Rule 176[428] regarding

[418] See discussion regarding Rule 430B in Section V.B.1 below under "Rule 430B." See also Rule 158.

[419] A free writing prospectus, while considered to relate to a registered securities offering, is not included in and does not become part of the registration statement unless the issuer files it as part of the registration statement or includes it in a filing that is incorporated by reference into the registration statement. Thus, the responsibility and liability of offering participants for a particular free writing prospectus that is not incorporated or included in the registration statement can arise only under Section 12(a)(2) and Section 17(a)(2) and the other anti-fraud provisions. This is true regardless of whether the free writing prospectus contains information from the registration statement (including information that has been included with the consent of an expert).

[420] See, *e.g.*, *Capri* v. *Murphy*, 856 F.2d 473, 478 (2d Cir. 1988); *Lone Star Ladies Investment Club* v. *Schlotzsky's, Inc*, 238 F.3d 363, 370 (5th Cir. 2001); *Rosenzweig* v. *Azurix* Corp., 332 F.3d 854 (5th Cir. 2003).

[421] The two transactions are parts of the same distribution of the securities to the public.

[422] See *Pinter* v. *Dahl*, 486 U.S. 622 (1988).

[423] We are not addressing the status of the issuer as a seller in a registered offering of transactions by selling security holders only.

[424] See, *e.g.*, letters from ABA; Alston; CMSA; Davis Polk; and NYSBA.

[425] See, *e.g.*, letters from ABA and CMSA.

[426] See, *e.g.*, letters from Alston and CMSA.

[427] We also have revised the final provision to provide that it covers communications by the issuer, not communications by or on behalf of the issuer.

[428] 17 CFR 230.176.

what constitutes a reasonable investigation and reasonable grounds under Securities Act Section 11(c), and requested an explanation of the changes that should be made and how each of those changes would work in the context of each type of registered securities offering. In response, commenters urged us to reintroduce the 1998 proposal to amend Rule 176 so that it also applies to the reasonable care standard under Section 12(a)(2).[429] Additionally, commenters asked us to reaffirm the statement from the 1998 proposals that "Section 11 requires a more diligent investigation than Section 12(a)(2)," so as to avoid any implication that our view of the matter has changed.[430] We have determined not to propose modifications to Rule 176 at this time. We believe, however, as we have stated previously, that the standard of care under Section 12(a)(2) is less demanding than that prescribed by Section 11 or, put another way, that Section 11 requires a more diligent investigation than Section 12(a)(2).[431] Moreover, we believe that any practices or factors that would be considered favorably under Section 11, including pursuant to Rule 176, also would be considered as favorably under the reasonable care standard of Section 12(a)(2).[432]

V. Securities Act Registration Rules and Amendments

A. Overview

As discussed above and in the Proposing Release, enhanced requirements for reporting under the Exchange Act for public issuers have been intended to improve the quality and currency of disclosure under the Exchange Act. Together with technological advances, these developments provide the basis for the rules we are adopting today to modernize many procedural aspects of securities offerings registered under the Securities Act.

Our new rules cover the registration procedures for seasoned and unseasoned issuers, and seek to streamline the registration process for most types of reporting issuers. These rules include:

- A more flexible automatic registration process for well-known seasoned issuers;
- Modifications that clarify and expand how and when information can be included in registration statements;
- A clarification of the Securities Act liability treatment of information provided in a prospectus supplement and Exchange Act reports incorporated by reference;
- Modification of the timing of effectiveness of shelf registration statements applicable to issuers in certain cases; and
- Rules relating to non-shelf offerings of securities.

B. Procedural Rules

1. Procedural Changes Regarding Shelf Offerings

a. Overview

We are adopting changes to the operation of the shelf registration system under the Securities Act. These new provisions involve:

- Clarifying and codifying the information to be included in and omitted from base prospectuses in shelf registration statements;
- Codifying the manner of inclusion of information in the final prospectus;
- Providing for the treatment of prospectus supplements; and
- Liberalizing certain of the requirements under Securities Act Rule 415, including:
- Eliminating the two-year limitation for registered securities for a delayed offering;
- Eliminating the "at-the-market" offering restrictions for issuers registering primary equity offerings on Form S–3 or Form F–3;
- Eliminating the prohibition against immediate takedowns off delayed shelf registration statements; and
- Making conforming changes to Rule 424 regarding the filing of prospectus supplements.

Commenters strongly supported the proposed procedural changes to the Securities Act registration process.[433] A number of commenters on these proposed changes, while supporting the automatic shelf registration proposals for well-known seasoned issuers, believed that all seasoned issuers should be able to use certain of the elements of automatic shelf registration such as identification of selling security holders in prospectus supplements, omission of most information from base prospectuses, and addition of new securities and new registrants by automatically effective post-effective amendments.[434] As discussed in greater detail below, we are adopting the procedural changes with some modifications.

b. Information in a Prospectus

i. Mechanics

(A) Rule 430B

Rule 415 provides for continuous or delayed offerings and is, therefore, the foundation for shelf registration. Primary offerings on a delayed basis may be registered by certain seasoned issuers only. A number of other delayed or continuous offerings may be undertaken or registered by any issuer, including offerings on a continuous basis of securities issued on exercise of outstanding options or warrants or conversion of other securities, offerings on a continuous basis under dividend reinvestment plans, offerings on a continuous basis under employee benefit plans, and offerings solely on behalf of selling security holders. Rule 415 also permits registration by any issuer of a continuous offering that will commence promptly and may continue for more than 30 days from the date of initial effectiveness.[435]

Many of the types of offerings contemplated by Rule 415 can be accomplished using a prospectus that is complete at the time of effectiveness of the related registration statement and therefore may not require a supplement because there may be no additional information to include in the prospectus.[436] There are a number of

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[429] See, *e.g.*, letters from Morgan Stanley; SIA; and TBMA.

[430] See, *e.g.*, letters from ABA; SIA; and S&C.

[431] See the 1998 proposals, note , at Section IX.D. In a brief filed in *Sanders* v. *John Nuveen & Co.*, 619 F.2d 1222 (7th Cir. 1980), the Commission stated that the standard of care under Section 12(a)(2) (formerly Section 12(2)) is less demanding than that prescribed by Section 11:

[I]t would be inconsistent with the statutory scheme to apply precisely the same standards to the scope of an underwriter's duty under Section 12[(a)](2) as the case law appropriately has applied to underwriters under Section 11. Because of the vital role played by an underwriter in the distribution of securities, and because the registration process is integral and important to the statutory scheme, we are of the view that a higher standard of care should be imposed on those actors who are critical to its proper operations. Since Congress has determined that registration is not necessary in certain defined situations, we believe that it would undermine the Congressional intent—that issuers and other persons should be relieved of registration—if the same degree of investigation were to be required to avoid potential liability whether or not a registration statement is required.

Brief for SEC in Nos. 74–2047 and 75–1260 (CA7), *Sanders* v. *John Nuveen & Co.*, 554 F.2d 790 (7th Cir., 1977), p. 69, as quoted by Powell, J., dissenting to the denial of certiorari in *John Nuveen & Co.* v. *Sanders*, 450 U.S. 1005 (U.S., 1981).

[432] See the 1998 proposals, note 30, at Section IX.

[433] See, *e.g.*, letters from ABA; Alston; Citigroup; Cleary; Davis Polk; Fried Frank; IBA; NYCBA; NYSBA; S&C; SIA; and TBMA.

[434] See, *e.g.*, letters from ABA; Alston; Citigroup; Cleary; Davis Polk; NYCBA; NYSBA; S&C; SIA; and TBMA.

[435] See Securities Act Rule 415(a)(1)(ix) [17 CFR 230.415(a)(1)(ix)].

[436] The terms of the securities being offered and the plan of distribution are often complete at the time of effectiveness and not subject to change. Where the offering is not registered on Form S–3 or Form F–3, updating information in the registration statement regarding the issuer cannot be included in future periodic reports filed under the Exchange Act and incorporated by reference, and therefore must be included in the prospectus

offerings contemplated by Rule 415, however, such as a delayed offering, in which the prospectus included in the related registration statement at the time of effectiveness, usually referred to as a "base prospectus," must be supplemented to reflect the final terms of the security and offering for each particular offering of securities. In addition, in continuous or delayed offerings employing shelf registration under Rule 415, there may be circumstances where a prospectus will be supplemented other than at the time of a takedown.

Rule 424 provides the framework for the filing of each type of prospectus and prospectus supplement. There currently is no rule, however, that specifies the relationship between the base prospectus and prospectus supplements and the information that may be omitted from or included in one or the other. We are adopting with some clarifications from the proposals a new rule, Rule 430B, which we intend to achieve that purpose by codifying existing practice in most respects and liberalizing the framework for the registration process in certain areas.[437] We also are adopting Rule 430C which addresses the treatment of prospectuses and prospectus supplements for all registered offerings not covered by Rule 430B and for prospectuses not covered by Rule 430A.

Rule 430B is a shelf offering corollary to existing Rule 430A, in that it describes the type of information that primary shelf eligible and automatic shelf issuers may omit from a base prospectus in a Rule 415 offering and include instead in a prospectus supplement, Exchange Act report incorporated by reference, or a post-effective amendment.[438]

Rule 430B covers the following types of offerings:

- Offerings by well-known seasoned issuers registered on automatic shelf registration statements;
- Immediate, delayed, and continuous primary offerings by primary shelf eligible issuers pursuant to Rule 415(a)(1)(x), including asset-backed issuers eligible to register their offerings on Form S–3;
- Secondary offerings by certain primary shelf eligible issuers, including for the purpose of adding information regarding the identities of and amounts of securities to be sold by selling security holders; and
- Offerings of mortgage-backed securities permitted by Rule 415(a)(1)(vii) that generally are registered on Form S–11.[439]

Rule 430C covers all registered offerings that are not covered by Rule 430B and prospectuses that are not covered by Rule 430A.[440]

Rule 430B generally is consistent with current requirements and practice for shelf registration statements for delayed offerings on Forms S–3 and F–3.[441] Under Rule 430B, a base prospectus in a shelf registration statement must comply with the applicable form requirements but can, as has been the case before today's new rules, continue to omit information that is unknown or not reasonably available to the registrant pursuant to Rule 409.[442]

Rule 430B provides that a base prospectus that omits information as provided in the Rule will be a permitted prospectus.[443] Thus, after a registration statement is filed, offering participants can use a base prospectus that omits information in accordance with the Rule. In addition, issuers can communicate using Rule 134 notices, and issuers and other offering participants can use free writing prospectuses under Rules 164 and 433. Commenters supported proposed Rule 430B because of the level of certainty it would provide for delayed offerings off of shelf registration statements.[444]

(B) Means for Providing Information

A base prospectus that omits statutorily required information is not a Securities Act Section 10(a) final prospectus, and today's rules do not change that fact. To satisfy the requirements of Securities Act Section 10(a), as is the case with shelf registration statements today, an issuer must include the information omitted from the base prospectus in:

- A prospectus supplement;
- A post-effective amendment; or
- Where permitted as described below, through its Exchange Act filings that are incorporated by reference into the registration statement and prospectus that is part of the registration statement and identified in a prospectus supplement.

Information included in a base prospectus or in an Exchange Act periodic report incorporated into a prospectus is included in the registration statement. Rule 430B makes clear that prospectus supplements and information in them also will be deemed to be part of and included in the registration statement.[445]

The rules we are adopting today provide primary shelf eligible issuers and well-known seasoned issuers with automatic shelf registration statements the ability to add to a prospectus, by means other than a post-effective amendment to the registration statement, more additional or omitted information than is currently the case.[446] We are adopting amendments to Forms S–3 and F–3 to permit all information required in the prospectus about the issuer and its securities to be incorporated by reference from Exchange Act reports.[447] Such

contained in the registration statement by a post-effective amendment. In that case, the new form of prospectus included in the amended registration statement is then complete at the new effective date and therefore also does not require a supplement.

[437] We also are making conforming changes to Rule 424.

[438] Issuers cannot rely on Rule 430B for offerings made in reliance on other provisions of Rule 415(a). For example, issuers that are not primary shelf eligible, but that are eligible to register securities for resale on behalf of selling security holders in reliance on General Instruction I.B.3 of Form S–3 or register the issuance of securities on exercise or conversion of outstanding securities pursuant to General Instruction I.B.4 of Form S–3, would not be eligible to rely on this Rule, but would instead be subject to Rule 430C.

[439] 17 CFR 239.18.

[440] As we discuss below, Rule 430C provides that all prospectuses and prospectus supplements filed pursuant to Rule 424 and Rule 497(b), (c), (d), and (e) (other than for offerings relying on Rule 430B or prospectuses covered by Rule 430A) are deemed part of and included in the related registration statement as of the date of first use. Rule 430C applies to prospectuses filed in offerings made in reliance on Rule 430A to the extent the prospectus or prospectus supplement is not covered by Rule 430A.

[441] Rule 430B liberalizes current requirements in certain respects, and significantly liberalizes requirements for automatic shelf registration statements, as discussed in Section V.B.2 below under "Automatic Shelf Registration for Well-Known Seasoned Issuers."

[442] See Rule 430B and Rule 409 [17 CFR 230.409]. The base prospectus still must include, for other than automatic shelf registration statements, general descriptions of the types of securities and possible plans of distribution.

[443] The Rule codifies that such a prospectus will satisfy the requirements of Securities Act Section 10 for purposes of Securities Act Section 5(b)(1).

For asset-backed securities offerings made in reliance on General Instruction I.B.5 of Form S–3, because those issuers do not have to satisfy a reporting history requirement, asset-backed securities offerings often must present most of their disclosure in the base prospectus and prospectus supplements rather than incorporate such information by reference into the registration statement. Thus, for purposes of Section 10, a prospectus for an asset-backed securities offering must include the format of deal-specific information in the base prospectus or the base prospectus and a prospectus supplement. See Asset-Backed Securities Adopting Release, note , at Section III.A.3.b. and General Instruction V. to Form S–3.

[444] See, *e.g.*, letters from Alston; NYCBA; and NYSBA.

[445] In the 1998 proposals, we expressed our belief that prospectus supplements and the information contained in them are subject to liability under Section 11. The rules we adopt today codify that position. See 1998 proposals, note 30, at Section V.C.1.

[446] Issuers still have the flexibility to file post-effective amendments to include the information.

[447] The amendments to Forms S–3 and F–3 explicitly permit information otherwise required in

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information also can be contained in the prospectus or a prospectus supplement.[448] For example, material changes in the plan of distribution, which currently are required to be included in post-effective amendments, can be amended under our new rules by incorporated Exchange Act reports or prospectus supplements.[449] Rule 430B also requires that a prospectus supplement be prepared and filed pursuant to Rule 424 if omitted information about an offering, such as the terms of the offering, the securities, the plan of distribution, or the selling security holders, is included in an Exchange Act report incorporated by reference. The prospectus supplement filed pursuant to Rule 424 must disclose the Exchange Act report or reports containing such information. This disclosure will assist investors and the markets in locating this offering-related information and will also be consistent with the treatment of other prospectus supplements filed for these purposes.

(C) Identification of Selling Security Holders Following Effectiveness

(1) Scope of Provision

As we discussed in the Proposing Release, transfers of restricted securities can occur after a private placement is completed so that the identities of the holders of those restricted securities at the time of filing the resale registration statement may not be known to the issuer.[450] Filing post-effective amendments to add new or previously unidentified security holders can impose delays. To alleviate the timing concern arising from an issuer's inability to identify selling security holders prior to effectiveness, we are including provisions to allow issuers eligible to use Form S–3 or Form F–3 for primary offerings in reliance on General Instruction I.B.1 to those Forms[451] to identify selling security holders and the amounts of securities to be registered on behalf of each of them after effectiveness.

Rule 430B and amendments to Form S–3 and Form F–3, as adopted, permit eligible seasoned issuers to add the identities of the selling security holders and all information about them, as required by Item 507 of Regulation S–K,[452] to the registration statement covering the resale of their securities after effectiveness by:

- An amendment to that registration statement;
- A prospectus supplement; or
- An Exchange Act report incorporated by reference into the registration statement (subject to filing a prospectus supplement identifying such report).[453]

We have revised this provision from the proposal to clarify that this ability to identify selling security holders after effectiveness will be available only if:

- The registration statement is an automatic shelf registration statement;[454] or
- All of the following are satisfied:

The resale registration statement identifies the initial offering transaction or transactions pursuant to which the securities, or securities convertible into such securities, were sold;[455]

The initial offering of the securities, or the securities convertible into such securities, is completed; and

The securities, or the securities convertible into such securities, that are the subject of the registration statement are issued and outstanding prior to initial filing of the resale registration statement.

An issuer registering the resale of securities sold in a private offering may not rely on this provision to identify after effectiveness selling security holders who will acquire the securities directly from the issuer if the securities are not yet issued in the private offering, even where the investors are contractually bound to acquire the securities.[456] The issuer can still register the resale of the not-yet-issued securities, but it must identify the selling security holders in the registration statement at the time of filing and prior to effectiveness because the issuer will know the identities of the selling security holders who will acquire the securities from it.

We believe that it is important for issuers to be able to satisfy their contractual registration obligations to selling security holders in registering their resales, while also assuring that offerings are properly registered and the selling security holders and the securities to be sold by them are identified in the registration statement. The purpose of this provision of Rule 430B is to provide a more convenient method to identify selling security holders in registration statements, and not to change the existing responsibilities and liabilities of issuers and these selling security holders under the federal securities laws.

(2) Comments on Identification of Selling Security Holders

Commenters expressed support for the proposals to allow seasoned issuers the ability to identify selling shareholders after effectiveness.[457] As with many of the other proposals, some believed that this flexibility also should be extended to unseasoned issuers.[458] In addition, one commenter suggested that we eliminate the proposed requirement that the issuer identify any known selling security holders prior to effectiveness, because some selling security holders known to the issuer may not have consented to the inclusion of their names in the prospectus.[459]

In response to commenters' suggestions, we have clarified that the initial transaction that the issuer must disclose in the resale registration statement must be the initial offering transaction in which the securities were

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the prospectus directly pursuant to Item 3 through Item 11 of Form S–3 and Item 3 through Item 5 of Form F–3 to be included in this manner.

[448] The changes to Form S–3 and Form F–3 are intended to allow the disclosure requirements to be satisfied through incorporation by reference, or through a filed prospectus or prospectus supplement, not to change the timing of when the information must be included.

[449] As noted above, under today's rules, prospectus supplements and the information contained in them are deemed to be part of and included in the registration statement.

[450] Currently, the staff in the Division of Corporation Finance requires all issuers registering securities for the benefit of selling security holders to include the names of selling security holders in the registration statement either prior to effectiveness or through a post-effective amendment to the registration statement, with limited exceptions for the identities of security holders owning a *de minimis* amount of the issuers securities (less than 1%) or receiving the securities as a result of a donative transfer.

[451] General Instruction I.B.1 to Form S–3 and Form F–3 permits reporting issuers that are current and timely in their periodic and current reporting obligations under the Exchange Act and that have $75 million in non-affiliate voting and non-voting common equity market capitalization to register securities offerings for cash on Form S–3 and Form F–3 for the benefit of the issuer or selling security holders. Blank check companies, shell companies, and penny stock issuers are not eligible to rely on this provision.

[452] 17 CFR 229.507.

[453] As we are amending Rule 424 today, prospectus supplements may be filed in connection with selling security holders offerings, to add selling security holders omitted pursuant to Rule 430B and to provide supplemental or additional information. The filing of a prospectus supplement to include the identity of omitted selling security holders pursuant to Rule 424(b)(7) will be deemed to be a new effective date of the registration statement for Section 11 liability purposes of the issuer and underwriter. Under the Securities Act, selling security holders may be underwriters in connection with the distribution of the securities being registered for resale on their behalf.

[454] See Section V.B.2 below under "Automatic Shelf Registration for Well-Known Seasoned Issuers."

[455] The Rule requires disclosure of the initial offering transaction pursuant to which the sales were made, not any subsequent resale transactions.

[456] These types of offerings include PIPE transactions discussed in note 182 above.

[457] See, *e.g.*, letters from Alston; ABA; and Davis Polk.

[458] See, *e.g.*, letters from ABA; NYCBA; NYSBA; and TBMA.

[459] See letter from Fried Frank.

initially sold, not a resale transaction in which any particular selling security holder may have acquired the securities. The goal of the disclosure is to clearly link the securities being registered for resale to a completed initial offering. Moreover, we have revised the instructions to Form S–3 and Form F–3 to eliminate any requirement to name any selling security holders prior to effectiveness if the conditions of Rule 430B are satisfied.

Commenters also suggested that we should allow all issuers to be able to identify selling security holders after effectiveness.[460] We have determined not to extend this flexibility to all issuers. We believe that issuers that are not eligible to file a primary offering on Form S–3 or Form F–3 are more prone, in general, to engage in transactions some of which have raised disclosure and registration issues.[461] As a result, we believe it is important to have complete selling security holder information and be able to review that information in registration statements to assure compliance with Section 5 and our disclosure rules in connection with these offerings.

ii. Information Deemed Part of Registration Statement

We are adopting provisions in Rule 430B that will make clear that information contained in a prospectus supplement required to be filed under Rule 424, whether in connection with a takedown or otherwise, will be deemed part of and included in the registration statement containing the base prospectus to which the prospectus supplement relates. We also are adopting new Rule 430C that has similar provisions regarding the treatment of prospectus supplements, which applies to offerings not covered by Rule 430B and prospectuses not covered by Rule 430A. As a result of Rule 430B and Rule 430C, prospectus supplements required to be filed under Rule 424 or Rule 497(b), (c), (d), or (e) will, in all cases, be deemed to be part of and included in registration statements for purposes of Securities Act Section 11.

iii. Date of Inclusion of Prospectus Supplements in Registration Statements and New Effective Dates of Registration Statements

(A) Scope of Provisions

Rule 430B and Rule 430C, as adopted, deem information contained in prospectus supplements to be part of and included in the registration statement as follows:

- For a prospectus supplement required to be filed other than in connection with a takedown of securities, all information contained in that prospectus supplement will be deemed part of and included in the registration statement as of the date the prospectus supplement is first used;[462] and
- Under Rule 430B only, for a prospectus supplement required to be filed in connection with a takedown of securities pursuant to Rule 424(b)(2), (b)(5), or (b)(7), all information in that prospectus supplement will be deemed part of and included in the registration statement as of the earlier of the date it is first used or the date and time of the first contract of sale of securities in the offering to which the prospectus supplement relates.[463]

We have chosen the triggering dates for prospectus supplements to be deemed part of and included in registration statements for a number of reasons. First, under Rule 430B and Rule 430C, for a prospectus supplement filed other than in connection with a takedown, we have chosen the date of first use as the appropriate date for it to be deemed part of and included in the registration statement because that is the date on which the prospectus supplement updates the information in the registration statement.[464] Second, under Rule 430B, a prospectus supplement filed in connection with a takedown pursuant to Rule 424 will be deemed part of and included in the registration statement as of the earlier of when it is first used or the date and time of the first contract of sale of the securities to which the prospectus supplement relates. This timing, combined with the new effective date provisions discussed below, provides the appropriate timing for assessing liability under Section 11 for issuers and underwriters.

(B) New Effective Date for Section 11 Purposes

Rule 430B also establishes a new effective date for a shelf registration statement for Section 11 liability purposes only for the issuer and for a person that is at the time an underwriter.[465] That new effective date will be the date a prospectus supplement filed in connection with the takedown or takedowns is deemed part of the relevant registration statement.[466] For purposes of liability under Section 11 of the issuer and any underwriter at the time only, the new effective date will be as to the part of the registration statement relating to the securities to which such prospectus relates. The part of the registration statement will consist of all information included in the registration statement and any prospectus relating to the offering of the securities as of the new effective date and all information included in reports and materials incorporated by reference into the registration statement and prospectus as of such date relating to the offering, and in each case, not modified or superseded pursuant to Rule 412. The part of the registration statement will include information relating to the offering in a prospectus already included in the registration statement. This includes, for example, a form of prospectus containing information relating to the offering and previously filed pursuant to Rule 424(b)(3) other than in connection with the takedown in question, where the information has not been modified or superseded. These provisions also will reconcile the effective date for shelf offerings for issuers and underwriters with a comparable date for non-shelf offerings. We believe the Rule also will eliminate the unwarranted, disparate treatment of underwriters and issuers under Section 11.[467]

[460] See, *e.g.*, letters from ABA; NYCBA; NYSBA; and TBMA.

[461] See note 182 above.

[462] We already have made clear that the date of first use for purposes of Securities Act Rule 424 is not the date that the prospectus supplement is given to a purchaser in connection with a sale. Rather, it refers to the date that the prospectus is available to the managing underwriter, syndicate member, or any prospective purchaser. See *Elimination of Certain Pricing Amendments and Revision of Prospectus Filing Procedures*, Release No. 33–6714 (May 27, 1987) [52 FR 21252].

[463] These new provisions determine when a prospectus supplement is deemed part of the registration statement for Securities Act Section 11 purposes. They do not affect the determination of when information is conveyed to a purchaser for Section 12(a)(2) liability purposes.

[464] See amendments to Securities Act Rule 412(a) [17 CFR 230.412(a)].

[465] We also are amending Rule 158 to include conforming changes to the effective date for purposes of the last paragraph of Securities Act Section 11(a).

Under Rule 430C, the filing of prospectus supplements will not trigger new effective dates of the registration statement.

[466] The new effective date will not, however, be considered the filing of a new registration statement for purposes of Form eligibility. See Securities Act Rule 401.

[467] Currently, there can be a mismatch between issuers and underwriters in the time that liability is assessed. For example, in an offering off a shelf registration statement, an issuer could have its liability assessed as of the date of the registration statement's initial effectiveness (or post-effective amendment) or the most recent updating required under Securities Act Section 10(a)(3), while the liability of an underwriter would be assessed at the later time when it became an underwriter. In such a case, underwriters in takedowns occurring after

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At the same time, we believe that for other persons, including directors, signing officers, and experts, the filing of a form of prospectus should not result in a later Section 11 liability date than that which applied prior to our new rules.[468] Therefore, under Rule 430B, except for an effective date resulting from the filing of a form of prospectus for purposes of updating the registration statement pursuant to Section 10(a)(3) or reflecting fundamental changes in the information in the registration statement pursuant to the issuer's undertakings, the prospectus filing will not create a new effective date for directors or signing officers of the issuer. Any person signing any report or document incorporated by reference in the prospectus that is part of the registration statement or the registration statement, other than a document filed for the purposes of updating the prospectus pursuant to Section 10(a)(3) or reflecting a fundamental change, is deemed not to be a person who signed the registration statement as a result. The new effective date also does not apply to a person that becomes an underwriter after that effective date; in that case Securities Act Section 11(d) provides that the date the person became an underwriter is its effective date.[469]

We also are not changing the effective date for auditors who provided consent in an existing registration statement for their report on previously issued financial statements or previous reports on management's assessment of internal control over financial reporting, unless a prospectus supplement (and any Exchange Act report incorporated by reference into the prospectus and registration statement) or post-effective amendment contains new audited financial statements or other information as to which the auditor is an expert and for which a new consent is required.[470] As to any other expert, the filing of the prospectus supplement also will not trigger a new effective date, and thus will not require the filing of a consent, unless the prospectus supplement (including incorporated Exchange Act reports) includes a new report or opinion of an expert whose consent is required pursuant to Section 7 and who will have liability pursuant to Section 11. For example, a prospectus supplement filed in connection with one or more takedowns of securities that did not include other disclosure (including through incorporated Exchange Act reports) for which the consent of an expert is required pursuant to Securities Act Section 7 and Securities Act Rule 436 will not require consents to be filed.

Including information contained in prospectus supplements in registration statements and triggering new effective dates for the issuer and underwriter will provide and preserve important investor protections under the Securities Act. We believe that these modifications are appropriate to ensure issuer liability for information included in the registration statement at the time of the prospectus supplement filing.

(C) Comments on Prospectus Supplements and New Effective Dates

A number of commenters addressed the provisions providing for new effective dates of registration statements at the time of filing of prospectus supplements for takedowns off shelf registration statements.[471] Commenters supporting these proposals agreed that, as to shelf registration statement takedowns, the liability of issuers under Section 11 should be brought into line with the liability of underwriters.[472] A number of commenters were concerned with the liability of auditors, other experts, and outside directors that would arise under Section 11 as of the new effective date of the registration statement.[473] While some commenters believed that the Rule should provide that a new auditor's consent is not required in connection with the takedown and new effective dates, others believed that unless the Rule was clear that the takedown would not be a new effective date for auditors and other experts, we should require that consents of these experts be provided at the new effective date.[474]

We have revised Rule 430B in response to commenters' concerns about new effective dates as we discuss above. We believe that these changes should provide clarity for auditors, among others, that a new effective date for them is not created and that new consents and corresponding procedures are not required as a result of Rule 430B.

iv. Amendments to Rule 415

(A) Elimination of Limitation on Amount of Securities Registered

(1) Revised Provisions

Prior to today's amendments, Rule 415(a)(2) limited the amount of securities that could be registered where the registration statement pertained to offerings pursuant to Rule 415(a)(1)(viii), (ix), and (x). Rule 415(a)(2) limited the amount of securities that could be registered in

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the date of initial effectiveness (or post-effective amendment) or the Section 10(a)(3) update would be subject to liability under Section 11 for an issuer's Exchange Act reports incorporated by reference into the prospectus included in the registration statement after that date while issuers would not. Rule 430B results in most cases in the date of effectiveness of a registration statement for an issuer and underwriter in a particular offering being close in time.

[468] Prior to today's amendments, Rule 158(c) provided that, for purposes of the last paragraph of Section 11(a), a new effective date is deemed to be the latest to occur of (1) the effective date of the registration statement, (2) any post-effective amendment next preceding a particular sale of registered securities by the issuer filed to update the registration statement pursuant to Section 10(a)(3) or to reflect in the prospectus fundamental changes in the information in the registration statement or add any material information about or reflect any material changes in the plan of distribution; or (3) the date of filing of the last report of the issuer incorporated by reference into the prospectus and relied on in lieu of filing a post-effective amendment to effect a Section 10(a)(3) update to the registration statement or to reflect a fundamental change in the information in the registration statement, next preceding a particular sale by the issuer of registered securities.

[469] Securities Act Section 11(d) provides in part, "If any person becomes an underwriter with respect to the security after the part of the registration statement with respect to which his liability is asserted has become effective, then * * * such part of the registration statement shall be considered as having become effective with respect to such person as of the time when he became an underwriter."

[470] New audited financial statements or other information as to which the accountant is an expert and for which a new consent is required under Securities Act Section 7 [15 U.S.C. 77g] or Securities Act Rule 436 [17 CFR 230.436] includes any financial statements filed pursuant to Article 3 of Regulation S–X [17 CFR 210.3–01 *et seq.*] after the date of the last consent by the accountant, including those that are restated. Examples of such audited financial statements and financial information are (1) a restatement of the issuer's or a guarantor's financial statements, (2) financial statements required under Rule 3–05 of Regulation S–X [17 CFR 210.3–05], and (3) financial statements that are required under Rule 3–14 of Regulation S–X [17 CFR 210.3–14]. In addition, a new consent is required when the accountant's report on management's assessment of the registrant's internal control over financial reporting is changed.

In the event a new consent is required, that consent may be filed by a post-effective amendment to the registration statement or by filing an Exchange Act report, such as an annual report on Form 10–K or a report on Form 8–K or Form 6–K, which is incorporated by reference into the registration statement. Under Rule 430B, a report pursuant to Rule 10–01(d) of Regulation S–X [17 CFR 210.10–01] on unaudited interim financial information by an accountant which has conducted a review of such interim financial information would not require the consent of such accountant under Rule 436. Such a report is not considered part of a registration statement prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of Securities Act Sections 7 and 11.

[471] See, *e.g.*, letters from ABA; AICPA; Alston, BDO Seidman; Deloitte; E & Y; KPMG; PwC; and SIA.

[472] See, *e.g.*, letters from ABA and SIA.

[473] See, *e.g.*, letters from ABA; AICPA; Alston, BDO Seidman; Deloitte; E & Y; KPMG; and PwC.

[474] One commenter expressed concern that requiring an auditor to give a consent before a shelf takedown would impose undue delays on the offering process. See letter from ABA. The commenter noted that, although auditor "bring-down" procedures are customary in connection with a comfort letter, these procedures currently do not delay pricing.

these offerings to an amount which, at the time the registration statement became effective, was reasonably expected to be offered and sold within two years from the initial effective date of a registration statement.

For offerings under Rule 415(a)(1)(x) and continuous offerings under Rule 415(a)(1)(ix) in each case that are registered on Form S–3 or Form F–3, we are eliminating the provision in Securities Act Rule 415(a)(2) that limits the amount of securities registered. The two-year limitation was designed to ensure that the issuer had a *bona fide* intention to offer and sell securities in the proximate future.[475] We are eliminating this requirement for these offerings because we do not believe that it provides any significant investor protection.[476]

However, under the amendments to Rule 415 we are adopting today, that shelf registration statement can only be used for three years (subject to a limited extension) after the initial effective date of the registration statement.[477] Under the revised rule, new shelf registration statements must be filed every three years, with unsold securities and fees paid thereon allowed to be included on the new registration statement, where the shelf registration statement relates to:

- Offerings registered on an automatic shelf registration statement; or
- Offerings of securities described in Rule 415(a)(vii), (ix), or (x).[478]

Automatic shelf registration statements are immediately effective, as discussed below. In other cases, as long as the new shelf registration statement is filed within three years of the original effective date of the old registration statement the issuer may continue to offer and sell securities from the old registration statement for up to six months thereafter until the new registration statement is declared effective.[479] Prior to effectiveness of the new registration statement (including at the time of filing for an automatic shelf registration statement), the issuer can amend the later registration statement to include any securities (and fees attributable to such securities) remaining unsold on the older registration statement. We believe that allowing issuers to continue to offer and sell securities off the old registration statement for an additional six months after filing the new registration statement pending effectiveness of the new registration statement, and then including any securities remaining unsold on the new registration statement, will preserve the ability of these issuers to continue to use their shelf registration statements to access the capital markets. The additional six-month time period will not impact adversely our decision to have new shelf registration statements filed every three years. In addition, continuous offerings begun prior to the end of the three years can continue on the old registration statement until the effective date of the new registration statement if they are permitted to be made under the new registration statement.

We believe that, especially with our liberalization of procedures for shelf registration, particularly automatic shelf registration as described below, the precise contents of shelf registration statements may become difficult to identify over time, and that markets will benefit from a periodic updating and consolidation requirement.[480] The new registration statement will include the disclosures then required under the applicable form and our rules.

(2) Comments on Elimination of Limitation on Amount of Securities Registered

Commenters supported most of the proposed changes to Rule 415.[481] Some commenters were concerned that the requirement to file a new shelf registration statement every three years could result in a blackout period between the end of the three years and effectiveness of the new registration statement, during which issuers could not continue to sell securities off their old registration statements.[482] As noted above, we are maintaining the three-year requirement, but we are allowing the issuer to continue to offer and sell securities off its old registration statement until the earlier of the effectiveness of the new registration statement or six months after the timely filing of the new registration statement. We believe that this provision will eliminate any inappropriate blackout periods.

(B) Immediate Takedowns From a Shelf Registration Statement Filed Under Rule 415(a)(1)(x)

We are amending Securities Act Rule 415(a)(1)(x), as proposed, to allow primary offerings on Form S–3 or Form F–3 to occur immediately after effectiveness of a shelf registration statement.[483] With respect to immediate offerings from an effective registration statement, our current rules permit omission of information from the prospectus at the time of effectiveness only in reliance on Securities Act Rule 430A.[484] The changes we are adopting today affecting the treatment of prospectus supplements provides sufficient protection to investors to allow, in an immediate offering, omission of information under Rule 415 and Rule 430B.[485] Commenters on this provision expressed support for allowing immediate takedowns off of shelf registration statements in reliance on Rule 415.[486]

(C) Eliminating "At-the-Market" Offering Restrictions for Seasoned Issuers

The restrictions on primary "at-the-market" offerings of equity securities currently set forth in Rule 415(a)(4) were adopted initially to address concerns about the integrity of trading markets.[487] As discussed in the

[475] See Securities Act Section 6(a) [15 U.S.C. 77f(a)] and *Proposed Revision of Regulation S–K and Guides for the Preparation and Filing of Registration Statements and Reports*, Release No. 33–6276 at Part III.E (Dec. 23, 1980) [46 FR 78].

[476] We are retaining the limitation for business combination transactions registered under Rule 415(a)(viii) and continuous offerings under Rule 415(a)(ix) that are not registered on Form S–3 or Form F–3.

[477] The rules adopted today do not limit the amount that can be registered and provide for unused amounts to be carried forward.

[478] In the Proposing Release we sought comment on whether Rule 415(a)(1)(vii), which permits shelf offerings of mortgage related securities, should be eliminated. We have decided to retain Rule 415(a)(1)(vii), but have also determined that the requirement of a new shelf registration statement every three years should apply to offerings of these securities.

[479] The six-month extension does not apply to automatic shelf registration statements, since they will go effective immediately upon filing. See discussion in Section V.B.2 below under "Automatic Shelf Registration for Well-Known Seasoned Issuers."

[480] See, for example, our revisions to Securities Act Rule 412 to permit information in registration statements and prospectuses to be modified or superseded by subsequently filed Exchange Act reports and prospectus supplements and our amendments to Forms S–3 and F–3 to permit most information to be included in the prospectus through incorporation by reference.

[481] See, *e.g.*, letters from Brinson Patrick; NYCBA; and NYSBA.

[482] See, *e.g.*, letters from ABA; Alston; BRT; NYCBA; S&C; and SIA. One commenter suggested a five-year, rather than a three-year, time period to file a new automatic registration statement. See letter from NYCBA.

[483] See amendments to Securities Act Rule 415(a)(1)(x).

[484] See *Prospectus Delivery; Securities Transactions Settlement*, Release No. 33–7168 (May 11, 1995) [60 FR 26604] at Section II.A.5.

[485] Rule 430A continues to be available for immediate takedowns where the information omitted from a form of prospectus contained in the registration statement at the time of effectiveness omits only Rule 430A information. We are amending Rule 430A to enable the rule to be relied on by issuers using automatic shelf registration statements that go effective immediately.

[486] See, *e.g.*, letters from NYCBA and NYSBA.

[487] 17 CFR 230.415(a)(4). See *Integrated Disclosure Release*, note 23, at Section IV.B.2.d.

Proposing Release, we are eliminating these restrictions for primary shelf eligible issuers because they are not necessary to provide protection to markets or investors. The market today has greater information about seasoned issuers than it did at the adoption of the "at-the-market" limitations, due to enhanced Exchange Act reporting. Further, trading markets for these issuers' securities have grown significantly since that time. Requiring the involvement of underwriters and limiting the amount of securities that can be sold imposes artificial limitations on this avenue for these issuers to access capital. Under our revised Rule, an issuer that is registering a primary equity shelf offering pursuant to Rule 415(a)(1)(x) can register an "at-the-market" offering of equity securities without identifying an underwriter in its registration statement[488] and without a limitation on the amount of the offering. Issuers who are not eligible to register primary equity offerings using Rule 415(a)(1)(x) will still not be eligible to register "at-the-market" equity securities offerings. Commenters generally supported the removal of the restrictions on "at-the-market" offerings.[489]

v. Rule 424 Amendments

In conjunction with our other procedural rules, we are adopting certain companion modifications to Securities Act Rule 424. We are adding a separate new paragraph (b)(8) to Rule 424 for forms of final prospectuses not filed within the required timeframe under Rule 424. As we discuss below, this provision of Rule 424 will allow us to identify more readily final prospectuses not filed timely.[490] As noted above, we also are adding a separate new paragraph (b)(7) under Rule 424 for filing of prospectuses identifying selling security holders.

Commenters supported the amendments to Rule 424.[491] Some commenters suggested additional revisions to Rule 424, including deleting references to paper copies[492] and defining the phrase "date it is first used.[493] We are adopting the changes to Rule 424 essentially as proposed.[494]

vi. Elimination of Rule 434

In the Proposing Release, we requested comment as to whether we should eliminate Rule 434 in its entirety.[495] The commenters who responded to this request believed that the Rule is superfluous and should be eliminated.[496] Because we believe that Rule 434 has been used only very rarely, and because our new rules regarding free writing prospectuses permit the use of written descriptions of the terms of the issuer's securities or of the offering, such as term sheets, under more flexible circumstances, we are eliminating Rule 434.[497]

vii. Issuer Undertakings

We are adopting conforming revisions to the issuer undertakings that are required in connection with a shelf registration statement. These revisions reflect the issuer's agreement regarding the inclusion of information contained in prospectus supplements in registration statements and new effective dates of the registration statement on filing of a prospectus supplement.

(A) Treatment of Information in Prospectus Supplements

Item 512(a) of Regulation S–K currently requires an issuer that has registered securities pursuant to Rule 415 to undertake to file a post-effective amendment to the registration statement to:

- Include in the registration statement any prospectus required by Securities Act Section 10(a)(3);
- Reflect in a prospectus included in the registration statement any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereto) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; and
- Include in a prospectus included in the registration statement any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change in such information in the registration statement.[498]

Currently, shelf issuers can satisfy the first two of these obligations by filing Exchange Act periodic reports that are incorporated by reference into the registration statement. We are amending the Item 512(a) undertaking as proposed to clarify that, in shelf registration statements filed on Forms S–3 and F–3, all the disclosures required by this undertaking also may be contained in any filed prospectus supplement deemed part of and included in a registration statement or any Exchange Act report, instead of only in periodic reports, that an issuer files that is incorporated by reference into the registration statement.[499] As discussed below, we also are adopting as proposed the undertaking to allow automatic shelf issuers to include in this manner all other information that has been omitted from the base prospectus, subject in the case of a takedown of securities to the filing of a prospectus supplement. In the event that satisfaction of any element of the undertaking requires the filing by any of the permitted methods of a consent of an expert, that consent may be filed by post-effective amendment to Part II of the registration statement or by filing of an Exchange Act report, such as an annual report on Form 10–K or a report on Form 8–K or Form 6–K, that is incorporated by reference into the registration statement.[500]

(B) Prospectus Supplements Deemed Part of a Registration Statement and New Effective Dates

To reflect the issuer's understanding of and agreement to the changes described above regarding inclusion of prospectus supplements in registration statements and new effective dates, we are including a new undertaking in which the issuer will agree that, consistent with Rules 430B and 430C, information in prospectus supplements is deemed part of and included in registration statements and that, consistent with Rule 430B, new effective dates as to the issuer and underwriter will occur in respect of

[488] Underwriters may, as in the case of other information, be included in the relevant prospectus supplement.

[489] See, *e.g.*, letters from Brinson Patrick; NYCBA; and NYSBA.

[490] A prospectus filed under new paragraph (b)(8) will still be characterized as "required to be filed" under the paragraph originally applicable to it. For example, a form of prospectus required to be filed under paragraph (b)(2) but filed under paragraph (b)(8) will still trigger a new effective date as provided in Rule 430B.

[491] See, *e.g.*, letters from Alston and NYSBA.

[492] See, *e.g.*, letters from Cleary and Davis Polk.

[493] See, *e.g.*, letter from NYSBA.

[494] We have included in Rule 430B a provision regarding identification in prospectuses or prospectus supplements of Exchange Act reports filed to include certain omitted information in prospectuses and registration statements.

[495] Rule 434 has permitted the use of term sheets in connection with certain offerings.

[496] See letters from Cleary and Davis Polk.

[497] We have made conforming changes to the rules that reference Rule 434.

[498] In addition, Item 512(a)(4) contains a provision under which foreign private issuers are required include an undertaking regarding the updating of the financial and other information in a shelf prospectus in accordance with the age of financial statements provisions under Item 8.A of Form 20–F. We are not modifying this requirement. Foreign private issuers will continue to be subject to this updating requirement, by a post-effective amendment or by incorporation by reference, as currently provided for under Item 512(a)(4).

[499] This amendment will permit an issuer to use an incorporated Form 8–K (or incorporated Form 6–K) to satisfy this undertaking.

[500] See Securities Act Rule 436.

prospectuses related to certain shelf takedowns.[501] The new undertaking will assure that the issuer agrees that it has liability for information that is included in or deemed part of the registration statement, that the liability of the issuer will be assessed as of the date such a prospectus supplement is deemed part of and included in the registration statement.[502]

Because closed-end management investment companies use Securities Act Rule 415 to make shelf offerings under certain circumstances and provide an undertaking similar to that required by Item 512(a) of Regulation S–K in their registration statements on Form N–2, we are including a new undertaking in Form N–2 similar to that which we are including in Item 512(a) of Regulation S–K.[503] We also are amending Rule 415 to clarify that investment companies filing on Form N–2 that use the Rule must provide the undertaking required by Form N–2, rather than the undertaking required in Item 512(a) of Regulation S–K.[504]

c. Changes to Form S–3 and Form F–3

In addition to adopting changes that will allow additional Form S–3 or Form F–3 disclosures to be included through prospectus supplements and Exchange Act reports, we are amending Form S–3 and Form F–3, as proposed, to expand the categories of majority-owned subsidiaries that will be eligible to register their non-convertible securities, other than common equity, or guarantees under General Instruction I.C. of Form S–3 or General Instruction I.A.5 of Form F–3. The permitted circumstances are the same as those provided for majority-owned subsidiaries to be well-known seasoned issuers.[505] We believe that this expansion is appropriate in that it recognizes the various types of subsidiary guarantees that may be employed in registered offerings of such non-convertible securities, other than common equity, of related entities. Whether information regarding the subsidiary will have to be included in the registration statement will depend, as today, on whether the subsidiary meets the conditions of Rule 3–10 of Regulation S–X and Exchange Act Rule 12h–5.

2. Automatic Shelf Registration for Well-Known Seasoned Issuers

a. Overview

i. Rule Changes

In addition to the updating of the shelf registration process described above, we are adopting rules to establish a significantly more flexible version of shelf registration for offerings by well-known seasoned issuers. This version of shelf registration, which we refer to as "automatic shelf registration," involves filings on Form S–3 or Form F–3. The automatic shelf registration rules are in addition to the communications exemptions we are adopting today and will allow eligible well-known seasoned issuers substantially greater latitude in registering and marketing securities. The automatic shelf registration process will continue to enable the issuer, as with other shelf registrants, to take down securities off a shelf registration statement from time to time.[506] Automatic shelf registration is not mandatory; a well-known seasoned issuer may continue to file any other registration statement it is eligible to use or engage in any exempt offering or offerings of exempt securities available to it.[507]

For well-known seasoned issuers, we believe that the modifications we are adopting will facilitate immediate market access and promote efficient capital formation, without at the same time diminishing investor protection. Most significantly, the new rules will provide the flexibility to take advantage of market windows, to structure securities on a real-time basis to accommodate issuer needs or investor demand, and to determine or change the plan of distribution of securities as issuers elect in response to changing market conditions. We hope that providing these automatic shelf issuers more flexibility for their registered offerings, coupled with the liberalized communications rules we are adopting, will encourage these issuers to raise their necessary capital through the registration process.[508]

Under our automatic shelf registration process, eligible well-known seasoned issuers may register unspecified amounts of different specified types of securities on immediately effective Form S–3 or Form F–3 registration statements. Unlike other issuers registering primary offerings on Form S–3 or Form F–3, the automatic shelf registration process allows eligible issuers to add additional classes of securities and to add eligible majority-owned subsidiaries as additional registrants after an automatic shelf registration statement is effective. They also can freely accommodate both primary and secondary offerings using automatic shelf registration. Thus, these issuers have significant latitude in determining the types and amounts of their securities or those of their eligible subsidiaries that can be offered without any potential time delay or other obstacles imposed by the registration process.

Issuers using an automatic shelf registration statement will be permitted, but not required, to pay filing fees at any time in advance of a takedown or on a "pay-as-you-go" basis at the time of each takedown off the shelf registration statement in an amount calculated for that takedown.

The rules as adopted also permit more information to be excluded from the base prospectus in an automatic shelf registration statement than from a regular shelf registration statement. The omitted information can then be included at or before the time of filing a prospectus supplement. The automatic shelf registration process, together with the loosening of the restrictions on communications, permits well-known seasoned issuers with maximum flexibility to use free writing prospectuses to structure transactions.

ii. Comments on Automatic Shelf Registration

Commenters strongly supported the concept of automatic shelf registration

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[501] See Rules 430B and 430C.

[502] With regard to the liability of directors, persons signing registration statements, and experts, see the discussion in Section V.B.1. above under "Date of Inclusion of Prospectus Supplements in Registration Statements and New Effective Dates of Registration Statements."

[503] Item 34.4.d and e of Form N–2. Form N–2 is the registration form used by closed-end management investment companies to register under the Investment Company Act of 1940 and to offer their securities under the Securities Act.

[504] See Rule 415(a)(3).

[505] See discussion in Section II.A. above under "Well-Known Seasoned Issuers."

[506] As with other delayed shelf registration statements, the issuer will be considered to be in registration or offering its securities only when it offers securities in a takedown off its registration statement. See, *e.g.*, the 2000 Electronics Release, note , at note 10.

[507] Those other registration statements will not go effective immediately.

[508] The flexibility permitted under the automatic shelf registration process will benefit issuers and investors by facilitating different types of offerings that issuers currently may elect to conduct on an unregistered basis. For example, this process will facilitate the registration under the Securities Act of rights offerings conducted by eligible foreign private issuers. At present, foreign private issuers frequently do not extend rights offerings to their U.S. security holders because the current registration process under the Securities Act does not accommodate the timing mechanics of rights offerings, which are typically announced and launched in a very short period of time. The ability of eligible foreign private issuers to use the automatic shelf registration process and to have a Securities Act registration statement become automatically effective so that sales in a rights offering can take place immediately after filing should encourage eligible foreign private issuers to extend rights offerings to U.S. security holders.

for well-known seasoned issuers.[509] Commenters also believed that automatic shelf registration should be optional and, in addition, should allow issuers to control the timing of effectiveness of their registration statements, if they did not want immediate effectiveness.[510] A number of commenters on the procedural changes, while supporting the automatic shelf registration proposals for well-known seasoned issuers, believed that all seasoned issuers should be able to use certain of the elements of automatic shelf registration such as identification of selling security holders in prospectus supplements, omission of most information from base prospectuses, and addition of new securities and new registrants by automatically effective post-effective amendments.[511]

The rules we are adopting today continue to provide the greatest flexibility to well-known seasoned issuers. We have not expanded the automatic shelf provisions to other issuers.[512] As we discussed in the Proposing Release, we believe that limiting the benefits of automatic shelf registration to well-known seasoned issuers is appropriate, at this point, as these issuers have an established Exchange Act record and a significant following in the market. As we discuss above, we are directing the staff of the Division of Corporation Finance and OEA to undertake a study in three years after the full implementation of the rules as to the operation of the definition of well-known seasoned issuers.[513]

We are not mandating that automatic shelf registration be used by any issuer meeting the conditions for being a well-known seasoned issuer and we are not modifying the immediate effectiveness provisions to permit a well-known seasoned issuer to defer effectiveness. Rather, well-known seasoned issuers may continue to file a registration statement on any form for which it is eligible if they either do not wish to file an automatic shelf registration statement or otherwise desire to delay the effective date of their registration statements.

b. Automatic Shelf Registration Mechanics

i. Eligibility

The automatic shelf registration procedure can be used in connection with registration statements on Form S–3 or Form F–3 for all primary and secondary offerings of securities of well-known seasoned issuers.[514] In general, securities of majority-owned subsidiaries of a well-known seasoned issuer parent can be included on the automatic shelf registration statement of the parent if the subsidiary satisfies the conditions for being considered a well-known seasoned issuer described above.[515] Under automatic shelf registration, as adopted, a registration statement can be amended by post-effective amendment to add an eligible subsidiary as an issuer.[516]

Under the rules we are adopting today, an issuer can file an automatic shelf registration statement if it meets the eligibility criteria for well-known seasoned issuer on the initial filing date. Thereafter, the issuer also must determine its eligibility at the time of each amendment to its shelf registration statement for purposes of providing its update under Securities Act Section 10(a)(3) (or on the due date thereof). If an issuer is no longer eligible to use an automatic shelf registration statement at the time of its determination of eligibility, it will have to either post-effectively amend its registration statement onto the form it is then eligible to use or file a new registration statement on such a form. For example, a well-known seasoned issuer that is initially eligible for automatic shelf registration, that is not eligible at the time of its annual report filing, but that retains its eligibility to file a shelf registration statement under Rule 415 on Form S–3, can file a post-effective amendment or a new registration statement on Form S–3 that designates an amount of securities to be registered and otherwise complies with requirements for seasoned issuers that are not well-known seasoned issuers.

ii. Information in a Registration Statement

(A) Information That May Be Omitted From the Base Prospectus

Our rules as adopted will allow well-known seasoned issuers using automatic shelf registration statements to omit more information from the base prospectus in an automatic shelf registration statement than is the case currently or than is the case in a regular shelf offering registration statement under new Rule 430B. A base prospectus included in an automatic shelf registration statement can, as today, omit information pursuant to Securities Act Rule 409 that is unknown and not reasonably available and, as adopted, can omit the following additional information:

- Whether the offering is a primary or secondary offering;
- The description of the securities to be offered other than an identification of the name or class of the securities;
- The names of any selling security holders; and
- The disclosure regarding any plan of distribution.

Omitting this additional information from the base prospectus will not affect the information that an investor will be provided in connection with a particular sale.[517]

(B) Mechanics for Including Information

We believe that our new rules to broaden the means by which issuers may include information in an automatic shelf registration statement will benefit both issuers and investors. These new rules provide issuers with automatic shelf registration statements the ability to add omitted information to a prospectus by means of:

- A post-effective amendment to the registration statement;
- Incorporation by reference from Exchange Act reports; or
- A prospectus or a prospectus supplement that would be deemed to be

[509] See, *e.g.*, letters from ABA; Alston; BMA; Citigroup; Cleary; Davis Polk; Fried Frank; NYCBA; NYSBA; S&C; and SIA.

[510] See, *e.g.*, letters from ABA and Cleary.

[511] See, *e.g.*, letters from ABA; Citigroup; Cleary; NYSBA; SIA; S&C; and TBMA.

[512] As a result of the amendments to Rule 415 and the provisions of Rule 430B, seasoned issuers will have more flexibility in a number of respects, including in providing information in registration statements, including selling security holder information, conducting "at-the-market" offerings, and conducting immediate takedowns off of shelf registration statements.

[513] See Section II.A.4 above under "Comments Regarding the Definition of Well-Known Seasoned Issuer."

[514] As today, business combination transactions, including exchange offers cannot be registered on Form S–3 or Form F–3. Automatic shelf registration is not available for Form S–4 or Form F–4.

[515] See discussion in Section II.A above under "Well-Known Seasoned Issuers."

[516] See discussion below at note 520.

[517] In shelf registration statements currently, base prospectuses generally do not contain certain information about particular securities offering takedowns. That information is communicated orally or through a preliminary prospectus and then reflected in a final prospectus filed pursuant to Rule 424. Under our new rules, it also will be permitted to communicate such information in free writing prospectuses. The automatic shelf expands the categories of information that may be omitted from the base prospectus. The right to omit information from a base prospectus does not affect the fact that under our interpretation and Rule 159 regarding Securities Act Sections 12(a)(2) and 17(a)(2), whether there are material misstatements or material omissions that make a communication misleading, in the circumstances in which it is made, is assessed on the basis of information conveyed at the time of sale, as discussed above.

part of and included in the registration statement.[518]

Examples of the types of information that can be added in this manner for automatic shelf registration statements include:

- The public offering price;
- Any updating information regarding the issuer (whether or not a fundamental change);
- Detailed description of securities including information not contained or incorporated by reference in the base prospectus;
- The identity of underwriters and selling security holders; and
- The plan of distribution of the securities.

The principal exceptions to this complete flexibility will be that an issuer adding new types of securities[519] or new eligible issuers, including guarantors, and the securities they may issue to a registration statement must do so by post-effective amendment, which will be effective immediately upon filing.[520] New issuers and requisite officers and directors are required to be signatories to the post-effective amendment.[521]

(C) Registration of Securities To Be Offered

An eligible well-known seasoned issuer may register on an automatic shelf registration statement an unspecified amount of securities to be offered, without indicating whether the securities are being sold in primary offerings or secondary offerings on behalf of selling security holders. Issuers that are well-known seasoned issuers based only on their registered non-convertible security issuances can register on automatic shelf registration statements only non-convertible securities, other than common equity, unless they also are primarily eligible to use Form S–3 or Form F–3 for a primary offering because they have a public float of $75 million or more.[522] The calculation of registration fee table in the initial registration statement will not need to include a dollar amount or a specific number of securities, unless a fee based on an amount of securities is paid at the time of filing, but that table must at least list each class of security registered and indicate if the filing fee will be paid on a pay-as-you-go basis. The issuer can specify the number or dollar amount of securities in a prospectus supplement at the time it pays a fee in advance of or for each offering.[523]

The base prospectus in the initial registration statement must identify in general terms the names or classes of securities registered.[524] In addition, we are expanding the unallocated shelf procedure to allow automatic shelf issuers to register classes of securities without allocating the mix of securities registered between the issuer, its eligible subsidiaries, or selling security holders.[525] Allowing registration without separately allocating the registered classes of securities will provide, we believe, greater flexibility to well-known seasoned issuers in conducting registered securities offerings.

We are adopting revisions to remove the current restriction that would prevent well-known seasoned issuers from adding classes of securities to an automatic shelf registration statement after effectiveness.[526] Under the amended rules, a well-known seasoned issuer can add new classes of securities or securities of an eligible subsidiary to an automatic shelf registration statement at any time before the sale of those securities. In order to add new classes of securities, an issuer must file a post-effective amendment, which will be immediately effective, to register an unspecified amount of securities of the new class of security.[527] This requirement will cause the registration statement to include each new class of securities to be offered. An issuer can provide the disclosure about the new class of securities of the issuer in:

- A post-effective amendment to the registration statement;
- A prospectus supplement deemed part of and included in the registration statement; or

[518] The amendments permit any information required in the prospectus pursuant to Item 3 through Item 11 of Form S–3 and Item 3 through Item 5 of Form F–3 to be included in this manner by any one of these methods or a combination thereof. Rule 430B requires that the issuer file a prospectus supplement if the Exchange Act reports include the offering-related information.

[519] See discussion in Section V.B.2 below under "Registration of Securities to be Offered."

[520] Adding the issuer by post-effective amendment, including necessary signatures and information and filings necessary for qualification under the Trust Indenture Act of 1939 [15 U.S.C. 77aaa-bbbb] where applicable, ensures that the entity will be considered an issuer for purposes of Securities Act Section 11 for the securities covered by the registration statement. Information about the newly added subsidiary is required in the amended registration statement, either in a prospectus that is part of the registration statement or through incorporation by reference, unless the subsidiary is exempt from reporting pursuant to Exchange Act Rule 12h-5. The post-effective amendment also must include necessary opinions and consents. All disclosure items with regard to that new issuer can be incorporated by reference from the new issuer's Exchange Act filings, or be included in a prospectus supplement or a post-effective amendment.

[521] See Securities Act Section 6 [15 U.S.C. 77f], and the discussion in Section V.B.2 below under "Registration of Securities to be Offered."

[522] See the discussion in Section II.A.3 above under "Well-Known Seasoned Issuers Securities Offerings."

[523] See amendments to Securities Act Rules 413, 456(b), and 457(r) [17 CFR 230.413; 230.456(b), and 230.457(r)]. See also, Form S–3—General Instruction II.E and Instructions to the Calculation of Registration Fee Table.

[524] One commenter suggested that the rule should not require issuers using automatic shelf registration statements to include a description of securities in the base prospectus. See letter from NYCBA. The proposal did not contemplate a detailed description and we are clarifying that only the identification of the names or classes of securities such as "debt," "common stock,"preferred stock," etc., is required.

[525] See General Instruction II.E. of Form S–3 and General Instruction II.F. of Form F–3. Currently, an issuer offering securities on Form S–3 or Form F–3 is not required to specify the amount of each class of securities that it will offer, but it is required to separately register and designate the amount and classes of securities that may be offered and sold by eligible subsidiaries and selling security holders. Under our current rules, offerings for selling security holders are not considered delayed offerings under Rule 415(a)(1)(x) and thus must be separately registered or designated prior to effectiveness of the registration statement. Except under our new rules for well-known seasoned issuers, issuers cannot offer and sell securities of selling security holders using an unallocated shelf registration statement.

[526] See amendments to Securities Act Rule 413 [17 CFR 230.413].

[527] If an issuer using automatic shelf registration determines after effectiveness to add a class of debt securities or guarantees of securities to its registration statement, in addition to filing a post-effective amendment to the registration statement to register the class of debt securities or guarantees, it also needs to qualify all appropriate indentures under the Trust Indenture Act of 1939. The Division of Corporation Finance has long taken the position that the indenture covering the securities to be sold pursuant to a registration statement must be qualified when that registration statement becomes effective and not at the time of any post-effective amendment to that registration statement. See Division of Corporation Finance letter to Donald P. Spencer (available September 24, 1982). This position is consistent with the existing registration process and Securities Act Rule 413, which provides that an issuer must register an offering of additional securities through the use of a separate registration statement. In the automatic shelf registration process we are adopting today, however, an issuer is permitted to add securities to a shelf registration statement by means of a post-effective amendment. As such, unlike in the current registration statement process, under our new rules the effectiveness of an automatic shelf registration post-effective amendment that adds securities to a shelf registration statement will be the time "when registration becomes effective as to such securit(ies)," as that term is used in Trust Indenture Act Section 309(a)(1). Accordingly, under the automatic shelf procedure, the Trust Indenture Act qualification requirement will be satisfied in the following manner: (1) for debt securities or guarantees included in the registration statement at original effectiveness, the trust indenture will be required to be included in the registration statement at the time that registration statement becomes effective; and (2) for debt securities or guarantees added to the registration statement through a post-effective amendment, the trust indenture will be required to be included in the registration statement at the time that post-effective amendment becomes effective.

• An Exchange Act report that is incorporated by reference into the registration statement.[528]

(D) Pay-as-You-Go Registration Fees

(1) Pay-as-You-Go Fee Rules

We are adopting rules to permit, but not require, issuers using automatic shelf registration statements to pay filing fees at the time of a securities offering—commonly known as "pay-as-you-go"—or prior to that time. Under the new rules, for issuers electing to use the pay-as-you-go arrangement, the issuer will not have to pay any filing fee at the time of filing the initial registration statement.[529] We have eliminated the requirement in the proposal to pay a nominal ($100) initial filing fee. The triggering event for a required fee payment is a takedown off a shelf registration statement. For each takedown, the issuer can file a prospectus supplement for the takedown that includes a calculation of registration fee table or can file a post-effective amendment including the same information. The rules provide that the issuer must pay the appropriate fee calculated in accordance with Securities Act Rule 457 within the time required to file the prospectus supplement pursuant to Rule 424, but provide an ability to cure a failure to pay the fee. The cure is available if the issuer made a good faith effort to pay the fee timely and then pays the fee within four business days of the original fee due date. The rules we are adopting today also require that the issuer file the prospectus supplement, including the fee table reflecting payment of the fee on the cover page, pursuant to Rule 424. In addition, at any time before one or more takedowns in the future (for example, in the case of a medium-term note program), the issuer can pay a filing fee in advance and file such a prospectus supplement with a fee table reflecting payment of the fee on the cover.[530]

(2) Comments on Pay-as-You-Go Fees

Commenters supported a pay-as-you-go filing fee approach.[531] Some commenters were concerned about the effect of an inadvertent failure to pay the filing fee in a timely manner.[532] Commenters also believed that issuers should continue to be able to pay filing fees in advance of an offering.[533] Some commenters requested guidance on the time at which automatic shelf issuers using the pay-as-you-go system should calculate the amount of the filing fee.[534]

We have adopted the pay-as-you-go filing fee provisions substantially as proposed, but with certain modifications to address commenters' concerns. In response to commenters' concerns, we have provided a cure provision that will allow an issuer to pay a filing fee after its original payment due date if it made a good faith effort to pay timely and then paid the fee within four business days of the original fee due date. We also have clarified that automatic shelf issuers may use any of the methods available to pay their filing fees, including paying the filing fees in advance, or paying the filing fees on a pay-as-you-go basis. We have eliminated the initial fee requirement. As a result of this clarification and the cure provisions, we believe that we have addressed commenters' concerns in this area. With regard to the time when the amount of the filing fee is calculated, as today, the amount of the filing fee is calculated based on the fee schedule in effect at the time of payment (upon filing in advance, or at the time of a takedown) in accordance with the provisions of Rule 457. Thus, the fee amount may be different depending on the time of payment.[535]

(E) Registration under Securities Act Sections 5 and 6

As we discussed in the Proposing Release, under our new rules for automatic shelf registration, compliance with Securities Act Sections 5 and 6 is tied to the timing of the necessary filings and the content of the automatic shelf registration statement (including, as we have described, amendments, incorporated documents, and prospectus supplements). Securities Act Section 5 requires registration of each securities offering unless an exemption is available. Securities Act Section 6 governs how securities may be registered, including the filing of registration statements and the payment of filing fees. Any securities offered and sold off an effective automatic shelf registration statement will satisfy the requirements of Securities Act Section 5(c) if the registration statement, as amended if applicable, includes that class of securities and is filed prior to sale and will satisfy the requirements of Securities Act Section 5(a) if such registration statement, as amended if applicable, includes that class of securities and is effective prior to sale. The securities sold in the takedown will be registered for purposes of Securities Act Section 6 if:

• The class of securities is included in the registration statement, which is signed as required; and

• The appropriate fee is paid as provided in our rules.

(F) Immediate Effectiveness

Under the automatic shelf registration statement rules we are adopting today, all automatic shelf registration statements and post-effective amendments thereto will become effective immediately upon filing.[536] In addition, we are adopting the proposed amendments to Securities Act Rule 401(g) to provide that an automatic shelf registration statement will be deemed to be filed on the proper form unless we notify the issuer after filing of our objection to the use of such form.[537] Therefore, until an issuer is notified by us, it can conduct offerings with certainty that it has registered the securities on the proper form. After we notify an issuer of our objection, the issuer cannot proceed with subsequent offerings (those offerings not in progress), unless it amends the registration statement to the proper form, or otherwise resolves the issue with us. If we notify an issuer that it is ineligible to use an automatic shelf registration statement, securities sold prior to our notification will not have been sold in violation of Section 5. For ongoing offerings, the issuer, once notified by us, will promptly have to file a post-effective amendment or a new registration statement to reflect that it is

[528] This disclosure becomes part of the registration statement regardless of the method chosen to provide it.

[529] Because an issuer can pay any filing fee, in whole or in part, in advance of a takedown, the rules as adopted provide flexibility in the timing of the fee payment. Issuers using pay-as-you-go can still deposit monies in an account for payment of filing fees when due. As today, the fee rules applicable to the use of such account will apply. We are referring to this account as the "lockbox account." The amount of the fee will be calculated based on the fee schedule in effect when the money is withdrawn from the lockbox account. We are providing this flexibility for issuers, such as those with medium term note programs, to determine the fee payment approach most appropriate for them.

[530] As we note above, issuers can use the lockbox account for the monies to be used to pay the fees.

[531] See, *e.g.*, letters from ABA; Cleary; S&C; and TBMA.

[532] See, *e.g.*, letters from Cleary and TBMA.

[533] See, *e.g.*, letters from NYSBA; S&C; and SIA.

[534] See, *e.g.*, letters from Cleary and TBMA.

[535] Fees paid through the use of the lockbox account will be calculated at the time the money is withdrawn from the lockbox account to make the payment, not at the time the money is deposited into the lockbox account.

[536] See Rule 462(e) and (f).

[537] We are delegating our authority to object and to notify the issuer to the Division of Corporation Finance.

One commenter supported the change to Rule 401 that provides that automatic shelf registration statements will be deemed to be filed on the proper form unless we notify the issuer of our objection. See letter from Alston. Of course this provision does not affect the issuer's responsibility to assess its eligibility as a well-known seasoned issuer on the relevant determination date.

not an automatic shelf registration statement. Pending effectiveness of the post-effective amendment or a new registration statement, the ongoing offering could continue if such offering is permitted by the post-effective amendment or new registration statement.

Immediate effectiveness of automatic shelf registration statements will not raise, we believe, significant investor protection concerns. As with shelf registration statements today, most, if not all, information about the issuer is included in shelf registration statements through incorporation by reference of Exchange Act reports. Such shelf registration statements permit issuers to sell securities off the shelf registration statement without previous staff review of each offering.[538] We expect issuers to evaluate disclosure or accounting issues in Exchange Act filings before filing registration statements, including automatic shelf registration statements, and at the time of filing incorporated Exchange Act reports. Because we believe it is important that issuers address unresolved staff comments as part of its evaluation of these issues, we are adopting, as we discuss below, substantially as proposed the requirement for accelerated filers and well-known seasoned issuers to disclose written staff comments received 180 days before an issuer's fiscal year end that the issuer believes are material and that have remained unresolved at the time of filing of the Form 10–K or Form 20–F.[539]

(G) Duration

An automatic shelf registration statement will become effective immediately and will cover an unspecified amount of securities. The open-ended nature of such registration statements could result in a large number of post-effective amendments. We are, therefore, adopting as proposed a requirement for issuers to file new automatic shelf registration statements every three years that will, in effect, restate their then-current registration statement and amend it, as they deem appropriate. As adopted, issuers will be prohibited from issuing securities off an automatic shelf registration statement that is more than three years old. Our rules provide, however, that, so long as eligibility for automatic shelf registration is maintained, the new registration statement will be effective immediately and will carry forward to the new registration statement, at the issuer's election, either any unused fees paid or unsold securities registered and fees paid attributable to such registered securities under the old registration statement. As a result, an issuer's securities offerings under the registration statement can be uninterrupted.[540]

3. Unseasoned Issuers and Non-Reporting Issuers

a. Overview

We are adopting as proposed procedural changes that will affect reporting issuers that are not seasoned issuers. These include:

- Expanding the circumstances under which issuers may incorporate information from their Exchange Act reports into their Securities Act registration statements;[541] and
- Eliminating Form S–2 and Form F–2.

The provisions of Rule 430C also apply to prospectuses and prospectus supplements used in offerings by non-reporting issuers and unseasoned reporting issuers.[542]

b. Amendments to Form S–1 and Form F–1—Expanded Use of Incorporation by Reference

i. Eligibility

As we stated in the Proposing Release, as part of our initiatives to integrate further the Exchange Act and the Securities Act, we are adopting as proposed amendments to Form S–1 and Form F–1 to permit a reporting issuer that has filed at least one annual report and that is current in its reporting obligation under the Exchange Act to incorporate by reference into its Form S–1 or Form F–1 information from its previously filed Exchange Act reports and documents. Successor registrants can incorporate by reference if their predecessors were eligible.[543] In a change from the proposals, only the following issuers will not be able to incorporate by reference into a Form S–1 or Form F–1:

- Reporting issuers who are not current in their Exchange Act reports;[544]
- Issuers who are, or were or any of whose predecessors were during the past three years:
  - Blank check issuers;
  - Shell companies (other than business combination related shell companies); or
- Issuers for offerings of penny stock.

In addition, as proposed, to enhance the availability to investors of incorporated information, the ability to incorporate by reference is conditioned on the issuer making its incorporated Exchange Act reports and other materials readily accessible on a web site maintained by or for the issuer. By conditioning the ability to incorporate by reference on the ready accessibility of an issuer's incorporated Exchange Act reports and other materials on its web site, we are providing investors the ability to obtain the information from those reports and materials at the same time that they would have been able to obtain the information if it was set forth directly in the registration statement. Issuers may satisfy this condition by including hyperlinks directly to the reports or other materials filed on EDGAR or on another third-party web site where the reports or other materials are made available in the appropriate time frame and access to the reports or other materials is free of charge to the user.[545]

ii. Procedural Requirements

Under the amendments we are adopting today, the prospectus in the registration statement at effectiveness must identify all previously filed Exchange Act reports and materials, such as proxy and information statements, that are incorporated by reference. There will be no permitted

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[538] The staff of the Division of Corporation Finance will continue to review, upon request, prospectus supplements involving novel and unique securities offerings that are submitted to them prior to the offering.

[539] See amendments to Form 10–K and Form 20–F. We recently began publicly releasing, not less than 45 days after the staff has completed a filing review, staff comment letters and response letters relating to disclosure filings made after August 1, 2004 that are selected for review. See SEC Press Release 2005–72 (May 9, 2005). See discussion in Section VII.B below under "Disclosure of Unresolved Staff Comments."

[540] We are adopting a similar requirement for non-automatic shelf issuers but are providing an additional six-month timeframe for such issuers to have their non-automatic shelf registration statements declared effective. See discussion in Section V.B.1. above under "Elimination of Limitation on Amount of Securities Registered."

[541] See amendments to Form S–1 and Form F–1.

[542] See discussion in Section V.B.1 above under "Information Deemed Part of Registration Statement."

[543] This is the same as has been the case for Form S–2 and Form F–2. The succession will either have to be primarily for the purpose of changing the state or jurisdiction of incorporation of the issuer or because all of the predecessor issuers were eligible at the time of the succession and the issuer continues to be eligible.

[544] To be current in its reporting obligations under the Exchange Act, at the time of filing the registration statement, the issuer must have filed all materials required to be filed pursuant to Exchange Act Sections 13, 14, or 15(d) during the preceding 12 calendar months (or for such shorter period that the issuer was required to file such materials).

[545] This manner of access is similar to that provided for disclosure of web site access to an accelerated filer's Exchange Act reports. See *Acceleration of Periodic Report Filing Dates and Disclosure Concerning Web site Access to Reports*, Release No. 33–8128 (Sept. 5, 2002) [67 FR 58480] at part II.D.3.

incorporation by reference of Exchange Act reports and materials filed after the registration statement is effective—known as "forward incorporation by reference." Under the amended Forms, an issuer eligible to incorporate by reference its Exchange Act reports and other materials into its Securities Act registration statement must include the following in the prospectus that is part of the registration statement:

- A list of the incorporated reports and materials;
- A statement that it will provide copies of any incorporated reports or materials on request;
- An indication that the reports and materials are available from us through our EDGAR system or our public reference room;
- Identification of the issuer's web site address where such incorporated reports and other materials can be accessed; and
- Required disclosures regarding material changes in or updates to the information that is incorporated by reference from an Exchange Act report or other material required to be filed.

iii. Comments on Form S–1 and Form F–1 Amendments

Commenters on this aspect of the proposals strongly supported the changes to allow issuers to incorporate by reference historical filings into Forms S–1 and F–1.[546] Some commenters suggested that Form S–1 and Form F–1 should allow forward incorporation by reference as well for filings made after effectiveness of a registration statement.[547] Some commenters did not believe that issuers should, as a condition to incorporating by reference into their Forms S–1 or F–1, be required to make their Exchange Act reports and other materials readily accessible on their web sites.[548]

As we discuss above, we have adopted the proposals substantially as proposed. We have narrowed the categories of ineligible issuers that can use incorporation by reference because the amended provisions still permit only incorporation of previously filed reports. Because the purpose of the proposal was not to extend short-form registration to all reporting issuers, but to further integrate disclosures under the Securities Act and Exchange Act without impacting investor protection, we have not adopted the suggestion that Form S–1 and Form F–1 permit "forward incorporation by reference" of Exchange Act reports that are filed in the future. As adopted, we also are retaining the condition that the reports and other materials that are incorporated by reference must be readily available and accessible on a web site maintained by or for the issuer and containing issuer information.

c. Elimination of Form S–2 and Form F–2

As we discussed in the Proposing Release, the purposes underlying the disclosure and delivery requirements of Form S–2 and Form F–2 are to minimize duplicative reporting, while still requiring that the incorporated information be delivered with the prospectus. It appears that the premises underlying Form S–2 and Form F–2 have become outdated in view of the introduction of EDGAR, other technological developments, and the rapid dissemination of information in the market. Also, these forms have not been widely used, particularly for the purposes they were intended.[549] Expanding the types of issuers that may incorporate by reference through our amendments to Form S–1 and Form F–1, without requiring delivery of the incorporated documents (except on request), makes Form S–2 and Form F–2 superfluous. Several commenters supported the elimination of Form S–2 and Form F–2.[550] We are, therefore, rescinding Form S–2 and Form F–2.[551]

VI. Prospectus Delivery Reforms

A. Current Prospectus Delivery Requirements

The Securities Act requires delivery of a prospectus meeting the requirements of Securities Act Section 10(a), known as a "final prospectus," to each investor in a registered offering.[552] After the effective date of a registration statement, a written communication that offers a security for sale or confirms the sale of a security may be provided if a final prospectus is sent or given previously or at the same time. Otherwise, such a communication is a prospectus and may not be provided unless it meets the requirements of Securities Act Section 10(a).[553] A written confirmation is not designed to meet these requirements. Therefore, a final prospectus must accompany or precede a written confirmation. In addition, Securities Act Section 5(b)(2) makes it unlawful to deliver a security "unless accompanied or preceded" by a final prospectus.

Under these requirements, in the current system, if no preliminary prospectus or written selling materials are distributed, the final prospectus is the only prospectus received by investors. However, an investor's purchase commitment and the resulting contract of sale of securities to the investor in the offering generally occur before the final prospectus is required to be delivered under the Securities Act. Moreover, for sales occurring in the aftermarket, as a result of our rules, investors in securities of reporting issuers generally are not delivered a final prospectus.[554] Accordingly, the greatest utility of a final prospectus may be as a document that informs and memorializes the information for the aftermarket. Actual delivery to purchasers is not necessary to satisfy this purpose.[555]

We have previously adopted a number of other rules to address prospectus delivery in primary offerings and secondary market transactions. Securities Act Rule 153 addresses delivery of final prospectuses in transactions between brokers taking

[546] See, *e.g.*, letters from Alston; BDO Seidman; Cleary; Davis Polk; and E & Y.

[547] See, *e.g.*, letters from ABA; Alston; Cleary; Davis Polk, and NYCBA.

[548] See, *e.g.*, letters from ABA; E & Y; and NYSBA.

[549] According to data obtained from our internal Filing Activity Tracking System, from 2001 to 2004, a total of 10 Forms F–2 were filed by 9 different issuers and a total of 253 Forms S–2 were filed by 153 different issuers.

[550] See, *e.g.*, letters from ABA; Alston; BDO Seidman; E & Y; NYCBA; and NYSBA.

[551] We also are amending Forms S–4 and F–4 to delete the references to Forms S–2 and F–2.

[552] Congress intended that the prospectus provide investors with "the means of understanding the intricacies of the transaction * * *." H.R. Rep. No. 85, 73rd Cong., 1st Sess. 8 (1933).

[553] The term "prospectus," as defined in Securities Act Section 2(a)(10), includes any written communication that "offers a security for sale or confirms the sale of any security; except that * * * a communication provided after the effective date of the registration statement * * * shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of subsection (a) of section 10" is sent or given.

[554] For non-reporting issuers who are listed, as of the offering date, on a national securities exchange or automated quotation system, we require that prospectuses be delivered for 25 days after the offering date. See Securities Act Rule 174(d) [17 CFR 230.174(d)].

[555] Professor Louis Loss has noted that "[a] prospectus that comes with the security does not tell the investor whether or not he or she should buy; it tells the investor whether he has acquired a security or a lawsuit." L. Loss & J. Seligman, *Securities Regulation*, § 2–b–3 (3d ed. 2001). See also Cohen, *Truth in Securities Revisited*, 79 Harv. L. Rev.1340, note 20, at 1386 (criticizing the requirement that a final prospectus be delivered after an investment decision is made and noting that information essential to a transaction should, to the extent practicable, be required to be provided in time for use in an investment decision). The final prospectus also can be a basis for liability claims under Securities Act Section 12(a)(2).

Our interpretation set forth above and in the Proposing Release and Rule 159 as adopted also provide that liability under Section 12(a)(2) is assessed based on the information conveyed at the time of the contract of sale.

place over a national securities exchange. Securities Act Rule 434 was intended to ease the burden of prospectus delivery within the T+3 settlement cycle by permitting delivery of a final prospectus to be made in multiple documents at different intervals in the offering process.[556]

Many of our recent rulemakings to improve the content and timing of a reporting issuer's Exchange Act filings, together with the communications and procedural changes we are adopting today, are aimed at providing more information to investors at the time they commit to purchase a security. As we discussed in the Proposing Release, the increase in the flow of current information about a reporting issuer and the ability of offering participants to use free writing prospectuses in connection with offerings will give offering participants a greater ability to provide information to investors about the securities at that time. Further, rapid technological advances in the area of information delivery have resulted in greater access to information. For example, prospectuses and other filings now are available through EDGAR and other electronic sources, including the Internet, immediately upon filing.[557]

B. Prospectus Delivery Revisions

We are adopting revisions to the prospectus delivery requirements. Our new and amended rules are intended to facilitate effective access to information, while taking into account advancements in technology and the practicalities of the offering process. These changes are intended to alleviate timing difficulties that may arise under the current securities clearance and settlement system, and also to facilitate the successful delivery of, and payment for, securities in a registered offering.

As we discussed in the Proposing Release, given that the final prospectus delivery obligations generally affect investors only after they have made their purchase commitments and that investors and the market have access to the final prospectus upon its filing, we believe that delivery obligation should be able to be satisfied through a means other than physical delivery. Because the contract of sale has already occurred, we also believe that delivery of a written confirmation and the delivery of the final prospectus need not be linked.

[556] As part of our actions today, we are eliminating Rule 434 because it has been used extremely infrequently and we believe that with the new rules it is no longer necessary.

[557] Paper copies also remain available through our Public Reference Room, 100 F Street, N.E., Washington, DC 20549.

Many commenters and market participants have encouraged us to adopt an "access equals delivery" model for final prospectus delivery.[558] Under such an "access equals delivery" model, investors are presumed to have access to the Internet, and issuers and intermediaries can satisfy their delivery requirements if the filings or documents are posted on a web site. The access concept is premised on the information or filings being readily available.

At this time, we believe that Internet usage has increased sufficiently to allow us to adopt a final prospectus delivery model for issuers and their intermediaries that relies on timely access to filed information and documents.[559] Issuers, brokers, and dealers can satisfy their final prospectus delivery obligations if a final prospectus is or will be on file with us within the time required by the new rules, including the cure period.

As adopted, the new and amended rules will:

- Eliminate the existing link between delivery of the final prospectus and the delivery of a written confirmation of sale;
- Provide that the obligation to have a final prospectus precede or accompany a security for sale can be satisfied by filing the final prospectus with us within the relevant timeframe provided by Rule 424(b);
- Permit written notices of allocations; and
- Permit the prospectus delivery obligations in dealer transactions during any prospectus delivery period and in broker or dealer transactions on exchanges, facilities of exchanges, and alternative trading systems to be satisfied if the final prospectus has been or will be filed with us.

[558] Commenters on prospectus delivery aspects of the 2000 Electronics Release indicated support for some sort of "access equals delivery" model. See comment letters in File No. S7–11–00 from ACCA; NYCBA; SIA; and TBMA.

[559] Internet usage in the United States has grown considerably since 2000 when we published our most recent interpretive guidance on the use of electronic media in securities offerings, including with regard to prospectus delivery by electronic means. For example, recent data indicates that 75% of Americans have access to the Internet in their homes, and that those numbers are increasing steadily among all age groups. See, *Three out of Four Americans Have Access to the Internet*, Nielsen//NetRatings, March 18, 2004; Robyn Greenspan, *Senior Surfing Surges*, ClickZNetwork, Nov. 20, 2003 (citing statistics from Neilsen/NetRatings and Jupiter Research). In addition, there is evidence suggesting that the "digital divide" is diminishing. See, for example, Kristen Fountain, *Antennas Sprout, and a Bronx Neighborhood Goes Online*, The N.Y. Times, June 10, 2004 at G8; and Steve Lohr, *Libraries Wired, and Reborn*, The N.Y. Times, Apr. 22, 2004 at G1.

1. Access Equals Delivery

a. Rule 172

(i) Scope of Rule

We are adopting new Rule 172 with some refinements from the proposals to implement our access equals delivery model.[560] Under Rule 172(b), as adopted, a final prospectus will be deemed to precede or accompany a security for sale for purposes of Securities Act Section 5(b)(2) as long as the final prospectus meeting the requirements of Securities Act Section 10(a) is filed or the issuer will make a good faith and reasonable effort to file it with us as part of the registration statement within the required Rule 424 prospectus filing timeframe.[561]

Our "access equals delivery" model will continue to satisfy the principal statutory purposes of final prospectus delivery while recognizing the need to modernize the obligations in view of technological and market structure developments.[562]

(ii) Comments on Rule 172

Most commenters supported the proposals that would deem the final prospectus delivery requirements satisfied through the filing of the final prospectus with the Commission.[563] Some commenters believed that the "access equals delivery" concept should extend to delivery obligations for preliminary prospectuses in initial public offerings as well as those applicable to proxy statements and other documents.[564] One commenter was concerned that an access equals delivery method for providing information would not provide older persons with the information they needed for their investment decisions.[565]

A number of commenters were concerned about the condition to the proposed rule that the final prospectus

[560] This prospectus delivery model is in addition to Rules 153 and 174, as we are amending those rules. See discussion in Section VI.B.3 below under "Transactions Taking Place on an Exchange or Through a Registered Trading Facility—Rule 153" and in Section VI.B.4 below under "Aftermarket Prospectus Delivery—Rule 174."

[561] A final prospectus only filed as provided in Rule 172 will not be considered to be sent or given prior to or with a written offer within the meaning of clause (a) of Securities Act Section 2(a)(10).

[562] We are not amending Exchange Act Rule 15c2–8(d), which requires broker-dealers to take reasonable steps to comply promptly with written requests for copies of the final prospectus.

[563] See, *e.g.*, letters from ABA; Alston; ASF; BRT; Cleary; Davis Polk; Fried Frank; Goldman Sachs; ICI; Intel; Lindsay Kassof; Merrill Lynch; NYCBA; NYSBA; PEG; S&C; SCSGP; SIA; and TBMA.

[564] See, *e.g.*, letters from BRT and Cleary.

[565] See letter from the American Association of Retired Persons ("AARP").

would have to be on file with the Commission within the time frame required under Securities Act Rule 424.[566] The commenters were concerned about retroactive violations of Section 5 if underwriters or dealers sent written confirmations and then the issuer failed to file the final prospectus within the required time frame. These commenters recommended including a cure provision in the Rule. Other commenters recommended eliminating this condition entirely and instead relying on Commission enforcement actions as the penalty for issuers failing to timely file final prospectuses.[567]

As we note above, we have adopted Rule 172 to continue to cover only delivery of final prospectuses. We do not currently believe that extension of access equals delivery is appropriate for preliminary prospectus delivery obligations in initial offerings because we believe that it is important for potential investors to be sent the preliminary prospectus.

We have, however, revised the Rule in response to commenters' concerns about the filing condition. As adopted, we have provided that the filing condition is satisfied if the issuer makes a good faith and reasonable effort to file the prospectus within the timeframe required by Rule 424. We have included a cure provision that allows the issuer an ability to cure an unintentional failure to file if it has made such a good faith and reasonable effort to comply with the filing condition and files the prospectus as soon as practicable after discovery of the failure to file. We believe that these revisions to the Rule will address commenters' concerns regarding retroactive violations of Section 5 due to an issuer's failure to timely file the final prospectus.[568] We also have provided new paragraph (b)(8) of Rule 424 under which the issuer will file a form of prospectus that is not timely filed. We also have provided that the filing condition does not apply to transactions by dealers requiring delivery of a final prospectus pursuant to Securities Act Section 4(3).

b. Exceptions to the Rule

We have excluded certain types of offerings from the Rule as adopted because either they do not raise the same issues as in corporate capital formation transactions or they are already subject to rules unique to their offerings. For example, in offerings made pursuant to Form S–8, the final prospectus is never filed with us and thus, these offerings do not raise the same types of issues as other capital formation transactions. Business combination transactions and exchange offers also differ from other types of offerings registered under the Securities Act because the proxy rules and tender offer rules in conjunction with state law impose informational and delivery requirements in those transactions. The information contained in the final prospectus, therefore, will be delivered regardless of the Securities Act's requirements. Moreover, it is important to retain consistency among the various rules and regulations applicable to these business combination transactions and exchange offers.[569]

Finally, registered investment companies and business development companies will not be able to rely on the Rule. These entities are subject to a separate framework governing communications with investors, and we believe that it would be more appropriate to consider any changes to our prospectus delivery requirements as they apply to registered investment companies and business development companies in the context of a broader reconsideration of this framework.[570]

c. Notification

(i) Rule 173

In addition to providing access to information, prospectus delivery can serve the function of informing investors that they purchased securities in a registered transaction. This notification will provide investors the ability to trace their purchases for purposes of asserting their rights under the liability provisions of the federal securities laws. To preserve this investor protection function, we are adopting Rule 173 substantially as proposed. Rule 173 addresses each transaction involving:

- A sale by an issuer or an underwriter to a purchaser; and
- A sale in which the final prospectus delivery requirements apply.

Rule 173 provides that, in these transactions, each underwriter or dealer participating in a registered offering (or, if the sale was effected by the issuer and not by or through an underwriter or dealer, then the issuer) must provide to each purchaser from it, not later than two business days after the completion of the sale, a copy of the final prospectus or, in lieu of the final prospectus, a notice providing that the sale was made pursuant to a registration statement or in a transactions in which a final prospectus would have been required to have been delivered in the absence of Rule 172.

The Rule also provides that an investor can request a final prospectus. Under the Rule, a requested final prospectus does not have to be provided before settlement.[571]

Rule 173, as adopted, provides that compliance with Rule 173 is not a condition to reliance on Rule 172 to satisfy final prospectus delivery. Accordingly non-compliance with Rule 173 will not result in a violation of Securities Act Section 5. Rule 173 is, however, an important component of the prospectus delivery modifications we are adopting today.

As adopted, the same offerings excluded pursuant to Rule 172, as discussed above, also are excluded from this notification provision.[572] We also have revised Rule 173 to exclude transactions solely between brokers or dealers in reliance on Rule 153.

(ii) Comments on Rule 173

Commenters suggested certain clarifications to proposed Rule 173 including providing a cure provision for failure to provide the required notification,[573] eliminating required compliance with Rule 173 for aftermarket sales covered by Rule 174,[574] and providing that compliance with Rule 153 would be deemed compliance with Rule 173.[575] One commenter also requested that we confirm that the Rule 173 notification may be included in Rule 10b–10 confirmations.[576]

[566] See, *e.g.*, letters from Citigroup; Cleary; CSFB; Fried Frank; Goldman Sachs; Merrill Lynch; Morgan Stanley; NYSBA; and PEG.

[567] See, *e.g.*, letters from ABA and SIA. Some commenters requested that we provide an interpretation of the applicability of the Electronic Signature in Global and National Commerce Act ("E-Sign") to the Securities Act prospectus delivery requirements. See, *e.g.*, letters from ABA and S&C.

[568] We believe that the filing condition remains a central component of the access equals delivery construct.

[569] Securities Act Rule 162 provides, however, a final prospectus delivery exemption in certain registered exchange offers subject to Exchange Act Rules 13e–4(e) [17 CFR 240.13e–4(e)] or 14d–4(b) [17 CFR 240.14d–4(b)].

[570] Although some commenters wanted us to expand the categories of issuers to whom Rule 172 would apply, we are not doing so at this time. See, *e.g.*, letters from ABA; Allied; and Cleary.

[571] The final prospectus also can be comprised of a set of documents which, taken together, satisfy the information requirements of Securities Act Section 10(a). See discussion in Section V.B.1 above under "Information Deemed Part of Registration Statement."

[572] In addition, as a result of the operation of Rule 172 and Rule 173, if a current final prospectus is filed with us, final prospectuses will no longer be required to be delivered in connection with market-making transactions by dealers affiliated with issuers.

[573] See, *e.g.*, letter from TBMA.

[574] See, *e.g.*, letter from Goldman Sachs.

[575] See, *e.g.*, letter from Brinson Patrick.

[576] 17 CFR 240.10b–10. See, *e.g.* letter from CSFB.

We have adopted Rule 173 substantially as proposed. We have made clear that Rule 173 does not apply to transactions between dealers or brokers in reliance on Rule 153, but it continues to apply to the transaction between the broker or dealer and the underlying purchaser on whose behalf or for whose account the transaction is effected. We believe that it is important that purchasers in registered offerings are notified that they have acquired their securities in the registered transaction and so we also have not taken commenters' suggestions to eliminate compliance with the Rule for aftermarket sales. The Rule 173 notification can be sent separately or can be included in a Rule 10b–10 confirmation.

2. Written Confirmations and Notices of Allocations

We are adopting Rule 172(a), substantially as proposed, to provide an exemption from Securities Act Section 5(b)(1) that allows written confirmations and notices of allocation to be sent after effectiveness of a registration statement without being accompanied or preceded by a final prospectus.[577] The exemption is conditioned on the registration statement being effective and the final prospectus meeting the requirements of Securities Act Section 10(a) being filed with us.[578] The exemption permits:

- Written confirmations containing information limited to that called for in Exchange Act Rule 10b–10 and other information customarily included in confirmations, including any notice provided pursuant to Rule 173; and
- Written communications from an offering participant to a customer or from an underwriter to dealers in the selling group notifying them of the transaction and their allocations of securities in a registered offering.

Under the exemption, for example, broker-dealers could send e-mail notices after effectiveness to inform investors in a public offering of their allocations. Under the Rule as adopted, the notices of allocations may include the name of the securities, the CUSIP number, the amount allocated to the customer, the price of the securities, and the date or expected date of settlement and incidental information. Similar information is permitted in notices to participating dealers. The exemption is not available for the same offerings excluded from the prospectus delivery provision of the Rule discussed above.

One commenter suggested that the notice of allocation be permitted to included CUSIP numbers and also suggested that, especially for asset-backed securities, the notice of allocation should be expanded to permit communication of demand for securities and "price talk" or a communication of information regarding expected or actual allocation of classes of securities in order to facilitate an investment decision.[579] We have included specific reference permitting inclusion of a CUSIP number. However, we believe that the other information identified in this comment, if communicated in writing, should be the subject of a free writing prospectus. It is not an appropriate subject for a notice of allocation. The notice of allocation is intended to be a notice of actual allocation of securities to the investor or participating dealer to which the notice is provided.

3. Transactions Taking Place on an Exchange or Through a Registered Trading Facility—Rule 153

Securities Act Rule 153 addresses delivery of final prospectuses in transactions taking place between brokers over a national securities exchange; it does not currently apply to transactions on an automated quotation system, such as the Nasdaq Stock Market. Rule 153 provides that where members of the exchange are on both sides of the transaction and the transaction is effected on that exchange, the Section 5 obligation to deliver a final prospectus before or with a security between the brokers will be satisfied if the issuer or underwriter delivers copies of the final prospectus to the exchange.[580] Rule 153 has limited utility today because it may be relied on only for transactions between brokers on an exchange. The difficulty in prospectus delivery that Rule 153 was designed to address—the difficulty or inability to identify the ultimate buyer—has expanded since 1936 with the rise in transactions effected on markets other than national securities exchanges, such as the Nasdaq Stock Market and alternative trading systems, the growth of the book-entry system, and street name holdings.[581] In addition, the paper-based system upon which Rule 153 is premised is outmoded and unnecessary due to electronic filings of final prospectuses on EDGAR and the technological resources of market members. There currently is no significance to the paper copies of prospectuses delivered to national securities exchanges.

As we stated in the Proposing Release, we believe it is important, therefore, to amend Rule 153. Under the amendments we are adopting today, brokers or dealers effecting transactions on a registered exchange, through a trading facility of a registered national securities association, or through a registered alternative trading system will be deemed to satisfy their prospectus delivery obligations under Securities Act Section 5(b)(2) with regard to transactions in securities if:

- The issuer has filed or will file the final prospectus with us;
- Securities of the same class as the securities that are the subject of the transaction are trading on that exchange or through that trading facility or alternative trading system;
- The registration statement relating to the offering is effective and not the subject of a stop order issued under Securities Act Section 8; and
- Neither the issuer nor any underwriter or participating dealer is the subject of a pending proceeding under Securities Act Section 8A in connection with the offering.

These changes will eliminate the difficulties for prospectus delivery among brokers and dealers in registered resales and other sales into existing trading markets where securities of the same class already are trading. We are not requiring as part of the Rule that physical copies of the prospectus be sent to the exchange or a market maker. Further, the exchange and the market maker no longer will need to keep track of any prospectuses.[582] As with the existing rule, the amended Rule does not affect delivery obligations to

[577] See Rule 172.

[578] The exemption is in Rule 172 and is subject to the same prospectus filing and cure condition, as we have modified it, as described above.

[579] See letter from BMA–ABS.

[580] Securities Act Rule 153 defines the phrase "preceded by a prospectus" as used in Securities Act Section 5(b)(2).

[581] In connection with a proposed rulemaking in 1976, we solicited comment on extending the procedures available under Securities Act Rule 153 to transactions effected on the automated quotation system of a national securities association registered under Exchange Act Section 15A [15 U.S.C. 78o A], at least initially for Form S–8 transactions. See *Effective Date of Amendments to Registration Statement and Possible Expansion of Definitional Rule*, Release No. 33–5768 (Nov. 22, 1976) [41 FR 52701]. Two years later, these plans were deferred for further consideration due to lack of public interest and input at the time. See *Effective Date of Amendments to Registration Statement and Expansion of Definition Rule*, Release No. 33–5978 (Sep. 18, 1978) [43 FR 43725]. Many trading markets allow market participants to preserve their anonymity, thus making it difficult or impossible to identify the ultimate buyer. The growth in the book-entry system and the fact that most securities are held in street name exacerbates the problem.

[582] Because we are adopting the proposed changes to Rule 153, on the effective date of the amendment our interpretation in Question 11 in the 1995 Electronics Release will no longer be effective.

purchasers other than brokers or dealers.

We have revised our proposed amendments to Rule 153 in one respect. For purposes of Rule 153 as amended, the filing of the final prospectus, regardless of whether it occurs before or after reliance on the Rule, will satisfy the conditions of the Rule.[583]

4. Aftermarket Prospectus Delivery—Rule 174

Unless our rules provide otherwise, all dealers are required to deliver a final prospectus for a specified period after a registration statement becomes effective to persons who buy the securities in the aftermarket.[584] Securities Act Rule 174 exempts from this aftermarket dealer prospectus delivery obligation any transaction relating to securities of a reporting issuer. These exemptions in Rule 174 do not apply to underwriters or dealers with regard to any unsold allotment. Otherwise, if the transaction relates to securities of a non-reporting issuer that will be listed on a national securities exchange or quoted on an electronic inter-dealer quotation system, current Rule 174 sets an aftermarket delivery period of 25 days after effectiveness. For offerings of securities of non-reporting issuers that will not be so listed or quoted and offerings by blank check companies, Rule 174 sets an aftermarket prospectus delivery period of 90 days after effectiveness or after the funds are released from the escrow or trust account, as the case may be. Where a registration statement relates to offerings to be made from time to time, Rule 174 provides that there is no aftermarket delivery requirement once the initial period expires. The underlying purpose of aftermarket prospectus delivery is to assure wide dissemination of information about the issuer in the market. For reporting issuers, the Rule assumes that the information is already disseminated and eliminates the prospectus delivery requirement for these issuers.

We believe that, where information regarding all issuers is largely disseminated other than through physical delivery, including through EDGAR, physical delivery of a final prospectus in the aftermarket is of limited utility and necessity. We are, therefore, amending Rule 174 as proposed to provide that during the aftermarket period, dealers can rely on proposed Rule 172 to satisfy any aftermarket delivery obligations (other than for blank check companies).

Some commenters recommended that we eliminate the conditions to "access equals delivery" contained in Rule 172 for brokers or dealers involved in only aftermarket distributions.[585] Commenters also recommended elimination of all aftermarket prospectus delivery requirements for all transactions, with some suggesting that the obligation should be eliminated where the securities are listed on an exchange or quoted on the Nasdaq Stock Market.[586] While we are not eliminating the prospectus delivery obligations that currently arise under Securities Act Section 4(3) and Rule 174, we are providing for reliance on Rule 172 to satisfy those delivery obligations (other than for blank check companies).[587] Rule 173 applies in part where Securities Act Section 4(3) requires prospectus delivery and where there is no exemption from delivery under Rule 174.

VII. Additional Exchange Act Disclosure Provisions

A. Risk Factor Disclosure

1. Scope of Requirement

As we stated in the Proposing Release, many Securities Act registration statements require disclosure of the risks associated with an investment in an issuer's securities. Items 503(c) of Regulation S–K and Regulation S–B[588] describe that required disclosure as a "discussion of the most significant factors that make the offering speculative or risky." The risk factor section is intended to provide investors with a clear and concise summary of the material risks to an investment in the issuer's securities.

We are adopting substantially as proposed a new item requiring risk factor disclosure in annual reports on Forms 10–K and Exchange Act registration statements on Form 10.[589] We are not extending this requirement to Forms 10–KSB or Form 10–SB. The new item applies the standard for risk factor disclosure in Securities Act registration statements to Exchange Act registration statements and annual reports.[590] As such, risk factor disclosure under the Exchange Act will be the same type of disclosure as required in a Securities Act registration statement by Item 503, other than information about a particular securities offering.[591] We are not requiring asset-backed issuers to include risk factor disclosure in their annual reports on Form 10–K. We agree with commenters who noted that disclosure requirements in a Form 10–K for asset-backed issuers varies considerably under Regulation AB from corporate issuers.[592] These requirements, along with the fundamental structure of most asset-backed securities offerings involving stand-alone trusts, make this requirement inappropriate for asset-backed issuers.

We also are adopting as proposed the requirement that the risk factor disclosure in Forms 10 and 10–K be written in accordance with the same "plain English" standards as apply to risk factor disclosure in Securities Act registration statements.[593] The amendments as adopted also provide for quarterly updates to reflect material changes from risk factors as previously disclosed in Exchange Act reports. The amendments do not otherwise require, and we discourage, unnecessary restatement or repetition of risk factors in quarterly reports.

As we stated in the Proposing Release, the requirement to include risk factor disclosure in Forms 10 and 10–K will, we believe, further enhance the contents of Exchange Act reports and their value in informing investors and the markets.[594] Further, requiring risk factor

[583] We have revised the amendments to Rule 153 to address the suggestions of some commenters in this regard. See, *e.g.*, letters from Cleary and Fried Frank.

[584] See Securities Act Section 4(3).

[585] See, *e.g.*, letters from ABA; Cleary; and Davis Polk.

[586] See, *e.g.*, letters from ABA; Goldman Sachs; Morgan Stanley; and SIA.

[587] We also have eliminated the filing condition as a condition to satisfaction of that delivery requirement.

[588] 17 CFR 229.503(c) and 17 CFR 228.503(c).

[589] See amendments to Form 10–K and Form 10. Form 20–F (the form used for annual reports and Exchange Act registrations for foreign private issuers) already requires risk factor disclosure. See Item 3.D. of Form 20–F. The 1998 proposals also proposed risk factor disclosure in annual reports. The Advisory Committee Report contained similar recommendations. See the Advisory Committee Report, note 25, at Section II.B.4.

[590] See Item 503(c) of Regulation S–K. We recognize that a risk factor discussion in a Form 10–K may not be necessary or appropriate in all cases, depending on the issuer.

[591] We have revised the item from the proposal to eliminate the added language which caused concern that a different standard for risk disclosure would apply to annual reports on Form 10–K and registration statements on Form 10 from that required for Securities Act registration statements. We believe that the added language was redundant of the existing language of Item 503 and, therefore, unnecessary.

[592] See, *e.g.*, letters from ABA–ABS; ASF; BMA–ABS; and CMSA.

[593] Securities Act Rule 421 [17 CFR 230.421] requires issuers to write and design their risk factor disclosure in registration statements using plain English principles. See also Updated Staff Legal Bulletin No. 7 (June 7, 1999), question no. 3. The plain English rules applicable to Securities Act registration statements already apply to risk factor disclosure in Exchange Act reports incorporated by reference into Securities Act registration statements.

[594] We note that many issuers have included risk factor disclosure in their Exchange Act reports for a number of years. See comment letter in File No. S7–30–98 from BRT. Issuers may already include

disclosure in Exchange Act registration statements and annual reports will enhance the ability of reporting issuers to incorporate risk factor disclosure from these Exchange Act reports into Securities Act registration statements to satisfy the risk factor disclosure requirements.[595] Because one of our goals is to further integrate disclosures under the Securities Act and the Exchange Act, we believe it is important to establish consistent disclosure standards for risk factor disclosure.

We are adopting the proposed requirements for updated risk factor disclosure in quarterly reports because we believe that issuers who are required to file quarterly reports already need to undertake a review of changes in their operations, financial results, financial condition, and other circumstances in order to prepare the other portions of the quarterly report, including the financial statements and MD&A.[596] Therefore, we believe that issuers should be able, on a quarterly basis, to update risk factors to reflect material changes from previously disclosed risk factors.

2. Comments on Risk Factor Disclosure Requirement

While some commenters supported the proposal generally, others suggested modifications to the risk factor requirement.[597] For example, several commenters suggested we should require risk factors only "where appropriate."[598] Other commenters did not believe a separate risk factor section was necessary because reporting companies already included risk disclosures in various sections of their annual reports.[599] Commenters also noted that the proposed language was more extensive than Item 503(c).[600] A number of commenters thought we should extend the requirement for risk factor disclosure to small business issuers.[601] Further, at least one commenter was concerned about the proposal to require updated risk factor disclosures in quarterly reports.[602]

We have made modifications to the language in the proposals as we considered appropriate. While we are providing risk factor disclosure to be included "where appropriate," and have eliminated duplicative language, we continue to believe that a risk factor section in Exchange Act annual reports and registration statements will, where appropriate, be beneficial to investors.

B. Disclosure of Unresolved Staff Comments

As we stated in the Proposing Release, because enhanced Exchange Act reporting provides a principal element of support for, and is at the core of, the rules we are adopting today, it is important that issuers timely resolve any staff comments on their Exchange Act reports. It is possible, however, that the procedural changes we are adopting today may eliminate some of the incentives issuers have to respond to and resolve comments on their Exchange Act reports in a timely manner. In particular, with immediate effectiveness, well-known seasoned issuers will not be subject to the possibility that effectiveness of a Securities Act registration statement could be delayed while comments are being resolved. In addition, all shelf eligible issuers will have to file new registration statements only every three years. Staff in the Division of Corporation Finance has begun to review more Exchange Act reports and will continue to do so in keeping with the requirements of the Sarbanes-Oxley Act[603] as well as our view of the importance of an issuer's Exchange Act reports. Under these circumstances, and with the greater flexibility given in the rules we are adopting today to communications outside the statutory prospectus and offering procedures, we think it is appropriate for accelerated filers and well-known seasoned issuers to disclose outstanding staff comments that remain unresolved for a substantial period of time.

1. Disclosure Requirement

We are adopting substantially as proposed the requirement that all entities defined as accelerated filers and well-known seasoned issuers disclose, in their annual reports on Form 10–K or Form 20–F, written comments our staff made in connection with a review of Exchange Act reports that:

- The issuer believes are material;
- Were issued more than 180 days before the end of the fiscal year covered by the annual report;[604] and
- Remain unresolved as of the date of the filing of the Form 10–K or Form 20–F.[605]

The disclosure must be sufficient to disclose the substance of the comments. Staff comments that have been resolved, including those that the staff and issuer have agreed will be addressed in future Exchange Act reports, do not need to be disclosed. Issuers can provide other information, including their position regarding any such unresolved comments.

2. Comments on Disclosure of Outstanding Comments

Many commenters did not support the proposed disclosure of outstanding comments.[606] These commenters believed that issuers already have sufficient incentives to comply with staff comments and that the disclosure may not provide meaningful information to investors.[607] Some commenters suggested that well-known seasoned issuers should be able to choose to either comply with the disclosure requirement or abstain from conducting an offering until the

risk factor disclosure in their Exchange Act reports for varying reasons, including to take advantage of the safe harbor for forward-looking statements in Securities Act Section 27A and the "bespeaks caution" defense developed through case law. See, *e.g., In re Donald Trump Sec. Litig.*, 7 F.3d at 371 (3d Cir. 1993); *P. Stolz Family P'ship L.P.* v. *Daum*, 355 F.3d 92, 97 (2d Cir., 2004); and *In re Sprint Corp. Sec. Litig.*, 232 F. Supp. 2d 1193 (D. Kan. Sept. 30, 2002).

[595] We note that incorporation by reference of risk factors in Exchange Act reports may not fully satisfy the Securities Act disclosure obligations. For example, additional offering-related risks may need to be included in Securities Act registration statements.

[596] Moreover, issuers will already have in place disclosure controls and procedures and internal controls over financial reporting that should alert them to new or changing material risks affecting the issuer.

[597] See, *e.g.*, letters from ABA; AICPA; Alston; BDO Seidman; BRT; Deloitte; E & Y; KPMG; NYCBA; and PwC.

[598] See, *e.g.*, letters from ABA; Davis Polk; NYSBA; and S&C. The proposed disclosure requirement omitted the qualifier that risk factors should only be disclosed "where appropriate." In addition, commenters believed that risk factors are not appropriate for issuers of asset-backed securities. See, *e.g.*, letters from ASF; BMA–ABS; and CMSA.

[599] See, *e.g.*, letters from BRT; Intel; and SCSGP.

[600] As proposed, the risk factor disclosure would have required a discussion of the most significant factors with respect to the registrant's business, operations, industry, or financial position that may have a negative impact on the registrant's future financial performance. See, *e.g.*, letters from ABA; Alston; and S&C.

[601] See, *e.g.*, letters from ABA; AICPA; Alston; BDO Seidman; KPMG; NYSBA; and PwC.

[602] See letter from Fried Frank.

[603] See Section 408 of the Sarbanes-Oxley Act.

[604] The 180-day time period begins from the date of the first comment letter that specifically raises the issue, which may be later than the date of the initial comment letter on the filing.

[605] The requirement to disclose outstanding comments applies to both domestic and foreign registrants. The term "accelerated filer," which is defined in Exchange Act Rule 12b–2 [17 CFR 240.12b–2], does not distinguish between domestic and foreign issuers. Accelerated filers who file reports on Form 20–F are not subject to accelerated deadlines because that Form, unlike Form 10–K, does not include accelerated deadlines for filing. Nevertheless, any registrant that meets the definition of accelerated filer is subject to the disclosure requirement for outstanding comments.

[606] See, *e.g.*, letters from AICPA; Alston; BDO Seidman; BRT; Cleary; CSFB; Deloitte; E & Y; KPMG; Intel; Merrill Lynch; Morgan Stanley; SCSGP; and TBMA.

[607] See, *e.g.*, letters from AICPA; BDO Seidman; and E & Y.

comments have been resolved.[608] One commenter was concerned about potential liability that might arise from the disclosure of the unresolved comments.[609]

For the reasons noted above, we believe that disclosure of outstanding comments is an important component of the rules that we are adopting today. Because the disclosure requirement applies only to comments issued more than 180 days before the issuer's fiscal year end that remain unresolved at the filing date, we believe that, in most circumstances, this will provide issuers with more than enough time to address and resolve issues. Moreover, we are not modifying the language from the proposal to allow issuers the choice to either disclose or refrain from offering securities in registered offerings because we believe the disclosures are important to the entire market.

C. Disclosure of Status as Voluntary Filer Under the Exchange Act

As we noted in the Proposing Release, our filing system does not prohibit issuers that are not required to file Exchange Act reports us from filing those reports voluntarily. In most cases, voluntary filers are issuers who have, at some point, completed a registered offering under the Securities Act and have continued to file Exchange Act reports even after their reporting obligation under Exchange Act Section 15(d) has been suspended.[610]

We are adopting the proposal to include a box on the cover page of Forms 10–K, 10–KSB, and 20–F for an issuer to check if it is filing reports voluntarily. However, the box is for disclosure purposes only and an issuer's filing obligation will be unaffected by an incorrectly checked box.

We believe that it is important that investors and other market participants are aware that an issuer that is a voluntary filer is not required to continue to file Exchange Act reports and may cease to file its Exchange Act reports at any time and for any reason without notice. In addition, our communications and procedural rules we are adopting today do not treat voluntary filers as reporting issuers or seasoned issuers. As we indicated above, voluntary filers desiring treatment as reporting issuers should register a class of their securities under the Exchange Act.[611] Identification of voluntary filers will enable market participants and us to identify voluntary filers.

Commenters on voluntary filers generally thought that voluntary filers should be treated as seasoned issuers because many of them have contractual obligations to file reports.[612] Some commenters were concerned that it would be difficult for certain foreign private issuers to assess their voluntary filer status because of issues relating to calculating the number of U.S. holders of record.[613]

We are adopting as proposed the requirement for voluntary filers to disclose their status on the cover of Form 10–K, Form 10–KSB, and Form 20–F. To date, we have permitted voluntary filers to submit their reports to us through EDGAR. We believe it is important to be able to assess whether issuers are subject to our reporting and other requirements arising from their reporting status. We do not believe that calculation of the number of U.S. holders is a significant obstacle to unregistered foreign private issuers' determination of their voluntary filer status.

VIII. Paperwork Reduction Act

A. Background

The rules contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA).[614] We published a notice requesting comment on the collection of information requirements in the Proposing Release, and we submitted these requirements to the Office of Management and Budget (OMB) for review in accordance with the PRA.[615]

We did not receive any comments on the PRA analysis contained in the Proposing Release. As discussed above, we have made several changes to the proposed rules in response to comments on the proposals. These changes are designed to avoid potential unintended consequences and reduce possible additional costs or burdens pointed out by commenters. After evaluating the comments and our responsive revisions to address them, we are not changing the initial PRA estimates described in the Proposing Release and submitted to OMB, other than to reflect the decreased number of free writing prospectuses that will be filed as a result of the changes to the treatment of electronic road shows, as discussed below.

The titles for all the collections of information affected by these rules are:[616]

(1) "Form 10" (OMB Control No. 3235–0064);
(2) "Form 20–F" (OMB Control No. 3235–0288);
(3) "Form 10–K" (OMB Control No. 3235–0063);
(4) "Form 10–Q" (OMB Control No. 3235–0070);
(5) "Regulation S–K" (OMB Control No. 3235–0071);
(6) "Regulation S–B" (OMB Control No. 3235–0417);
(7) "Regulation C" (OMB Control No. 3235–0074);
(8) "Form S–1" (OMB Control No. 3235–0065);
(9) "Form F–1" (OMB Control No. 3235–0258);
(10) "Form S–2" (OMB Control Number 3235–0072);
(11) "Form F–2" (OMB Control Number 3235–0257);
(12) "Form S–3" (OMB Control Number 3235–0073);
(13) "Form F–3" (OMB Control Number 3235–0256);
(14) "Form S–4" (OMB Control Number 3235–0324);
(15) "Form F–4" (OMB Control Number 3235–0325);
(16) "Form N–2" (OMB Control Number 3235–0026);
(17) "Rule 173" (OMB Control Number 3235–0618);
(18) "Rule 163" (OMB Control Number 3235–0619); and
(19) "Rule 433" (OMB Control Number 3235–0617).

We adopted all of the existing regulations and forms pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940. They set forth the disclosure requirements for annual and quarterly reports, registration statements, and prospectuses that are prepared by issuers to ensure that investors have the information they need to make informed investment decisions in registered offerings and in secondary market transactions. We also are adopting new Securities Act Rules 163, 173, and 433

[606] See, *e.g.*, letters from ABA; Alston; CSFB; and NYSBA.

[609] See letter from TBMA.

[610] Exchange Act Section 15(d) suspends automatically its application to any issuer that would be subject to the filing requirements of that section where, if other conditions are met, on the first day of the issuer's fiscal year, it has fewer than 300 holders of record of the class of securities that created the Section 15(d) obligation.

[611] See Exchange Act Section 12(g) [15 U.S.C. 78l(g)].

[612] See, *e.g.*, letters from ABA and Alston.

[613] See, *e.g.*, letters from ABA and Alston.

[614] 44 U.S.C. 3501 *et seq.*

[615] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[616] The paperwork burden from Regulations S–K, S–B, and C are imposed through the forms that are subject to the requirements in those Regulations and reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience we estimate the burdens imposed by Regulations S–K, S–B, and C to be a total of one hour.

and eliminating Securities Act Rule 434 and Forms S–2 and F–2.

The amendments to existing forms and regulations and new rules will modify and advance the Commission's regulatory system for offerings under the Securities Act, enhance communications between public issuers and investors, and promote investor protection. The rules involve three main areas:

- Communications related to registered securities offerings;
- Procedural restrictions in the offering and capital formation processes; and
- Delivery of information to investors.

The hours and costs associated with preparing disclosure, filing forms, and retaining records constitute reporting and cost burdens imposed by the collections of information. The estimates of reporting and cost burdens provided in this PRA analysis address the time, effort, and financial resources necessary to provide the collections of information and are not intended to represent the full economic cost of complying with the rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The information collection requirements related to registration statements and periodic reports will be mandatory. For registration statements and periodic reports, there will be no mandatory retention period for the information disclosed, and the information gathered will be made publicly available. The information collection requirements related to the communications and prospectus delivery rules will apply only to issuers and other offering participants choosing to rely on them. There will be a mandatory record retention period with respect to the communications and prospectus delivery provisions. Moreover, free writing prospectuses that are prepared by or on behalf of or used or referred to by an issuer, and free writing prospectuses that are broadly disseminated by another offering participant, will have to be filed and will be publicly available on the EDGAR filing system, whereas other free writing prospectuses prepared by or on behalf of or used or referred to by offering participants, other than the issuer, will not have to be filed.

B. Summary of Information Collections

The rules will add the following disclosure requirements to Exchange Act periodic reports and registration statements:

- Risk factor disclosure;
- Disclosure by accelerated filers and well-known seasoned issuers, in their annual reports on Forms 10–K or 20–F, of any written staff comments regarding their Exchange Act reports issued more than 180 days before the end of the fiscal year covered by the annual report that the issuer believes to be material and that remain unresolved as of the date of the filing of the annual report; and
- "Check boxes" that will appear on the cover page of the report or registration statement to indicate whether the registrant is filing Exchange Act reports on a voluntary basis and whether the registration is a well-known seasoned issuer.[617]

The rules will impose the following new disclosure requirements and filing or notification conditions in connection with registered offerings under the Securities Act:

- A brief notice to purchasers in a registered offering providing that the sale was made pursuant to a registration statement;[618]
- A brief legend in "free writing prospectuses"[619] that refers investors to the statutory prospectus;
- "Check boxes" on registration statement cover pages indicating whether the registration statement is being used for "automatic shelf registration" or post-effective registration of additional securities or classes of securities;[620]
- Additional disclosure in the undertakings required to be included in a registration statement for securities to be offered pursuant to Rule 415;[621]
- A filing condition in connection with the use of certain free writing prospectuses;[622] and
- Making a version of an electronic road show that is a written communication used in initial public offerings of common equity or convertible equity securities by non-reporting issuers broadly disseminated on an unrestricted basis.

The rules will decrease existing disclosure requirements by:

- Reducing the need to repeat previously disclosed information by permitting any reporting issuer that has filed at least one annual report and that is current in its reporting obligation to incorporate information by reference into its registration statement on Forms S–1 or F–1; and
- Reducing the number of registration statements filed because the automatic shelf registration rules likely will eliminate the need to file multiple registration statements.

C. Summary of Comment Letters on the PRA Analysis

We received no comments in response to our request for comment on the PRA analysis in the Proposing Release. We have made several changes and clarifications in response to comments on the proposals that are designed to avoid or reduce possible additional costs or burdens pointed out by commenters. For example, we are not requiring that an electronic road show be filed for most offerings, except if an electronic road show that is a written communication is used in an initial public offering of common equity or convertible equity securities by a non-reporting issuer. In that case, the electronic road show does not have to be filed if a *bona fide* electronic road show is made readily available electronically on an unrestricted basis In addition, we have revised the definition of graphic communication so that live, in real-time presentations to a live audience will not be considered written communications and therefore not free writing prospectuses. As a result of these modifications, we believe that fewer free writing prospectuses, including those that are electronic road shows, will be filed or otherwise made available electronically on an unrestricted basis, and we have therefore revised the estimates for the total burden imposed by Rule 433.

D. Paperwork Reduction Act Burden Estimates

For purposes of the PRA, we estimated the total annual incremental reduction in the paperwork burden for registrants to comply with the collection of information requirements to be approximately 40,393 hours of in-house issuer personnel time and the reduction in cost to be approximately $70,797,000 for the services of outside

[617] We believe that the burden associated with checking a box on the cover page of an Exchange Act report or registration statement is so minimal that we are unable to quantify the burden.

[618] Under Securities Act Rule 173, this notification will be imposed, which may be satisfied through inclusion of the notification on a confirmation of sale already required to be provided in sales involving broker dealers, while Securities Act Rule 172 will eliminate the more burdensome requirement of delivery of a final prospectus.

[619] "Free writing prospectuses" are written communications (other than statutory prospectuses) that constitute offers to sell or solicitations of offers to buy securities.

[620] In this regard, see note regarding the burden associated with checking a box on the cover page.

[621] We also are requiring similar undertaking language in Form N–2, the registration statement form for closed-end management investment companies.

[622] See the discussion in Section III above under "Permissible Use of Free Writing Prospectuses" under "Filing Conditions."

professionals.[623] The changes in the PRA burden estimates for Rule 433 (OMB Control No. 3235–0617) have the effect of reducing the estimated paperwork burden for registrants by approximately 356 hours of in-house personnel time, for a new estimate of approximately 40,749 hours, and a reduction in cost of approximately $320,800, for a new estimate of approximately $71,117,800 for the services of outside professionals. For broker-dealers, we estimated the annual incremental paperwork burden to comply with the collection of information requirements to be approximately 3,874,133 hours of in-house issuer personnel time, and we are not changing this estimate.[624] Those estimates include the time and the cost of preparing and reviewing disclosure, filing documents or otherwise publicizing information, and retaining records.

As we noted in the Proposing Release, the estimates represent the average burden for all issuers, both large and small. We expect that the burdens and costs could be greater for larger issuers and lower for smaller issuers. For Exchange Act periodic reports, we estimated that 75% of the burden of preparation is carried by the issuer internally and that 25% of the burden is carried by outside professionals retained by the issuer at an average cost of $300 per hour.[625] For Securities Act registration statements, Exchange Act registration statements, all filings by foreign private issuers, and the free writing prospectus rules, we estimated that 25% of the burden of preparation is carried by the issuer internally and that 75% of the burden is carried by outside professionals retained by the issuer at an average cost of $300 per hour. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the issuer internally is reflected in hours.

1. Exchange Act Periodic Reports and Registration Statements

For purposes of the PRA, we estimated the annual incremental paperwork burden for all issuers to prepare the disclosure required in Exchange Act periodic reports and registration statements under the rules to be approximately 43,245 hours of issuer personnel time and the cost to be approximately $4,477,000 for the services of outside professionals, as we explained more fully in the Proposing Release. Those estimates include the time and the cost of preparing and reviewing the required new disclosure. The estimates reflect our belief that, because the current disclosure requirements for Exchange Act reports (such as Management's Discussion and Analysis of Financial Condition and Results of Operations)[626] already require issuers to obtain information necessary to evaluate their material risks, and because disclosure by accelerated filers describing unresolved written staff comments on previous filings that the issuer believes to be material will be simply a summary of comments provided to the issuer by the staff of the Commission, the disclosure that issuers would have to make in their Exchange Act periodic reports and registration statements should not impose significant new burdens.

2. Communications and Prospectus Delivery

For purposes of the PRA, we estimate that the annual paperwork burden for issuers that choose to comply with the communications rules will be approximately 1,176 hours of issuer personnel time and a cost of approximately $1,058,288 for the services of outside professionals. These estimates reflect the burden hours and costs associated with the disclosure, filing, and record retention conditions. As noted above, we are revising the annual burden for the information collection requirements of Rule 433 as a result of the changes to the treatment of electronic road shows and we have decreased the annual paperwork burden accordingly. For the prospectus delivery rules, we estimated that the annual burden would be 3,874,133 hours total for all respondents to comply with Rule 173.

3. Securities Act Registration Statements

For purposes of the PRA, we estimated that the rules affecting the collection of information requirements related to Securities Act registration statements would reduce incrementally the annual paperwork burden by approximately 85,170 hours of issuer personnel time and by a cost of approximately $76,653,000 for the services of outside professionals, as we explained more fully in the Proposing Release. That estimate reflected changes to the number of filings that could result from the rules as well as the decrease in disclosure preparation time resulting from the expansion of incorporation by reference.

IX. Cost Benefit Analysis

A. Background

We are revising the registration, communications, and offering processes under the Securities Act. The rules involve three main areas:

- Communications related to registered securities offerings;
- Registration and other procedures in the offering and capital formation processes; and
- Delivery of information to investors.

The overall goal of the reforms is to make the registration system more workable for issuers and underwriters and more effective for investors in today's capital markets. We believe that the gun-jumping provisions of the Securities Act impose substantial and increasingly unworkable restrictions on useful communications that would be beneficial to investors and markets and consistent with investor protection. Today's rules reflect our view that revisions to the Securities Act registration and offering processes are appropriate in light of significant developments in the offering and capital formation processes and can provide enhanced protection of investors under the statute. This view is based on our belief that today's rules will:

- Facilitate greater availability of information to investors and the market with regard to all issuers;
- Eliminate barriers to open communications that have been made increasingly outmoded by technological advances;
- Reflect the increased importance of electronic dissemination of information, including the use of the Internet;
- Make the capital formation process more efficient; and
- Define more clearly both the information and the timeliness of the availability of information against which a seller's statements are evaluated for liability purposes.

B. Summary of Rules

The amount of flexibility granted to issuers under the revisions to the registration, communications, and offering processes is contingent on the characteristics of the issuer. We believe that the most far-reaching revisions of the communications rules and registration processes should be

[623] For administrative convenience, the presentation of the totals related to the paperwork burden hours have been rounded to the nearest whole number and the cost totals have been rounded to the nearest thousand.

[624] We assume that brokers and dealers will not use outside professionals to comply with the new collection of information requirements.

[625] In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $300 as the average cost of outside professionals that assist issuers in preparing disclosures and conducting registered offerings.

[626] Item 303 of Regulation S–K [17 CFR 229.303].

considered for issuers that have a reporting history under the Exchange Act and are presumptively the most widely followed in the marketplace. We believe that these issuers have an Exchange Act record, a broad following of their Exchange Act filings, and the contemplated attention directed to their Exchange Act reports by analysts and institutional investors, and the staff of the Division of Corporation Finance that will produce the greatest likelihood of Exchange Act reports that not only are reliable but also are broadly scrutinized by investors and the markets.

For purposes of the rules we are adopting today, we categorize issuers into tiers, consisting of non-reporting issuers, unseasoned issuers, seasoned issuers, and well-known seasoned issuers. The first three tiers of issuers are identified by pre-existing criteria under the existing federal securities laws. A non-reporting issuer is an issuer that is not required to file reports pursuant to Sections 13 or 15(d) of the Exchange Act.[627] An unseasoned issuer is an issuer that is required to file reports pursuant to Sections 13 or 15(d) of the Exchange Act, but does not satisfy the requirements of Form S–3 or Form F–3 for a primary offering of its securities. A seasoned issuer is an issuer that uses Form S–3 or Form F–3 to register primary offerings of securities. Our longstanding experience with these categories of issuers provides us with a basis for determining the amount of flexibility provided by the rules we are adopting today.

The characteristics of the last tier of issuer, called well-known seasoned issuers in the rules, will be easily measurable and readily available so that issuers and market participants can determine eligibility easily. In response to comments, we are modifying the definition of well-known seasoned issuer to provide that the eligibility determination will be made as of the later of the time of filing of the issuer's most recent registration statement on Form S–3 or Form F–3 for a primary offering, the time of filing its most recent amendment for purposes of complying with Section 10(a)(3) of the Securities Act, or an amendment to a shelf registration within 16 months. If the well-known seasoned issuer has not filed an automatic shelf registration statement, the eligibility is determined at the time of filing the issuer's most recent annual report on Form 10–K or Form 20–F (or if such report has not been filed by its due date, such due date). In addition, we will require issuers to check a box on the cover of their Form 10–K or Form 20–F if they are a well-known seasoned issuer so that market participants may reasonably rely on the issuer's determination. For issuers with publicly traded equity, we believe that market capitalization provides a sufficient proxy for determining whether or not an issuer is well followed. For issuers of fixed income securities, we believe that the amount of fixed income securities sold in registered offerings for cash in the past three years provides a sufficient proxy.[628]

Under the rules, a well-known seasoned issuer will have the greatest flexibility. The largest issuers are followed by sophisticated institutional and retail investors, members of the financial press, and numerous sell-side and buy-side analysts that actively seek new information on a continual basis. Unlike smaller or less mature issuers, large, seasoned public issuers tend to have a more regular dialogue with investors and market participants through the press and other media. The communications of these well-known seasoned issuers are subject to scrutiny by investors, the financial press, analysts, and others who evaluate disclosure when it is made.

1. Communications

We are adopting communications rules that recognize the value of ongoing communications as well as the importance of avoiding unnecessary restrictions on offers during a registered offering. The rules are designed to improve investors' access to information, to promote communications between offering participants and investors, and to maintain adequate investor protection. The rules will operate in the following manner:

- There will be two separate safe harbors from the gun-jumping provisions for ongoing communications at any time:
  - A safe harbor for a reporting issuer's continued publication or dissemination at any time of regularly released factual business and forward-looking information; and
  - A safe harbor for a non-reporting issuer's continued publication or dissemination at any time of factual business information that is regularly released to persons other than investors or potential investors.
- There will be two separate exclusions from the gun-jumping provisions for communications not encompassed in the rules above that occur prior to the filing of a registration statement:
  - An exclusion from the definition of offer for purposes of Securities Act Section 5(c) for all issuers for all communications made by or on behalf of issuers 30 days prior to filing a registration statement; and
  - An exemption from the prohibition on offers for purposes of Securities Act Section 5(c) before the filing of a registration statement for offers made by or on behalf of eligible well-known seasoned issuers.
- Certain written offering related communications, such as communications about the schedule for an offering or communications about account-opening procedures, will be permitted in connection with an offering and will be excluded from the definition of "prospectus."
- Issuers and other offering participants will be permitted to use free writing prospectuses after the filing of the registration statement, subject to enumerated conditions (including, in specified cases, filing with the Commission).
- The safe harbors for research reports will be expanded.

2. Securities Act Registration Rules

As part of the rules to modernize the regulatory regime for registered securities offerings, we are streamlining the registration process for most types of reporting issuers. The rules recognize the role that technology and improved Exchange Act reporting procedures have in informing the marketplace. The rules address the registration procedures for seasoned and unseasoned issuers. These rules include:

- Modifications that clarify and expand how and when information can be included in registration statements;
- A clarification of the Securities Act liability treatment of information provided in a prospectus supplement and Exchange Act reports incorporated by reference;
- A more flexible automatic registration process for well-known seasoned issuers, including immediate effectiveness and pay-as-you-go registration fee payment; and
- Rules related to non-shelf offerings of securities.

3. Prospectus Delivery

We are adopting an "access equals delivery" prospectus delivery model, where final prospectus delivery obligations for purposes of Securities

[627] Under the rules, an issuer that is filing Exchange Act reports voluntarily, but is not required to do so, will be a non-reporting issuer for purposes of the communications and procedural rules.

[628] For further discussion of the characteristics of well-known seasoned issuers, see Section II above.

Act Section 5(b)(2) will be satisfied if the issuer filed the final prospectus with the Commission within the required time frame. The rules will:

- Eliminate the existing link between delivery of the final prospectus and the delivery of a written confirmation of sale;
- Provide that the obligation to have a final prospectus precede or accompany a security can be satisfied by filing a final prospectus with us within the relevant timeframe provided by Rule 424(b);
- Permit written notices of allocations; and
- Permit the prospectus delivery obligations in dealer transactions during any prospectus delivery period and broker or dealer transactions in registered resales of securities that are trading to be satisfied if the final prospectus has been or will be filed with us.

4. Exchange Act Reports

A public issuer's Exchange Act record often provides the most detailed source of information to the market and to potential purchasers regarding the issuer, its business, its financial condition, and its prospects. We are adopting, substantially as proposed, several reforms to Exchange Act reporting requirements related to the reforms to the Securities Act offering process. As a result of the rules, we will:

- Extend risk factor disclosure requirements to annual reports on Exchange Act Form 10–K and registration statements on Exchange Act Form 10;
- Require updates for previously disclosed risk factors in quarterly reports on Exchange Act Form 10–Q;
- Require accelerated filers and well-known seasoned issuers to disclose in their annual reports on Exchange Act Forms 10–K and 20–F any written staff comments on Exchange Act reports issued more than 180 days before the end of the fiscal year covered by the report that the issuer believes to be material and that remain unresolved as of the filing date of the report;
- Include a box on the cover page of the Exchange Act Forms 10–K and 20–F for an issuer to check if it is a well-known seasoned issuer; and
- Include a box on the cover page of Exchange Act Forms 10–K, 10–KSB, and 20–F for an issuer to check if it is filing reports voluntarily.

C. Comments on the Proposals

Commenters supported the proposals, with many commenters noting that the proposals struck the appropriate balance between improving the capital formation process and modernizing offering communications, while preserving investor protection and avoiding unnecessary impediments to the capital formation process. We did not receive any comments on the cost-benefit analysis, other than asking generally about cost savings by underwriters and broker-dealers. Some commenters noted potential costs that certain of the proposals might impose. We considered these comments carefully and believe that we have made responsive changes in order to minimize these potential costs.

For example, a number of commenters were concerned about the final prospectus filing condition in Rule 172, due to the potential liability if written confirmations were sent and the issuer failed to file the final prospectus within the required time frame. We have included a cure provision allowing an issuer that has made a good faith and reasonable effort to file within the required time frame to file the final prospectus as soon as practicable after discovery of the failure to file. Commenters also expressed concern about the distinctions between oral and written communications and the effects on offering participants to provide information. We have revised the definition of graphic and written communications to make clearer when a communication is written and when it is oral.

D. Benefits

As discussed, the overall goal of the reforms is to make the registration system more workable for issuers and underwriters and more effective for investors in today's capital markets. We believe that the reforms will achieve this goal and consequently result in significant benefits in a number of areas, including by increasing the flow of information available to investors during a registered offering while maintaining investor protection against misleading or inaccurate disclosures. We also anticipate that the rules will improve access to the public capital markets and possibly lower the cost of capital by, among other things, modifying, and in some cases clarifying, the federal securities laws related to communications, liability, shelf registration, and the use of electronic media during a registered offering. Finally, we believe that the rules will provide cost-saving options to issuers and underwriters.

1. Increased Information Flow

The primary benefit that the rules seek to achieve is an increased flow of information to investors during a registered offering. While much of the Commission's recent rulemaking is intended to encourage reporting issuers to provide materially accurate and complete information to the market on a more current basis, the Securities Act's constraints on communications during an offering cause issuers to be concerned about the treatment of their ongoing communications and whether their customary disclosures will be considered an impermissible offer of securities. As a result of the multiplicity of means of communication, restricting written offers to a statutory prospectus inhibits desirable methods of timely communication of information. The rules regarding communications, registration, and liability will operate to increase the amount of valuable information that could be provided to investors before they make investment decisions. We believe that more information will be provided on a more timely basis because the rules will eliminate regulatory barriers to the dissemination of that information, and the markets may provide incentives for issuers, underwriters, and broker dealers to produce additional information.

Increased information flow will promote efficient capital markets because the market may be able to value securities more accurately. Under the rules, underwriters can communicate with potential investors during an offering to better gauge investor interest, thus facilitating greater discourse among investors and underwriters.

Another benefit of increasing the information flow is that investors may become better informed in making portfolio allocation decisions in accordance with their particular risk-return profiles. Moreover, the ability of offering participants to use free writing prospectuses in connection with offerings will impart a greater ability to provide information to investors about securities before they make investment decisions. For example, issuers and underwriters will be able to provide proprietary analytical material that is specifically tailored to address the particular asset allocation considerations of different investors. Today's markets include a growing number of increasingly complex securities where written communications, such as detailed term sheets, will enhance significantly the offering process for the benefit of investors. In addition, we are adopting rules to permit research to be distributed about more issuers that are making registered offerings. Having access to these reports may facilitate

additional security analysis among investors.

By reducing the restrictions on the contents of written communications, we anticipate that investors will demand more information and issuers, underwriters, and other offering participants will be more willing to provide it. Significant technological advances have increased both the market's demand for more timely corporate disclosure and the ability of issuers to capture, process, and disseminate information. The rules will enable issuers and market participants to take greater advantage of the Internet and other electronic media to communicate and deliver information to investors. As discussed in greater detail below, reducing regulatory and liability uncertainty with respect to the treatment of written communications may make issuers more comfortable in supplying information without worrying about violating the gun-jumping provisions. Accordingly, investor demand for information can be satisfied through relatively inexpensive mass dissemination of the information through electronic means.

Finally, the rules we are adopting today that provide that an electronic road show presentation must either be filed or a *bona fide* version must be made readily available to an unrestricted audience for initial public offerings of a non-reporting issuer's common equity or convertible equity securities provide for the availability of information in these offerings to all investors. We believe these changes will encourage more road shows and other information in these offerings to be provided to more investors.

2. Investor Protection

Another benefit of the rules is that they will maintain investor protection against misleading or inaccurate disclosures. Investor protection is of paramount importance in maintaining fair, orderly, and efficient capital markets. The rules regarding liability and disclosure in Exchange Act periodic reports, as well as the filing conditions and record retention conditions for unfiled free writing prospectuses, will maintain and enhance investor protection in connection with registered securities offerings.

A central premise underlying the liability rules is that communications to investors at the time of sale (including the time of the contract of sale) should not include material misstatements or fail to include material information that is necessary to make the communication not misleading in light of the circumstances in which the communication is made. We believe that the rules will provide issuers and underwriters with greater flexibility to communicate information in a manner that does not slow the offering process unduly. At the same time, investors should be in a better position to have accurate information at the time of the sale of the securities to them (including the time of the contract of sale). These measures should encourage the disclosure of accurate information about transactions.[629]

The free writing prospectus rules will promote investor protection by requiring issuers to file issuer prepared or used free writing prospectuses and issuer information in free writing prospectuses. We believe that conditioning the use of written issuer provided or used information on filing will improve investor protection. On the one hand, the filing requirement is designed to assure that written issuer provided or used information is publicly available. On the other hand, requiring underwriters to file their proprietary analysis may cause them competitive harm. Additionally, the free writing prospectus will be a Section 10(b) prospectus under the Securities Act and, as such, will be subject to liability under Section 12(a)(2) as well as the anti-fraud provisions of the federal securities laws. As a Section 10(b) prospectus, there will be continuing Commission oversight and enforcement authority over the contents and use of the free writing prospectus, including the ability to halt the use of any materially false or misleading free writing prospectus in accordance with Section 10(b).

The rules allowing automatic shelf registration statements to become effective immediately will allow the Commission to shift its resources more toward the review of issuers' Exchange Act reports. Because we believe that an issuer's Exchange Act record often provides the most detailed source of information to the market and to potential purchasers regarding the issuer, its business, its financial condition, and its prospects, we believe that investors will benefit from the staff's ability to review Exchange Act reports more frequently.

The inclusion of additional disclosures in Exchange Act periodic reports also will promote investor protection. We believe that the disclosure by issuers meeting the definition of accelerated filers and well-known seasoned issuers of unresolved written staff comments that the issuer believes to be material will benefit investors because they will be able to ascertain the nature of the staff comments and take them into account in their investment decisions. We believe that the disclosure of risk factors in plain English will help investors in assessing the risks that an issuer currently faces or may face in the future. Many issuers currently provide this risk factor disclosure in their Exchange Act reports voluntarily. However, for other issuers, investors have access to this information only if the issuer has recently conducted a registered offering under the Securities Act, in which case the issuer will be subject to risk factor disclosure requirements in its Securities Act registration statement. The rules also require disclosure of voluntary filer status. We believe it is important that the staff and the market understand when issuers are filing Exchange Act reports voluntarily, since such issuers may cease filing these reports at any time.

3. Facilitating Capital Formation

We anticipate that the rules will facilitate capital formation, and possibly lower the cost of capital, by improving access to the public capital markets. The rules are designed to eliminate unnecessary regulatory impediments to capital formation and provide more flexibility to issuers to conduct registered securities offerings. The amount of flexibility accorded by the rules will depend on the characteristics of the issuer. The rules provide the most flexibility under the communications rules and the automatic shelf registration system to eligible well-known seasoned issuers. Other issuers also will benefit, albeit to a lesser degree, from the other revisions to the communications and registration process.

The rules may lower the cost of capital because they will provide significant flexibility to issuers and underwriters in marketing their securities. The communications rules will allow well-known seasoned issuers to communicate at any time regarding an offering and will allow other issuers more freedom in communicating after a registration statement is filed. For well-known seasoned issuers, automatic shelf registration will facilitate immediate market access and promote efficient capital formation, without diminishing investor protection. The automatic shelf registration process will allow eligible

[629] Recent research has examined the effect of securities laws on stock market development in 49 countries and found strong evidence that laws facilitating private enforcement through disclosure and liability rules are positively correlated with more developed stock markets. See, La Porta, Lopez de Silanes, and Shleifer, "What Works in Securities Laws?" Forthcoming in Journal of Finance.

issuers to add additional classes of securities and eligible majority-owned subsidiaries as additional registrants after an automatic shelf registration statement is effective. The "pay-as-you-go" system will allow well-known seasoned issuers to pay at the time of each takedown off the shelf registration statement or in advance. The automatic shelf registration rules will provide these issuers with significant latitude in determining the types and amounts of their securities or those of their eligible subsidiaries that could be offered without any potential time delay or other obstacles imposed by the registration process. The rules will provide the flexibility to take advantage of market windows, to structure securities on a real-time basis to accommodate issuer needs or investor demand, and to determine or change the plan of distribution of securities as issuers elect in response to changing market conditions.

The other rules to the shelf registration procedures and expansion of incorporation by reference also will provide flexibility to issuers to enable them to access the capital markets at a lower cost. For example, removing the current restrictions on at-the-market offerings of equity securities will allow issuers eligible to use Form S–3 or Form F–3 for primary equity offerings to offer securities directly to the marketplace, without using the underwriting or syndication process. Under the rules to expand Form S–3 eligibility to cover additional majority-owned subsidiaries, issuers will have greater flexibility to structure offerings of guaranteed securities without losing the benefits of shelf registration. In addition, the rules to expand incorporation by reference to Form S–1 and Form F–1 will enable eligible issuers to use their Exchange Act filings to satisfy their disclosure requirements without having to incur costs to replicate information in the prospectus.

Providing flexibility for registered offerings may encourage issuers to raise capital through the registration process instead of through private placements. Typically, registered securities enjoy more liquid markets than unregistered securities. Therefore, registered securities are less likely to be subject to a liquidity discount. In addition, registered securities offerings provide a potentially larger investor base than that available to those who participate in private placements. Accordingly, issuers may incur lower transaction costs when raising capital because they will have access to a much deeper market for their securities and may have to expend fewer resources to locate investors.

The prospectus delivery rules are designed to facilitate effective access to information, while taking into account advancements in technology and the practicalities of the offering process. These changes are intended to alleviate timing difficulties that may arise under the current securities clearance and settlement system, and also to facilitate the successful delivery of, and payment for, securities in a registered offering. Given that the final prospectus delivery obligations generally affect investors only after they have made their investment decisions and that investors and the market have access to the final prospectus upon its filing, we believe that the obligation can be satisfied through a means other than physical delivery. Because the contract of sale will have already occurred by the time the final prospectus is filed, we also believe that delivery of a confirmation and the delivery of the final prospectus need not be linked. Receiving confirmations earlier in the settlement process will enable investors to review the confirmation and verify trade data closer to the time of the investment decision.

4. Reduced Regulatory Uncertainty

The rules modify the federal securities laws related to communications, liability, shelf registration, and the use of electronic media during a registered offering. The rules, by enhancing issuers' certainty about the regulatory treatment of and liability provisions attached to the communication of information to the marketplace, could encourage issuers to increase the dissemination of readily available information useful to investors, such as management's plans and objectives for future operations. The 30-day bright-line exclusion and the exemption from the prohibition on offers prior to filing for well-known seasoned issuers will provide these issuers with the ability to communicate information prior to filing a registration statement without risk of violating the gun-jumping provisions.

The safe harbors for regularly released factual business information and forward-looking information will allow issuers to continue ordinary communications without fear of violating the gun-jumping provisions. At the same time, these communications could benefit all investors because there will be more current information and analysis available upon which to make investment decisions. We also are clarifying the treatment of information located on or hyperlinked to an issuer's website around the time of a registered offering, to allow for the continued availability of historical information that may be useful to investors.

The rules affecting the shelf registration procedures will codify in a single location permissible omissions from shelf registration statements and the permissible methods to include the omitted information. This will promote efficiency by providing certainty about the content of base prospectuses in shelf registration statements and the methods by which required information may be included, thereby reducing divergent practices and eliminating possible inadvertent mistakes. In addition, we believe the rules will address the disparate treatment of underwriters from a liability standpoint by establishing a new effective date for liability purposes for issuers and persons who are underwriters at that time in connection with takedowns off shelf registration statements, as reflected in prospectus supplements filed for such takedowns. On the other hand, the new rules regarding prospectus supplement filings will not trigger a new effective date for officers or directors of the issuer or for experts, including accountants.

5. Lower Costs

The prospectus delivery rules and the rules related to the registered securities offering process will provide cost-saving options to issuers, underwriters, and dealers. We believe that allowing reporting issuers to incorporate by reference their previously filed Exchange Act reports and other materials into a Form S–1 or Form F–1 provides them a more cost-effective way to raise capital without the cost of duplicating the information contained in their filed reports and other materials. The rules affecting final prospectus delivery should also result in lower costs to issuers because of reduced printing costs for a smaller number of final prospectuses.

For purposes of the PRA analysis, we have estimated that the rules to the registered securities offering processes will reduce the total current annual compliance costs by approximately $87,664,000.[630] In addition, we believe that issuers and underwriters will benefit from not having to print and deliver final prospectuses. We estimate that the cost savings per prospectus will be approximately $0.75 per prospectus. For purposes of the PRA, we have estimated 232.45 million instances in which broker dealers will be able to rely on the "access equals delivery"

[630] For purposes of monetizing the cost of issuer personnel time, we estimate the average hourly cost of issuer personnel time to be $125.

provisions. Investors may request the final prospectus, and we estimate that they will do so 25% of the time. Therefore, we estimate the total annual cost savings will be approximately $130,753,000.

E. Costs

While the overall goal of the reforms is to make the registration system more workable for issuers and underwriters and more effective for investors in today's capital markets, we do believe that there will be costs to the rules. These include costs for compliance with the rules, potential behavioral changes resulting from the liability rules, and certain other costs.

1. Compliance Costs

One potential cost of the rules is that issuers may incur increased filing costs associated with issuer free writing prospectuses or making a version of an electronic road show publicly available.[631] These costs should be mitigated somewhat by the fact that free writing prospectuses are not required to be filed as part of the registration statement and therefore will not have to be conformed to meet all the requirements for an amendment to the registration statement. In addition, because oral communications are not written and, therefore, not free writing prospectuses, the rules should not result in significant incremental costs from existing regulations. We also are conditioning the use of free writing prospectuses on the inclusion of a legend that notifies investors that they can receive a copy of the prospectus by calling a toll-free number. Accordingly, there may be some costs for issuers and offering participants associated with establishing a toll-free number for investors, although the toll-free number does not have to be issuer specific.

Another potential compliance cost is the additional expenditures that issuers and offering participants may incur in storing and archiving information to satisfy the record retention conditions.[632] Parties will need to implement appropriate mechanisms to ensure that they retain for three years adequate records of any free writing prospectuses used and not filed. We have revised the proposed record retention condition so that it encompasses only free writing prospectuses that have not been filed on EDGAR, so this should ease the burden for issuers and offering participants.

The disclosures may increase the cost to issuers of preparing their Exchange Act reports. We do not expect the costs to accelerated filers and well-known seasoned issuers of including disclosure of certain unresolved staff comments to be significant because the information will be readily available to the issuer.[633]

Including risk factor disclosure may impact issuers who do not already include this disclosure in their Exchange Act reports for other reasons.[634] Because issuers already are required to prepare financial statements and other information about their business, financial condition, and prospects in their annual and quarterly reports, some of which will include these risk factors, we believe that issuers will have already analyzed the issues that might be addressed in the risk factor disclosure. In addition, issuers may already include risk factor disclosure in their Exchange Act reports for varying reasons, including to take advantage of the safe harbor for forward-looking statements in Securities Act Section 27A of the Securities Act [635] and the "bespeaks caution" defense developed through case law. We recognize, however, that issuers will incur costs in preparing, reviewing, filing, printing, and disseminating this information. In particular, in addition to involving in-house preparers, in-house legal and accounting staff, and senior management, issuers may consult with outside legal counsel in preparing this disclosure. We believe, however, that the potential compliance costs for the risk factor disclosure should be considered in light of the fact that requiring risk factor disclosure in Exchange Act registration statements and annual reports will enhance the ability of reporting issuers to incorporate risk factor disclosure from Exchange Act reports into Securities Act registration statements to satisfy the risk factor disclosure requirements.

Parties also may incur additional costs due to the requirement to notify investors that they have purchased in a registered offering. In addition, these same parties will incur costs to establish procedures for receiving and complying with requests for final prospectuses. We believe that providing the notice to investors will not impose a significant incremental cost because the notice can consist of a pre-printed message that is automatically delivered with or as part of the confirmation required by Exchange Act Rule 10b–10. Accordingly, we estimate that the cost for complying with Rule 173 will be approximately $0.05 per notice. We estimate the annual cost of providing the notifications will be approximately $11,622,500.[636] The cost savings resulting from the elimination of the requirement to supply a final prospectus to each investor will offset the costs incurred, however.

2. Potential for Increased Liability

The rules to deem prospectus supplements to be part of and included in effective registration statements, and to modify, for liability purposes for the issuer and underwriters only, the effective date of shelf registration statements to link them to individual offerings or takedowns off the shelf registration statement may cause issuers to evaluate more carefully the information contained in prospectuses and the information conveyed to investors. We have sought to minimize the potential costs by limiting the rule so that it affects the issuer and underwriters only, and therefore have not changed the effective date for liability purposes for officers, directors, and experts, other than when new expertized information is included in the prospectus.

In response to commenters' concerns about cross-liability for free writing prospectuses, the rules provide greater clarity for when an offering participant would be liable for a free writing prospectus.

With respect to the risk factor disclosure, a potential cost might be that issuers may be concerned about increased liability for a material misstatement or omission in their disclosure. In view of existing liability for information in registration statements and Exchange Act reports, as well as existing safe-harbors for forward-looking information, in drafting the current rules, however, we were

[631] For example, for purposes of the PRA analysis, we estimate that the aggregate total annual paperwork burden for issuers arising from the preparation, review, and filing of free writing prospectuses or making a version of an electronic road show available under the new communications rules will be approximately $301,993.

[632] For example, as we discussed in the Proposing Release, for purposes of the PRA analysis, we estimated that the aggregate total annual paperwork burden of complying with the record retention conditions for free writing prospectuses used in reliance on Rule 433 will be approximately $948,900.

[633] For example, as we discussed in the Proposing Release, for purposes of the PRA analysis, we estimated that the aggregate total annual paperwork burden of preparing, reviewing and filing the disclosure of unresolved comments in Exchange Act reports will be approximately $138,713.

[634] For example, as we discussed in the Proposing Release, for purposes of the PRA analysis, we estimated that the aggregate total annual paperwork burden of preparing, reviewing and filing the disclosure of risk factors in Exchange Act reports will be approximately $9,743,417.

[635] 17 U.S.C. 77z–2.

[636] ($0.05 per notice) multiplied by (232.45 million confirmations) = $11,622,500.

sensitive to potential additional costs that the disclosure requirement might impose. For example, for liability purposes, we are not treating risk factor disclosure any differently than other disclosures in Exchange Act reports that may be incorporated by reference into Securities Act registration statements. We also note that the safe harbor for forward-looking statements contained in Securities Act Section 27A and Exchange Act Section 21E may apply to this disclosure for eligible issuers. In addition, the risk factor disclosure is based on an evaluation of the material risks facing an issuer. Issuers currently disclose significant information about themselves in their Exchange Act reports, including in management's discussion and analysis of financial condition and results of operations and, as a result, already analyze their business and operations. Moreover, we note that issuers already are subject to disclosure requirements regarding this information in Securities Act registration statements.

3. Other Potential Costs

We are allowing registration statements by well-known seasoned issuers to become effective automatically, rather than being subject to review by the staff of the Division of Corporation Finance. As a result, registrants may not have the same incentive to remedy deficient disclosure in Exchange Act reports or in the registration statement itself than they would if their registration statements were subject to pre-effective staff review. We have sought to minimize this possibility by requiring accelerated filers and well-known seasoned issuers to disclose, on an annual basis, written staff comments on their periodic report disclosures, that were issued more than 180 days prior to the fiscal year end covered by the report, that the issuer believes to be material, and that remain unresolved at the time of the filing of the annual report.

The rules also may impose certain costs on underwriters. For example, removing the restrictions on at-the-market equity offerings by unseasoned issuers on Form S–3 or Form F–3 may affect underwriters adversely because issuers may decide not to hire an underwriter to conduct an at-the-market equity offering.

The rules permit reporting issuers with the ability to incorporate by reference historical filings into Form S–1 or Form F–1, provided that the issuer post its Exchange Act reports on a web site maintained by or for the issuer and containing issuer information. Issuers wishing to take advantage of this ability to incorporate by reference will have to make these reports readily available on a web site maintained by or for the issuer in addition to availability on EDGAR. Because most companies today maintain web sites for their businesses and other entities maintain web sites for companies, we do not believe that this cost will be significant.

We also recognize that relaxing restrictions on communications may impose a burden on investors. For example, today, for some offerings, such as those on Form S–1, much of the relevant information regarding an offering is required to be contained in one document comprising the registration statement. Under the rules, some offerings will require an investor to assemble and assimilate information from various free writing prospectuses, Exchange Act reports, and the Securities Act registration statement in order to get the relevant information regarding an offering. Investors will have to compile the information integrated into the registration statement or delivered by means outside of the prospectus. We note, however, that Securities Act Forms S–3 and F–3 have long permitted incorporation by reference from the issuer's Exchange Act reports and investors have not complained they are unduly burdened when investing in offerings registered on these Forms.

X. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Exchange Act Section 23(a)(2)[637] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Securities Act Section 2(b),[638] Exchange Act Section 3(f),[639] and Investment Company Act Section 2(c)[640] require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The rules are intended to modify and advance the Commission's regulatory system for offerings under the Securities Act, enhance communications between public issuers and investors, and promote investor protection. We anticipate these rules will improve investors' ability to make informed investment decisions and, therefore, lead to increased efficiency and competitiveness of the U.S. capital markets. We anticipate that this increased market efficiency and investor confidence also may encourage more efficient capital formation. Specifically, we believe that the rules will:

- Facilitate greater availability of information to investors and the market with regard to all issuers;
- Eliminate barriers to open communications that have been made increasingly outmoded by technological advances;
- Reflect the increased importance of electronic dissemination of information, including the use of the Internet;
- Make the capital formation process more efficient; and
- Define more clearly both the information and the timeliness of the availability of information against which a seller's statements are evaluated for liability purposes.

To the extent that some of these reforms will be available to well-known seasoned issuers, smaller issuers may not be able to use all of the reforms. In addition, it is possible that investors will favor issuers that are able to take advantage of the reforms. We believe, however, that these potential unequal effects are justified in order to ensure that investors have appropriate access to required information about all issuers.

We requested comment on whether the rules would promote efficiency, competition, and capital formation or have an impact or burden on competition. We received no comments on this subject directly, but some comments touched on these issues. Commenters expressed strong support for the proposals to streamline the registration process by providing well-known seasoned issuers the ability to use automatic shelf registration statements.[641] They generally believed that the streamlined registration process will aid issuers in capital formation by providing them with quick access to the capital markets. In addition, one commenter believed the proposals have the potential to draw more offerings from 144A and other unregistered markets into public market, improve efficiency of U.S. public market, and possibly enhance global competitiveness of U.S. public capital markets.[642]

[637] 15 U.S.C. 78w(a)(2).

[638] 15 U.S.C. 77b(b).

[639] 15 U.S.C. 78c(f).

[640] 15 U.S.C. 80a–2(c).

[641] See note 509, above.

[642] See letter from SIA.

Two commenters believed that the proposed rules, which created an exception to the conditions to the free writing prospectus rules for publications by unaffiliated media would create a competitive disadvantage for issuers who are in the media business.[643] We have addressed these concerns by providing an exclusion for media companies and their affiliates if certain conditions are met, including that the company or its affiliate is a *bona fide* media publisher or broadcaster.[644]

XI. Final Regulatory Flexibility Act Analysis

This Final Regulatory Flexibility Act Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to revisions to the rules and forms under the Securities Act and the Exchange Act that will (1) alter shelf registration procedures; (2) allow more communications between offering participants than currently permitted; and (3) enable offering participants to satisfy their prospectus delivery obligations through means other than actual physical delivery. These rules are intended to modify and advance the Commission's regulatory system for offerings under the Securities Act, enhance communications between public issuers and investors, and promote investor protection.

A. Reasons for and Objectives of the Rules and Amendments

On November 3, 2004, we issued proposed rule and form changes under the Securities Act and the Exchange Act that would modernize the securities offering and communication processes while maintaining protection of investors under the Securities Act.[645] We are revising the registration, communications, and offering processes under the Securities Act that we believe, while limited in scope, properly address the areas that are in need of modernization. The rules involve three main areas:

- Communications related to registered securities offerings;
- Procedural restrictions in the offering and capital formation processes; and
- Delivery of information to investors.

The overall objective of the reforms is to make the registration system more workable for issuers and underwriters and more effective for investors in today's capital markets. The rules reflect our view that revisions to the Securities Act registration and offering processes are not only appropriate in light of significant developments in the offering and capital formation processes, but also are necessary for the proper protection of investors under the statute. This view is based on our belief that today's rules will:

- Facilitate greater availability of information to investors and the market with regard to all issuers;
- Eliminate barriers to open communications that have been made increasingly outmoded by technological advances;
- Reflect the increased importance of electronic dissemination of information, including the use of the Internet;
- Make the capital formation process more efficient; and
- Define more clearly both the information and the timeliness of the availability of information against which a seller's statements are evaluated for liability purposes.

B. Significant Issues Raised by Public Comment

The Initial Regulatory Flexibility Analysis, or IRFA, appeared in the Proposing Release.[646] We requested comment on any aspect of the IRFA, including the number of small entities that would be affected by the rules, the nature of the impact, how to quantify the number of small entities that would be affected and how to quantify the impact of the proposals. We received no comment letters responding to that request.

C. Small Entities Subject to the Rules

The rules will affect issuers that are small entities. Securities Act Rule 157[647] and Exchange Act Rule 0–10(a)[648] define an issuer, other than an investment company, to be a "small business" or "small organization" for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year.[649] We estimate that there were approximately 2,500 public issuers, other than investment companies, that may be considered small entities as of the end of fiscal year 2004.[650]

In addition to small issuers, small broker-dealers may be affected by the rules. Paragraph (c)(1) of Rule 0–10[651] states that the term "small business" or "small organization," when referring to a broker-dealer, means a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d); and is not affiliated with any person (other than a natural person) that is not a small business or small organization. As of 2003, we estimated that there were approximately 900 broker-dealers that qualified as small entities as defined above. To the extent a small broker-dealer participates in a securities offering or prepares research reports, it may be affected by the rules. Generally, we believe larger broker-dealers engage in these activities. We requested comment on whether and how these rules will affect small broker-dealers and did not receive any responses.

For purposes of the rules, we categorize issuers into tiers, consisting of non-reporting issuers, unseasoned issuers, seasoned issuers, and well-known seasoned issuers. The first three tiers of issuers are identified by pre-existing criteria under the existing federal securities laws. A non-reporting issuer is an issuer that is not required to file reports pursuant to Sections 13 or 15(d) of the Exchange Act.[652] An unseasoned issuer is an issuer that is required to file reports pursuant to Sections 13 or 15(d) of the Exchange Act, but does not satisfy the requirements of Form S–3 or Form F–3 for a primary offering of its securities. A seasoned issuer is an issuer that uses Form S–3 or Form F–3 to register offerings of securities.

Under the rules, a well-known seasoned issuer will have the greatest flexibility. The largest issuers are followed by sophisticated institutional and retail investors, members of the financial press, and numerous sell-side and buy-side analysts that actively seek new information on a continual basis. Unlike smaller or less mature issuers, large, seasoned public issuers tend to have a more regular dialogue with investors and market participants through the press and other media. The

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[643] See letters from Davis Polk and NYSBA.

[644] See the discussion in Section III.D.3 above under "Issuers in the Media Business."

[645] *Securities Offering Reform*, Release No. 33–8501 (Nov. 3, 2004)[69 FR 67392] ("Proposing Release").

[646] See the Proposing Release at Section VII.

[647] 17 CFR 230.157.

[648] 17 CFR 240.0–10(a).

[649] An investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. 17 CFR 270.0–10.

[650] We estimate that there are approximately 233 investment companies that may be considered small entities. We believe the impact on these investment companies will be minimal because they generally are not covered by the new rules.

[651] 17 CFR 240.0–10(c)(1).

[652] Under the rules, an issuer that is voluntarily filing Exchange Act reports, but is not required to do so, will be an unseasoned issuer for purposes of the communications and procedural rules and rule rules.

communications of these well-known seasoned issuers are subject to scrutiny by investors, the financial press, analysts, and others who evaluate disclosure when it is made.

To the extent that some of these reforms are designed for well-known seasoned issuers, smaller issuers may not benefit from all of the reforms to the registration process. We believe, however, that these potential unequal effects are justified in order to ensure that investors have access to required information about all issuers. Therefore, allowing smaller entities to take advantage of all of the reforms to the registration process may not address issues of investor protection. The reforms are not available to offerings by a blank check company, offerings by a shell company, and offerings of penny stock by an issuer. These offerings are more likely to be made by issuers that are small issuers. We have excluded these offerings from the reforms because they pose the greatest risk of abuse of the reforms.

To the extent the rules are not available to smaller issuers, the establishment of any differing compliance or reporting requirements or timetables or any exemptions for small business issuers may not be in keeping with the objectives of the rules. We believe that the rules are a cost-effective initial approach to address specific concerns related to small entities.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The rules are expected to impact all issuers raising capital and selling security holder transactions that are registered under the Securities Act, as well as all issuers that file annual reports on Exchange Act Form 10–K or Form 20–F.

For smaller issuers, we are not imposing any new restrictions on communications. In fact, small issuers will be able to take advantage of the new bright-line rule permitting communications more than 30 days before filing a registration statement and the clarification that they can continue to make factual business communications and, if they are reporting companies, communications of forward-looking information. Small issuers, like larger issuers, will have to file any free writing prospectus they use. We requested comment on whether issuers that file on Form 10–KSB, who tend to be smaller issuers, should be required to disclose risk factors in their annual reports, and have decided not to extend this requirement to these issuers. Unlike larger companies that are "accelerated filers," smaller issuers will not be required to disclose outstanding staff comments in their annual reports.

The rules also will affect broker-dealers participating in a registered offering, as they will no longer be required to deliver a final prospectus, but will be able to send a notice of allocation and notice of prospectus availability. They also will be permitted to prepare and use free writing prospectuses. If a free writing is not required to be filed publicly, the broker-dealer will have to retain copies of the free writing prospectus for three years. (Such retention requirements may already exist in most cases). Finally, the broker-dealer will be permitted to issue research reports with respect to a broader class of issuers and securities than currently permitted.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the rules, we considered the following alternatives:

1. Establishing different compliance or reporting requirements that take into account the resources available to small entities;

2. Clarifying, consolidating, or simplifying compliance and reporting obligations for small entities;

3. Using performance standards rather than design standards; and

4. Including smaller entities in some of the reforms.

We have considered a variety of reforms to achieve our regulatory objectives and, where possible, have taken steps to minimize the effects of the rules and amendments on small entities. For example, we are not requiring small business issuers to include disclosure of risk factors or unresolved staff comments in their Exchange Act periodic reports. We are liberalizing generally the restrictions regarding communications around the time of a Securities Act registered offering of securities. As discussed above, the flexibility will be greatest for larger, more seasoned issuers; however, the rules will provide greater flexibility for all issuers, including small entities. As we implement these changes, we will consider the available information to determine whether greater flexibility is warranted, consistent with investor protections. In this regard, we have established an Advisory Committee on Smaller Public Companies to examine these and other related issues.

XII. Statutory Authority—Text of the Rules and Amendments

We are adopting the new rules and amendments pursuant to Sections 7, 10, 19, 27A and 28 of the Securities Act, as amended, Sections 3, 10, 12, 13, 15, 17, 21E, 23 and 36 of the Securities Exchange Act, as amended, and Sections 8, 24(a), 30, and 38 of the Investment Company Act of 1940, as amended.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Parts 229, 230, 239, 240, 243, and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

■ For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

■ 1. The authority citation for Part 200, subpart A, continues to read, in part, as follows:

Authority: 15 U.S.C. 77s, 77o, 77sss, 78d, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 80a–37, 80b–11, and 7202, unless otherwise noted.

* * * * *

■ 2. Amend § 200.30–1 to add paragraphs (a)(9) and (a)(10) to read as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(a) * * *

(9) To determine whether to object, pursuant to Rule 401(g)(1) (§ 230.401(g)(1) of this chapter), and to notify issuers, pursuant to Rule 401(g)(2) (§ 230.401(g)(2) of this chapter), of an objection to the use of an automatic shelf registration as defined in Rule 405 (§ 230.405 of this chapter) or any post-effective amendment thereto that becomes effective immediately

pursuant to Rule 462 (§ 230.462 of this chapter).

(10) To authorize the granting or denial of applications, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer as defined in Rule 405.

* * * * *

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

■ 3. The authority citation for part 228 continues to read in part as follows:

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

* * * * *

■ 4. Amend § 228.512 as follows:
■ a. Revise the Note after paragraph (a)(1)(iii);
■ b. Add paragraph (a)(4); and
■ c. Add paragraph (g).

The additions read as follows:

§ 228.512 (Item 512) Undertakings.

* * * * *

(a) * * *

Notes to paragraph (a)(1):

1. Small business issuers do not need to give the statements in paragraphs (a)(1)(i) and (a)(1)(ii) of this Item if the registration statement is on Form S–8 (§ 239.16b of this chapter), and the information required in a post-effective amendment is incorporated by reference from periodic reports filed by the small business issuer under the Exchange Act; and

2. Small business issuers do not need to give the statements in paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this Item if the registration statement is on Form S–3 (§ 239.13 of this chapter) and the information required in a post-effective amendment is incorporated by reference from periodic reports filed by the small business issuer under the Exchange Act, or is contained in a form of prospectus filed pursuant to Rule 424(b) (§ 230.424(b) of this chapter) that is deemed part of and included in the registration statement.

* * * * *

(4) For determining liability of the undersigned small business issuer under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned small business issuer undertakes that in a primary offering of securities of the undersigned small business issuer pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned small business issuer will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned small business issuer relating to the offering required to be filed pursuant to Rule 424 (§ 230.424 of this chapter);

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned small business issuer or used or referred to by the undersigned small business issuer;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned small business issuer or its securities provided by or on behalf of the undersigned small business issuer; and

(iv) Any other communication that is an offer in the offering made by the undersigned small business issuer to the purchaser.

* * * * *

(g) That, for the purpose of determining liability under the Securities Act to any purchaser:

(1) If the small business issuer is relying on Rule 430B (§ 230.430B of this chapter):

(i) Each prospectus filed by the undersigned small business issuer pursuant to Rule 424(b)(3) (§ 230.424(b)(3) of this chapter) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) (§ 230.424(b)(2), (b)(5), or (b)(7) of this chapter) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) (§ 230.415(a)(1)(i), (vii), or (x) of this chapter) for the purpose of providing the information required by section 10(a) of the Securities Act shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date; or

(2) If the small business issuer is subject to Rule 430C (§ 230.430C of this chapter), include the following:

Each prospectus filed pursuant to Rule 424(b)(§ 230.424(b) of this chapter) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A (§ 230.430A of this chapter), shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

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

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

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

* * * * *

■ 6. Amend § 229.512 as follows:
■ a. Revise the first proviso immediately following paragraph (a)(1)(iii);
■ b. Redesignate the second proviso immediately following paragraph (a)(1)(iii) as paragraph (a)(1)(iii)(C);
■ c. Add paragraph (a)(5); and

■ d. Add paragraph (a)(6).

The revision and additions read as follows:

§ 229.512 (Item 512) Undertakings.

(a) * * *

(1) * * *

(iii) * * *

Provided, however, That:

(A) Paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the registration statement is on Form S–8 (§ 239.16b of this chapter), and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) that are incorporated by reference in the registration statement; and

(B) Paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) of this section do not apply if the registration statement is on Form S–3 (§ 239.13 of this chapter) or Form F–3 (§ 239.33 of this chapter) and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) (§ 230.424(b) of this chapter) that is part of the registration statement.

* * * * *

(5) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) If the registrant is relying on Rule 430B (§ 230.430B of this chapter):

(A) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) (§ 230.424(b)(3) of this chapter) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) (§ 230.424(b)(2), (b)(5), or (b)(7) of this chapter) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) (§ 230.415(a)(1)(i), (vii), or (x) of this chapter) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however,* that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date; or

(ii) If the registrant is subject to Rule 430C (§ 230.430C of this chapter), each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A (§ 230.430A of this chapter), shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. *Provided, however,* that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(6) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities:

The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424 (§ 230.424 of this chapter);

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

* * * * *

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

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

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

■ 8. Revise § 230.134 to read as follows:

§ 230.134 Communications not deemed a prospectus.

Except as provided in paragraphs (e) and (g) of this section, the terms "prospectus" as defined in section 2(a)(10) of the Act or "free writing prospectus" as defined in Rule 405 (§ 230.405) shall not include a communication limited to the statements required or permitted by this section, provided that the communication is published or transmitted to any person only after a registration statement relating to the offering that includes a prospectus satisfying the requirements of section 10 of the Act (except as otherwise permitted in paragraph (a) of this section) has been filed.

(a) Such communication may include any one or more of the following items of information, which need not follow the numerical sequence of this paragraph, provided that, except as to paragraphs (a)(4), (a)(5), (a)(6), and (a)(17) of this section, the prospectus included in the filed registration statement does not have to include a price range otherwise required by rule:

(1) Factual information about the legal identity and business location of the

issuer limited to the following: the name of the issuer of the security, the address, phone number, and e-mail address of the issuer's principal offices and contact for investors, the issuer's country of organization, and the geographic areas in which it conducts business;

(2) The title of the security or securities and the amount or amounts being offered, which title may include a designation as to whether the securities are convertible, exercisable, or exchangeable, and as to the ranking of the securities;

(3) A brief indication of the general type of business of the issuer, limited to the following:

(i) In the case of a manufacturing company, the general type of manufacturing, the principal products or classes of products manufactured, and the segments in which the company conducts business;

(ii) In the case of a public utility company, the general type of services rendered, a brief indication of the area served, and the segments in which the company conducts business;

(iii) In the case of an asset-backed issuer, the identity of key parties, such as sponsor, depositor, issuing entity, servicer or servicers, and trustee, the asset class of the transaction, and the identity of any credit enhancement or other support; and

(iv) In the case of any other type of company, a corresponding statement;

(4) The price of the security, or if the price is not known, the method of its determination or the *bona fide* estimate of the price range as specified by the issuer or the managing underwriter or underwriters;

(5) In the case of a fixed income security, the final maturity and interest rate provisions or, if the final maturity or interest rate provisions are not known, the probable final maturity or interest rate provisions, as specified by the issuer or the managing underwriter or underwriters;

(6) In the case of a fixed income security with a fixed (non-contingent) interest rate provision, the yield or, if the yield is not known, the probable yield range, as specified by the issuer or the managing underwriter or underwriters and the yield of fixed income securities with comparable maturity and security rating as referred to in paragraph (a)(17) of this section;

(7) A brief description of the intended use of proceeds of the offering, if then disclosed in the prospectus that is part of the filed registration statement;

(8) The name, address, phone number, and e-mail address of the sender of the communication and the fact that it is participating, or expects to participate, in the distribution of the security;

(9) The type of underwriting, if then included in the disclosure in the prospectus that is part of the filed registration statement;

(10) The names of underwriters participating in the offering of the securities, and their additional roles, if any, within the underwriting syndicate;

(11) The anticipated schedule for the offering (including the approximate date upon which the proposed sale to the public will begin) and a description of marketing events (including the dates, times, locations, and procedures for attending or otherwise accessing them);

(12) A description of the procedures by which the underwriters will conduct the offering and the procedures for transactions in connection with the offering with the issuer or an underwriter or participating dealer (including procedures regarding account-opening and submitting indications of interest and conditional offers to buy), and procedures regarding directed share plans and other participation in offerings by officers, directors, and employees of the issuer;

(13) Whether, in the opinion of counsel, the security is a legal investment for savings banks, fiduciaries, insurance companies, or similar investors under the laws of any State or Territory or the District of Columbia, and the permissibility or status of the investment under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 *et seq.*];

(14) Whether, in the opinion of counsel, the security is exempt from specified taxes, or the extent to which the issuer has agreed to pay any tax with respect to the security or measured by the income therefrom;

(15) Whether the security is being offered through rights issued to security holders, and, if so, the class of securities the holders of which will be entitled to subscribe, the subscription ratio, the actual or proposed record date, the date upon which the rights were issued or are expected to be issued, the actual or anticipated date upon which they will expire, and the approximate subscription price, or any of the foregoing;

(16) Any statement or legend required by any state law or administrative authority;

(17) With respect to the securities being offered:

(i) Any security rating assigned, or reasonably expected to be assigned, by a *nationally recognized statistical rating organization* as defined in Rule 15c3–1(c)(2)(vi)(F) of the Securities Exchange Act of 1934 (§ 240.15c3–1(c)(2)(vi)(F) of this chapter) and the name or names of the nationally recognized statistical rating organization(s) that assigned or is or are reasonably expected to assign the rating(s); and

(ii) If registered on Form F–9 (§ 239.39 of this chapter), any security rating assigned, or reasonably expected to be assigned, by any other rating organization specified in the Instruction to paragraph A.(2) of General Instruction I of Form F–9;

(18) The names of selling security holders, if then disclosed in the prospectus that is part of the filed registration statement;

(19) The names of securities exchanges or other securities markets where any class of the issuer's securities are, or will be, listed;

(20) The ticker symbols, or proposed ticker symbols, of the issuer's securities;

(21) The CUSIP number as defined in Rule 17Ad–19(a)(5) of the Securities Exchange Act of 1934 (§ 240.17Ad–19(a)(5) of this chapter) assigned to the securities being offered; and

(22) Information disclosed in order to correct inaccuracies previously contained in a communication permissibly made pursuant to this section.

(b) Except as provided in paragraph (c) of this section, every communication used pursuant to this section shall contain the following:

(1) If the registration statement has not yet become effective, the following statement:

> A registration statement relating to these securities has been filed with the Securities and Exchange Commission but has not yet become effective. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective; and

(2) The name and address of a person or persons from whom a written prospectus for the offering meeting the requirements of section 10 of the Act (other than a free writing prospectus as defined in Rule 405) including as to the identified paragraphs above a price range where required by rule, may be obtained.

(c) Any of the statements or information specified in paragraph (b) of this section may, but need not, be contained in a communication which:

(1) Does no more than state from whom and include the uniform resource locator (URL) where a written prospectus meeting the requirements of section 10 of the Act (other than a free writing prospectus as defined in Rule 405) may be obtained, identify the security, state the price thereof and state by whom orders will be executed; or

(2) Is accompanied or preceded by a prospectus or a summary prospectus, other than a free writing prospectus as defined in Rule 405, which meets the requirements of section 10 of the Act, including a price range where required by rule, at the date of such preliminary communication.

(d) A communication sent or delivered to any person pursuant to this section which is accompanied or preceded by a prospectus which meets the requirements of section 10 of the Act (other than a free writing prospectus as defined in Rule 405), including a price range where required by rule, at the date of such communication, may solicit from the recipient of the communication an offer to buy the security or request the recipient to indicate whether he or she might be interested in the security, if the communication contains substantially the following statement:

No offer to buy the securities can be accepted and no part of the purchase price can be received until the registration statement has become effective, and any such offer may be withdrawn or revoked, without obligation or commitment of any kind, at any time prior to notice of its acceptance given after the effective date.

Provided, that such statement need not be included in such a communication to a dealer.

(e) A section 10 prospectus included in any communication pursuant to this section shall remain a prospectus for all purposes under the Act.

(f) The provision in paragraphs (c)(2) and (d) of this section that a prospectus that meets the requirements of section 10 of the Act precede or accompany a communication will be satisfied if such communication is an electronic communication containing an active hyperlink to such prospectus.

(g) This section does not apply to a communication relating to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48))

■ 9. Revise § 230.137 to read as follows:

§ 230.137 Publications or distributions of research reports by brokers or dealers that are not participating in an issuer's registered distribution of securities.

Under the following conditions, the terms "offers," "participates," or "participation" in section 2(a)(11) of the Act shall not be deemed to apply to the publication or distribution of research reports with respect to the securities of an issuer which is the subject of an offering pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective:

(a) The broker or dealer (and any affiliate) that has distributed the report and, if different, the person (and any affiliate) that has published the report have not participated, are not participating, and do not propose to participate in the distribution of the securities that are or will be the subject of the registered offering.

(b) In connection with the publication or distribution of the research report, the broker or dealer (and any affiliate) that has distributed the report and, if different, the person (and any affiliate) that has published the report are not receiving and have not received consideration directly or indirectly from, and are not acting under any direct or indirect arrangement or understanding with:

(1) The issuer of the securities;

(2) A selling security holder;

(3) Any participant in the distribution of the securities that are or will be the subject of the registration statement; or

(4) Any other person interested in the securities that are or will be the subject of the registration statement.

Instruction to § 230.137(b). This paragraph (b) does not preclude payment of:

1. The regular price being paid by the broker or dealer for independent research, so long as the conditions of this paragraph (b) are satisfied; or

2. The regular subscription or purchase price for the research report.

(c) The broker or dealer publishes or distributes the research report in the regular course of its business.

(d) The issuer is not and during the past three years neither the issuer nor any of its predecessors was:

(1) A blank check company as defined in Rule 419(a)(2) (§ 230.419(a)(2));

(2) A shell company, other than a business combination related shell company, each as defined in Rule 405 (§ 230.405); or

(3) An issuer for an offering of penny stock as defined in Rule 3a51–1 of the Securities Exchange Act of 1934 (§ 240.3a51–1 of this chapter).

(e) *Definition of research report.* For purposes of this section, *research report* means a written communication, as defined in Rule 405, that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.

■ 10. Revise § 230.138 to read as follows:

§ 230.138 Publications or distributions of research reports by brokers or dealers about securities other than those they are distributing.

(a) *Registered offerings.* Under the following conditions, a broker's or dealer's publication or distribution of research reports about securities of an issuer shall be deemed for purposes of sections 2(a)(10) and 5(c) of the Act not to constitute an offer for sale or offer to sell a security which is the subject of an offering pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective, even if the broker or dealer is participating or will participate in the registered offering of the issuer's securities:

(1)(i) The research report relates solely to the issuer's common stock, or debt securities or preferred stock convertible into its common stock, and the offering involves solely the issuer's non-convertible debt securities or non-convertible, non-participating preferred stock; or

(ii) The research report relates solely to the issuer's non-convertible debt securities or non-convertible, non-participating preferred stock, and the offering involves solely the issuer's common stock, or debt securities or preferred stock convertible into its common stock.

Instruction to paragraph (a)(1): If the issuer has filed a shelf registration statement under Rule 415(a)(1)(x) (§ 230.415(a)(1)(x)) or pursuant to General Instruction I.D. of Form S–3 or General Instruction I.C. of Form F–3 (§ 239.13 or § 239.33 of this chapter) with respect to multiple classes of securities, the conditions of paragraph (a)(1) of this section must be satisfied for the offering in which the broker or dealer is participating or will participate.

(2) The issuer as of the date of reliance on this section:

(i) Is required to file reports, and has filed all periodic reports required during the preceding 12 months (or such shorter time that the issuer was required to file such reports) on Forms 10–K (§ 249.310 of this chapter), 10–KSB (§ 249.310b of this chapter), 10–Q (§ 249.308a of this chapter), 10–QSB (§ 249.308b of this chapter), and 20–F (§ 249.220f of this chapter) pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); or

(ii) Is a foreign private issuer that:

(A) Meets all of the registrant requirements of Form F–3 other than the reporting history provisions of General Instructions I.A.1. and I.A.2(a) of Form F–3;

(B) Either:

(*1*) Satisfies the public float threshold in General Instruction I.B.1. of Form F–3; or

(*2*) Is issuing non-convertible investment grade securities meeting the provisions of General Instruction I.B.2. of Form F–3; and

(C) Either:

(*1*) Has its equity securities trading on a designated offshore securities market as defined in Rule 902(b) (§ 230.902(b)) and has had them so traded for at least 12 months; or

(*2*) Has a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more.

(3) The broker or dealer publishes or distributes research reports on the types of securities in question in the regular course of its business; and

(4) The issuer is not, and during the past three years neither the issuer nor any of its predecessors was:

(i) A blank check company as defined in Rule 419(a)(2) (§ 230.419(a)(2));

(ii) A shell company, other than a business combination related shell company, each as defined in Rule 405 (§ 230.405); or

(iii) An issuer for an offering of penny stock as defined in Rule 3a51–1 of the Securities Exchange Act of 1934 (§ 240.3a51–1 of this chapter).

(b) *Rule 144A offerings.* If the conditions in paragraph (a) of this section are satisfied, a broker's or dealer's publication or distribution of a research report shall not be considered an offer for sale or an offer to sell a security or general solicitation or general advertising, in connection with an offering relying on Rule 144A (§ 230.144A).

(c) *Regulation S offerings.* If the conditions in paragraph (a) of this section are satisfied, a broker's or dealer's publication or distribution of a research report shall not:

(1) Constitute directed selling efforts as defined in Rule 902(c) (§ 230.902(c)) for offerings under Regulation S (§ 230.901 through § 230.905); or

(2) Be inconsistent with the offshore transaction requirement in Rule 902(h) (§ 230.902(h)) for offerings under Regulation S.

(d) *Definition of research report.* For purposes of this section, research report means a written communication, as defined in Rule 405, that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.

■ 11. Revise § 230.139 to read as follows:

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

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

(1) *Issuer-specific research reports.*

(i) The issuer either:

(A)(*1*) At the later of the time of filing its most recent Form S–3 (§ 239.13 of this chapter) or Form F–3 (§ 239.33 of this chapter) or the time of its most recent amendment to such registration statement for purposes of complying with section 10(a)(3) of the Act, meets the registrant requirements of such Form S–3 or Form F–3 and either at such date meets the minimum float provisions of General Instruction I.B.1 of such Forms or, at the date of reliance on this section, is offering securities meeting the requirements for the offering of investment grade securities pursuant to General Instruction I.B.2 of Form S–3 or Form F–3; and

(*2*) As of the date of reliance on this section, has filed all periodic reports required during the preceding 12 months on Forms 10–K (§ 249.310 of this chapter), 10–KSB (§ 249.310b of this chapter), 10–Q (§ 249.308a of this chapter), 10–QSB (§ 249.308b of this chapter), and 20–F (§ 249.220f of this chapter) pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); or

(B) Is a foreign private issuer that as of the date of reliance on this section:

(*1*) Meets all of the registrant requirements of Form F–3 other than the reporting history provisions of General Instructions I.A.1. and I.A.2(a) of Form F–3;

(*2*) Either:

(*i*) Satisfies the public float threshold in General Instruction I.B.1. of Form F–3; or

(*ii*) Is issuing non-convertible investment grade securities meeting the provisions of General Instruction I.B.2. of Form F–3; and

(*3*) Either:

(*i*) Has its equity securities trading on a designated offshore securities market as defined in Rule 902(b) (§ 230.902(b)) and has had them so traded for at least 12 months; or

(*ii*) Has a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more;

(ii) The issuer is not and during the past three years neither the issuer nor any of its predecessors was:

(A) A blank check company as defined in Rule 419(a)(2) (§ 230.419(a)(2));

(B) A shell company, other than a business combination related shell company, each as defined in Rule 405 (§ 230.405); or

(C) An issuer for an offering of penny stock as defined in Rule 3a51–1 of the Securities Exchange Act of 1934 (§ 240.3a51–1 of this chapter); and

(iii) The broker or dealer publishes or distributes research reports in the regular course of its business and such publication or distribution does not represent the initiation of publication of research reports about such issuer or its securities or reinitiation of such publication following discontinuation of publication of such research reports.

(2) *Industry reports.*

(i) The issuer is required to file reports pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 or satisfies the conditions in paragraph (a)(1)(i)(B) of this section;

(ii) The condition in paragraph (a)(1)(ii) of this section is satisfied;

(iii) The research report includes similar information with respect to a substantial number of issuers in the issuer's industry or sub-industry, or contains a comprehensive list of securities currently recommended by the broker or dealer;

(iv) The analysis regarding the issuer or its securities is given no materially greater space or prominence in the publication than that given to other securities or issuers; and

(v) The broker or dealer publishes or distributes research reports in the regular course of its business and, at the time of the publication or distribution of the research report, is including similar information about the issuer or its securities in similar reports.

(b) *Rule 144A offerings.* If the conditions in paragraph (a)(1) or (a)(2) of this section are satisfied, a broker's or dealer's publication or distribution of a research report shall not be considered an offer for sale or an offer to sell a security or general solicitation or general advertising, in connection with an offering relying on Rule 144A (§ 230.144A).

(c) *Regulation S offerings.* If the conditions in paragraph (a)(1) or (a)(2) of this section are satisfied, a broker's or

dealer's publication or distribution of a research report shall not:

(1) Constitute directed selling efforts as defined in Rule 902(c) (§ 230.902(c)) for offerings under Regulation S (§§ 230.901 through 230.905); or

(2) Be inconsistent with the offshore transaction requirement in Rule 902(h) (§ 230.902(h)) for offerings under Regulation S.

(d) *Definition of research report.* For purposes of this section, *research report* means a written communication, as defined in Rule 405, that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.

Instruction to § 230.139.

Projections. A projection constitutes an analysis or information falling within the definition of research report. When a broker or dealer publishes or distributes projections of an issuer's sales or earnings in reliance on paragraph (a)(2) of this section, it must:

1. Have previously published or distributed projections on a regular basis in order to satisfy the "regular course of its business" condition;

2. At the time of publishing or disseminating a research report, be publishing or distributing projections with respect to that issuer; and

3. For purposes of paragraph (a)(2)(iii) of this section, include projections covering the same or similar periods with respect to either a substantial number of issuers in the issuer's industry or sub-industry or substantially all issuers represented in the comprehensive list of securities contained in the research report.

§ 230.139a [Amended]

■ 12. Amend § 230.139a as follows:

■ a. Remove paragraph (c); and

■ b. Redesignate paragraphs (d) and (e) as paragraphs (c) and (d).

■ 13. Revise § 230.153 to read as follows:

§ 230.153 Definition of "preceded by a prospectus" as used in section 5(b)(2) of the Act, in relation to certain transactions.

(a) *Definition of preceded by a prospectus.* The term preceded by a prospectus as used in section 5(b)(2) of the Act, regarding any requirement of a broker or dealer to deliver a prospectus to a broker or dealer as a result of a transaction effected between such parties on or through a national securities exchange or facility thereof, trading facility of a national securities association, or an alternative trading system, shall mean the satisfaction of the conditions in paragraph (b) of this section.

(b) *Conditions.* Any requirement of a broker or dealer to deliver a prospectus for transactions covered by paragraph (a) of this section will be satisfied if:

(1) Securities of the same class as the securities that are the subject of the transaction are trading on that national securities exchange or facility thereof, trading facility of a national securities association, or alternative trading system;

(2) The registration statement relating to the offering is effective and is not the subject of any pending proceeding or examination under section 8(d) or 8(e) of the Act;

(3) Neither the issuer, nor any underwriter or participating dealer is the subject of a pending proceeding under section 8A of the Act in connection with the offering; and

(4) The issuer has filed or will file with the Commission a prospectus that satisfies the requirements of section 10(a) of the Act.

(c) *Definitions.*

(1) The term *national securities exchange*, as used in this section, shall mean a securities exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

(2) The term *trading facility*, as used in this section, shall mean a trading facility sponsored and governed by the rules of a registered securities association or a national securities exchange.

(3) The term *alternative trading system*, as used in this section, shall mean an alternative trading system as defined in Rule 300(a) of Regulation ATS under the Securities Exchange Act of 1934 (§ 242.300(a) of this chapter) registered with the Commission pursuant to Rule 301 of Regulation ATS under the Securities Exchange Act of 1934 (§ 242.301(a) of this chapter).

■ 14. Amend § 230.158 to revise paragraph (c) to read as follows:

§ 230.158 Definitions of certain terms in the last paragraph of section 11(a).

* * * * *

(c) For purposes of the last paragraph of section 11(a) of the Act only, the effective date of the registration statement is deemed to be the date of the latest to occur of:

(1) The effective date of the registration statement;

(2) The effective date of the last post-effective amendment to the registration statement next preceding a particular sale of the issuer's registered securities to the public filed for the purposes of:

(i) Including any prospectus required by section 10(a)(3) of the Act; or

(ii) Reflecting in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement;

(3) The date of filing of the last report of the issuer incorporated by reference into the prospectus that is part of the registration statement or the date that a form of prospectus filed pursuant to Rule 424(b) or Rule 497(b), (c), (d), or (e) (§ 230.424(b) or § 230.497(b), (c), (d), or (e)) is deemed part of and included in the registration statement, and relied upon in either case in lieu of filing a post-effective amendment for purposes of paragraphs (c)(2)(i) and (ii) of this section next preceding a particular sale of the issuer's registered securities to the public; or

(4) As to the issuer and any underwriter at that time only, the most recent effective date of the registration statement for purposes of liability under section 11 of the Act of the issuer and any such underwriter only at the time of or next preceding a particular sale of the issuer's registered securities to the public determined pursuant to Rule 430B (§ 230.430B).

* * * * *

■ 15. Add § 230.159 to read as follows:

§ 230.159 Information available to purchaser at time of contract of sale.

(a) For purposes of section 12(a)(2) of the Act only, and without affecting any other rights a purchaser may have, for purposes of determining whether a prospectus or oral statement included an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading at the time of sale (including, without limitation, a contract of sale), any information conveyed to the purchaser only after such time of sale (including such contract of sale) will not be taken into account.

(b) For purposes of section 17(a)(2) of the Act only, and without affecting any other rights the Commission may have to enforce that section, for purposes of determining whether a statement includes or represents any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading at the time of sale (including, without limitation, a contract of sale), any information conveyed to the purchaser only after such time of sale (including such contract of sale) will not be taken into account.

(c) For purposes of section 12(a)(2) of the Act only, knowing of such untruth

or omission in respect of a sale (including, without limitation, a contract of sale), means knowing at the time of such sale (including such contract of sale).

16. Add § 230.159A to read as follows:

§ 230.159A Certain definitions for purposes of section 12(a)(2) of the Act.

(a) *Definition of seller for purposes of section 12(a)(2) of the Act.* For purposes of section 12(a)(2) of the Act only, in a primary offering of securities of the issuer, regardless of the underwriting method used to sell the issuer's securities, *seller* shall include the issuer of the securities sold to a person as part of the initial distribution of such securities, and the issuer shall be considered to offer or sell the securities to such person, if the securities are offered or sold to such person by means of any of the following communications:

(1) Any preliminary prospectus or prospectus of the issuer relating to the offering required to be filed pursuant to Rule 424 (§ 230.424) or Rule 497 (§ 230.497);

(2) Any free writing prospectus as defined in Rule 405 (§ 230.405) relating to the offering prepared by or on behalf of the issuer or used or referred to by the issuer and, in the case of an issuer that is an open-end management company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), any profile relating to the offering provided pursuant to Rule 498 (§ 230.498);

(3) The portion of any other free writing prospectus (or, in the case of an issuer that is an investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), any advertisement pursuant to Rule 482 (§ 230.482)) relating to the offering containing material information about the issuer or its securities provided by or on behalf of the issuer; and

(4) Any other communication that is an offer in the offering made by the issuer to such person.

Notes to paragraph (a) of Rule 159A.

1. For purposes of paragraph (a) of this section, information is provided or a communication is made by or on behalf of an issuer if an issuer or an agent or representative of the issuer authorizes or approves the information or communication before its provision or use. An offering participant other than the issuer shall not be an agent or representative of the issuer solely by virtue of its acting as an offering participant.

2. Paragraph (a) of this section shall not affect in any respect the determination of whether any person other than an issuer is a "seller" for purposes of section 12(a)(2) of the Act.

(b) *Definition of by means of for purposes of section 12(a)(2) of the Act.*

(1) For purposes of section 12(a)(2) of the Act only, an offering participant other than the issuer shall not be considered to offer or sell securities that are the subject of a registration statement by means of a free writing prospectus as to a purchaser unless one or more of the following circumstances shall exist:

(i) The offering participant used or referred to the free writing prospectus in offering or selling the securities to the purchaser;

(ii) The offering participant offered or sold securities to the purchaser and participated in planning for the use of the free writing prospectus by one or more other offering participants and such free writing prospectus was used or referred to in offering or selling securities to the purchaser by one or more of such other offering participants; or

(iii) The offering participant was required to file the free writing prospectus pursuant to the conditions to use in Rule 433 (§ 230.433).

(2) For purposes of section 12(a)(2) of the Act only, a person will not be considered to offer or sell securities by means of a free writing prospectus solely because another person has used or referred to the free writing prospectus or filed the free writing prospectus with the Commission pursuant to Rule 433.

■ 17. Add § 230.163 to read as follows:

§ 230.163 Exemption from section 5(c) of the Act for certain communications by or on behalf of well-known seasoned issuers.

Preliminary Note to § 230.163. Attempted compliance with this section does not act as an exclusive election and the issuer also may claim the availability of any other applicable exemption or exclusion. Reliance on this section does not affect the availability of any other exemption or exclusion from the requirements of section 5 of the Act.

(a) In an offering by or on behalf of a well-known seasoned issuer, as defined in Rule 405 (§ 230.405), that will be or is at the time intended to be registered under the Act, an offer by or on behalf of such issuer is exempt from the prohibitions in section 5(c) of the Act on offers to sell, offers for sale, or offers to buy its securities before a registration statement has been filed, provided that:

(1) Any written communication that is an offer made in reliance on this exemption will be a free writing prospectus as defined in Rule 405 and a prospectus under section 2(a)(10) of the Act relating to a public offering of securities to be covered by the registration statement to be filed; and

(2) The exemption from section 5(c) of the Act provided in this section for such written communication that is an offer shall be conditioned on satisfying the conditions in paragraph (b) of this section.

(b) *Conditions.* (1) *Legend.* (i) Every written communication that is an offer made in reliance on this exemption shall contain substantially the following legend:

> The issuer may file a registration statement (including a prospectus) with the SEC for the offering to which this communication relates. Before you invest, you should read the prospectus in that registration statement and other documents the issuer has filed with the SEC for more complete information about the issuer and this offering. You may get these documents for free by visiting EDGAR on the SEC Web site at www.sec.gov. Alternatively, the company will arrange to send you the prospectus after filing if you request it by calling toll-free 1–8[xx-xxx-xxxx].

(ii) The legend also may provide an e-mail address at which the documents can be requested and may indicate that the documents also are available by accessing the issuer's Web site, and provide the Internet address and the particular location of the documents on the Web site.

(iii) An immaterial or unintentional failure to include the specified legend in a free writing prospectus required by this section will not result in a violation of section 5(c) of the Act or the loss of the ability to rely on this section so long as:

(A) A good faith and reasonable effort was made to comply with the specified legend condition;

(B) The free writing prospectus is amended to include the specified legend as soon as practicable after discovery of the omitted or incorrect legend; and

(C) If the free writing prospectus has been transmitted without the specified legend, the free writing prospectus is retransmitted with the legend by substantially the same means as, and directed to substantially the same prospective purchasers to whom, the free writing prospectus was originally transmitted.

(2) *Filing condition.* (i) Subject to paragraph (b)(2)(ii) of this section, every written communication that is an offer made in reliance on this exemption shall be filed by the issuer with the Commission promptly upon the filing of the registration statement, if one is filed, or an amendment, if one is filed, covering the securities that have been offered in reliance on this exemption.

(ii) The condition that an issuer shall file a free writing prospectus with the

Commission under this section shall not apply in respect of any communication that has previously been filed with, or furnished to, the Commission or that the issuer would not be required to file with the Commission pursuant to the conditions of Rule 433 (§ 230.433) if the communication was a free writing prospectus used after the filing of the registration statement. The condition that the issuer shall file a free writing prospectus with the Commission under this section shall be satisfied if the issuer satisfies the filing conditions (other than timing of filing which is provided in this section) that would apply under Rule 433 if the communication was a free writing prospectus used after the filing of the registration statement.

(iii) An immaterial or unintentional failure to file or delay in filing a free writing prospectus to the extent provided in this section will not result in a violation of section 5(c) of the Act or the loss of the ability to rely on this section so long as:

(A) A good faith and reasonable effort was made to comply with the filing condition; and

(B) The free writing prospectus is filed as soon as practicable after discovery of the failure to file.

(3) *Ineligible offerings.* The exemption in paragraph (a) of this section shall not be available to:

(i) Communications relating to business combination transactions that are subject to Rule 165 (§ 230.165) or Rule 166 (§ 230.166);

(ii) Communications by an issuer that is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*); or

(iii) Communications by an issuer that is a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)).

(c) For purposes of this section, a communication is made by or on behalf of an issuer if the issuer or an agent or representative of the issuer, other than an offering participant who is an underwriter or dealer, authorizes or approves the communication before it is made.

(d) For purposes of this section, a communication for which disclosure would be required under section 17(b) of the Act as a result of consideration given or to be given, directly or indirectly, by or on behalf of an issuer is deemed to be an offer by the issuer and, if a written communication, is deemed to be a free writing prospectus of the issuer.

(e) A communication exempt from section 5(c) of the Act pursuant to this section will not be considered to be in connection with a securities offering registered under the Securities Act for purposes of Rule 100(b)(2)(iv) of Regulation FD under the Securities Exchange Act of 1934 (§ 243.100(b)(2)(iv) of this chapter).

■ 18. Add § 230.163A to read as follows:

§ 230.163A Exemption from section 5(c) of the Act for certain communications made by or on behalf of issuers more than 30 days before a registration statement is filed.

Preliminary Note to § 230.163A. Attempted compliance with this section does not act as an exclusive election and the issuer also may claim the availability of any other applicable exemption or exclusion. Reliance on this section does not affect the availability of any other exemption or exclusion from the requirements of section 5 of the Act.

(a) Except as excluded pursuant to paragraph (b) of this section, in all registered offerings by issuers, any communication made by or on behalf of an issuer more than 30 days before the date of the filing of the registration statement that does not reference a securities offering that is or will be the subject of a registration statement shall not constitute an offer to sell, offer for sale, or offer to buy the securities being offered under the registration statement for purposes of section 5(c) of the Act, provided that the issuer takes reasonable steps within its control to prevent further distribution or publication of such communication during the 30 days immediately preceding the date of filing the registration statement.

(b) The exemption in paragraph (a) of this section shall not be available with respect to the following communications:

(1) Communications relating to business combination transactions that are subject to Rule 165 (§ 230.165) or Rule 166 (§ 230.166);

(2) Communications made in connection with offerings registered on Form S–8 (§ 239.16b of this chapter), other than by well-known seasoned issuers;

(3) Communications in offerings of securities of an issuer that is, or during the past three years was (or any of whose predecessors during the last three years was):

(i) A blank check company as defined in Rule 419(a)(2) (§ 230.419(a)(2));

(ii) A shell company, other than a business combination related shell company, each as defined in Rule 405 (§ 230.405); or

(iii) An issuer for an offering of penny stock as defined in Rule 3a51–1 of the Securities Exchange Act of 1934 (§ 240.3a51–1 of this chapter); or

(4) Communications made by an issuer that is:

(i) An investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*); or

(ii) A business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)).

(c) For purposes of this section, a communication is made by or on behalf of an issuer if the issuer or an agent or representative of the issuer, other than an offering participant who is an underwriter or dealer, authorizes or approves the communication before it is made.

(d) A communication exempt from section 5(c) of the Act pursuant to this section will not be considered to be in connection with a securities offering registered under the Securities Act for purposes of Rule 100(b)(2)(iv) of Regulation FD under the Securities Exchange Act of 1934 (§ 243.100(b)(2)(iv) of this chapter).

■ 19. Add § 230.164 to read as follows:

§ 230.164 Post-filing free writing prospectuses in connection with certain registered offerings.

Preliminary Notes to § 230.164.

1. This section is not available for any communication that, although in technical compliance with this section, is part of a plan or scheme to evade the requirements of section 5 of the Act.

2. Attempted compliance with this section does not act as an exclusive election and the person relying on this section also may claim the availability of any other applicable exemption or exclusion. Reliance on this section does not affect the availability of any other exemption or exclusion from the requirements of section 5 of the Act.

(a) In connection with a registered offering of an issuer meeting the requirements of this section, a free writing prospectus, as defined in Rule 405 (§ 230.405), of the issuer or any other offering participant, including any underwriter or dealer, after the filing of the registration statement will be a section 10(b) prospectus for purposes of section 5(b)(1) of the Act provided that the conditions set forth in Rule 433 (§ 230.433) are satisfied.

(b) An immaterial or unintentional failure to file or delay in filing a free writing prospectus as necessary to satisfy the filing conditions contained in Rule 433 will not result in a violation of section 5(b)(1) of the Act or the loss of the ability to rely on this section so long as:

(1) A good faith and reasonable effort was made to comply with the filing condition; and

(2) The free writing prospectus is filed as soon as practicable after discovery of the failure to file.

(c) An immaterial or unintentional failure to include the specified legend in a free writing prospectus as necessary to satisfy the legend condition contained in Rule 433 will not result in a violation of section 5(b)(1) of the Act or the loss of the ability to rely on this section so long as:

(1) A good faith and reasonable effort was made to comply with the legend condition;

(2) The free writing prospectus is amended to include the specified legend as soon as practicable after discovery of the omitted or incorrect legend; and

(3) If the free writing prospectus has been transmitted without the specified legend, the free writing prospectus must be retransmitted with the legend by substantially the same means as, and directed to substantially the same prospective purchasers to whom, the free writing prospectus was originally transmitted.

(d) Solely for purposes of this section, an immaterial or unintentional failure to retain a free writing prospectus as necessary to satisfy the record retention condition contained in Rule 433 will not result in a violation of section 5(b)(1) of the Act or the loss of the ability to rely on this section so long as a good faith and reasonable effort was made to comply with the record retention condition. Nothing in this paragraph will affect, however, any other record retention provisions applicable to the issuer or any offering participant.

(e) *Ineligible issuers.* (1) This section and Rule 433 are available only if at the eligibility determination date for the offering in question, determined pursuant to paragraph (h) of this section, the issuer is not an ineligible issuer as defined in Rule 405 (or in the case of any offering participant, other than the issuer, the participant has a reasonable belief that the issuer is not an ineligible issuer);

(2) Notwithstanding paragraph (e)(1) of this section, this section and Rule 433 are available to an ineligible issuer with respect to a free writing prospectus that contains only descriptions of the terms of the securities in the offering or the offering (or in the case of an offering of asset-backed securities, contains only information specified in paragraphs (a)(1), (2), (3), (4), (6), (7), and (8) of the definition of ABS informational and computational materials in Item 1101 of Regulation AB (§ 229.1101 of this chapter), unless the issuer is or during the last three years the issuer or any of its predecessors was:

(i) A blank check company as defined in Rule 419(a)(2) (§ 230.419(a)(2));

(ii) A shell company, other than a business combination related shell company, as defined in Rule 405; or

(iii) An issuer for an offering of penny stock as defined in Rule 3a51–1 of the Securities Exchange Act of 1934 (§ 240.3a51–1 of this chapter).

(f) *Excluded issuers.* This section and Rule 433 are not available if the issuer is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)).

(g) *Excluded offerings.* This section and Rule 433 are not available if the issuer is registering a business combination transaction as defined in Rule 165(f)(1) (§ 230.165(f)(1)) or the issuer, other than a well-known seasoned issuer, is registering an offering on Form S–8 (§ 239.16b of this chapter).

(h) For purposes of this section and Rule 433, the determination date as to whether an issuer is an ineligible issuer in respect of an offering shall be:

(1) Except as provided in paragraph (h)(2) of this section, the time of filing of the registration statement covering the offering; or

(2) If the offering is being registered pursuant to Rule 415 (§ 230.415), the earliest time after the filing of the registration statement covering the offering at which the issuer, or in the case of an underwritten offering the issuer or another offering participant, makes a *bona fide* offer, including without limitation through the use of a free writing prospectus, in the offering.

■ 20. Add § 230.168 to read as follows:

§ 230.168 Exemption from sections 2(a)(10) and 5(c) of the Act for certain communications of regularly released factual business information and forward-looking information

Preliminary Notes to § 230.168.

1. This section is not available for any communication that, although in technical compliance with this section, is part of a plan or scheme to evade the requirements of section 5 of the Act.

2. This section provides a non-exclusive safe harbor for factual business information and forward-looking information released or disseminated as provided in this section. Attempted compliance with this section does not act as an exclusive election and the issuer also may claim the availability of any other applicable exemption or exclusion. Reliance on this section does not affect the availability of any other exemption or exclusion from the definition of prospectus in section 2(a)(10) or the requirements of section 5 of the Act.

3. The availability of this section for a release or dissemination of a communication that contains or incorporates factual business information or forward-looking information will not be affected by another release or dissemination of a communication that contains all or a portion of the same factual business information or forward-looking information that does not satisfy the conditions of this section.

(a) For purposes of sections 2(a)(10) and 5(c) of the Act, the regular release or dissemination by or on behalf of an issuer (and, in the case of an asset-backed issuer, the other persons specified in paragraph (a)(3) of this section) of communications containing factual business information or forward-looking information shall be deemed not to constitute an offer to sell or offer for sale of a security which is the subject of an offering pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective, if the conditions of this section are satisfied by any of the following:

(1) An issuer that is required to file reports pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d));

(2) A foreign private issuer that:

(i) Meets all of the registrant requirements of Form F–3 (§ 239.33 of this chapter) other than the reporting history provisions of General Instructions I.A.1. and I.A.2.(a) of Form F–3;

(ii) Either:

(A) Satisfies the public float threshold in General Instruction I.B.1. of Form F–3; or

(B) Is issuing non-convertible investment grade securities meeting the provisions of General Instruction I.B.2. of Form F–3; and

(iii) Either:

(A) Has its equity securities trading on a designated offshore securities market as defined in Rule 902(b) (§ 230.902(b)) and has had them so traded for at least 12 months; or

(B) Has a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; or

(3) An asset-backed issuer or a depositor, sponsor, or servicer (as such terms are defined in Item 1101 of Regulation AB (§ 229.1101 of this chapter)) or an affiliated depositor, whether or not such other person is the issuer.

(b) *Definitions.*

(1) *Factual business information* means some or all of the following information that is released or disseminated under the conditions in paragraph (d) of this section, including, without limitation, such factual

business information contained in reports or other materials filed with, furnished to, or submitted to the Commission pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*):

(i) Factual information about the issuer, its business or financial developments, or other aspects of its business;

(ii) Advertisements of, or other information about, the issuer's products or services; and

(iii) Dividend notices.

(2) *Forward-looking information* means some or all of the following information that is released or disseminated under the conditions in paragraph (d) of this section, including, without limitation, such forward-looking information contained in reports or other materials filed with, furnished to, or submitted to the Commission pursuant to the Securities Exchange Act of 1934:

(i) Projections of the issuer's revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure, or other financial items;

(ii) Statements about the issuer management's plans and objectives for future operations, including plans or objectives relating to the products or services of the issuer;

(iii) Statements about the issuer's future economic performance, including statements of the type contemplated by the management's discussion and analysis of financial condition and results of operation described in Item 303 of Regulations S–B and S–K (§ 228.303 and § 229.303 of this chapter) or the operating and financial review and prospects described in Item 5 of Form 20–F (§ 249.220f of this chapter); and

(iv) Assumptions underlying or relating to any of the information described in paragraphs (b)(2)(i), (b)(2)(ii) and (b)(2)(iii) of this section.

(3) For purposes of this section, the release or dissemination of a communication is by or on behalf of the issuer if the issuer or an agent or representative of the issuer, other than an offering participant who is an underwriter or dealer, authorizes or approves such release or dissemination before it is made.

(4) For purposes of this section, in the case of communications of a person specified in paragraph (a)(3) of this section other than the asset-backed issuer, the release or dissemination of a communication is by or on behalf of such other person if such other person or its agent or representative, other than an underwriter or dealer, authorizes or approves such release or dissemination before it is made.

(c) *Exclusion.* A communication containing information about the registered offering or released or disseminated as part of the offering activities in the registered offering is excluded from the exemption of this section.

(d) *Conditions to exemption.* The following conditions must be satisfied:

(1) The issuer (or in the case of an asset-backed issuer, the issuer and the other persons specified in paragraph (a)(3) of this section, taken together) has previously released or disseminated information of the type described in this section in the ordinary course of its business;

(2) The timing, manner, and form in which the information is released or disseminated is consistent in material respects with similar past releases or disseminations; and

(3) The issuer is not an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)).

■ 21. Add § 230.169 to read as follows:

§ 230.169 Exemption from sections 2(a)(10) and 5(c) of the Act for certain communications of regularly released factual business information.

Preliminary Notes to § 230.169.

1. This section is not available for any communication that, although in technical compliance with this section, is part of a plan or scheme to evade the requirements of section 5 of the Act.

2. This section provides a non-exclusive safe harbor for factual business information released or disseminated as provided in this section. Attempted compliance with this section does not act as an exclusive election and the issuer also may claim the availability of any other applicable exemption or exclusion. Reliance on this section does not affect the availability of any other exemption or exclusion from the definition of prospectus in section 2(a)(10) or the requirements of section 5 of the Act.

3. The availability of this section for a release or dissemination of a communication that contains or incorporates factual business information will not be affected by another release or dissemination of a communication that contains all or a portion of the same factual business information that does not satisfy the conditions of this section.

(a) For purposes of sections 2(a)(10) and 5(c) of the Act, the regular release or dissemination by or on behalf of an issuer of communications containing factual business information shall be deemed not to constitute an offer to sell or offer for sale of a security by an issuer which is the subject of an offering pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective, if the conditions of this section are satisfied.

(b) *Definitions.*

(1) *Factual business information* means some or all of the following information that is released or disseminated under the conditions in paragraph (d) of this section:

(i) Factual information about the issuer, its business or financial developments, or other aspects of its business; and

(ii) Advertisements of, or other information about, the issuer's products or services.

(2) For purposes of this section, the release or dissemination of a communication is by or on behalf of the issuer if the issuer or an agent or representative of the issuer, other than an offering participant who is an underwriter or dealer, authorizes or approves such release or dissemination before it is made.

(c) *Exclusions.* A communication containing information about the registered offering or released or disseminated as part of the offering activities in the registered offering is excluded from the exemption of this section.

(d) *Conditions to exemption.* The following conditions must be satisfied:

(1) The issuer has previously released or disseminated information of the type described in this section in the ordinary course of its business;

(2) The timing, manner, and form in which the information is released or disseminated is consistent in material respects with similar past releases or disseminations;

(3) The information is released or disseminated for intended use by persons, such as customers and suppliers, other than in their capacities as investors or potential investors in the issuer's securities, by the issuer's employees or agents who historically have provided such information; and

(4) The issuer is not an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)).

■ 22. Add § 230.172 to read as follows:

§ 230.172 Delivery of prospectuses.

(a) *Sending confirmations and notices of allocations.* After the effective date of a registration statement, the following are exempt from the provisions of section 5(b)(1) of the Act if the

conditions set forth in paragraph (c) of this section are satisfied:

(1) Written confirmations of sales of securities in an offering pursuant to a registration statement that contain information limited to that called for in Rule 10b–10 under the Securities Exchange Act of 1934 (§ 240.10b–10 of this chapter) and other information customarily included in written confirmations of sales of securities, which may include notices provided pursuant to Rule 173 (§ 230.173); and

(2) Notices of allocation of securities sold or to be sold in an offering pursuant to the registration statement that may include information identifying the securities (including the CUSIP number) and otherwise may include only information regarding pricing, allocation and settlement, and information incidental thereto.

(b) *Transfer of the security.* Any obligation under section 5(b)(2) of the Act to have a prospectus that satisfies the requirements of section 10(a) of the Act precede or accompany the carrying or delivery of a security in a registered offering is satisfied if the conditions in paragraph (c) of this section are met.

(c) *Conditions.* (1) The registration statement relating to the offering is effective and is not the subject of any pending proceeding or examination under section 8(d) or 8(e) of the Act;

(2) Neither the issuer, nor an underwriter or participating dealer is the subject of a pending proceeding under section 8A of the Act in connection with the offering; and

(3) The issuer has filed with the Commission a prospectus with respect to the offering that satisfies the requirements of section 10(a) of the Act or the issuer will make a good faith and reasonable effort to file such a prospectus within the time required under Rule 424 (§ 230.424) and, in the event that the issuer fails to file timely such a prospectus, the issuer files the prospectus as soon as practicable thereafter.

(4) The condition in paragraph (c)(3) of this section shall not apply to transactions by dealers requiring delivery of a final prospectus pursuant to section 4(3) of the Act.

(d) *Exclusions.* This section shall not apply to any:

(1) Offering of any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80â–1 *et seq.*);

(2) Offering of any business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48));

(3) A business combination transaction as defined in Rule 165(f)(1) (§ 230.165(f)(1); or

(4) Offering registered on Form S–8 (§ 239.16b of this chapter).

■ 23. Add § 230.173 to read as follows:

§ 230.173 Notice of registration.

(a) In a transaction that represents a sale by the issuer or an underwriter, or a sale where there is not an exclusion or exemption from the requirement to deliver a final prospectus meeting the requirements of section 10(a) of the Act pursuant to section 4(3) of the Act or Rule 174 (§ 230.174), each underwriter or dealer selling in such transaction shall provide to each purchaser from it, not later than two business days following the completion of such sale, a copy of the final prospectus or, in lieu of such prospectus, a notice to the effect that the sale was made pursuant to a registration statement or in a transaction in which a final prospectus would have been required to have been delivered in the absence of Rule 172 (§ 230.172).

(b) If the sale was by the issuer and was not effected by or through an underwriter or dealer, the responsibility to send a prospectus, or in lieu of such prospectus, such notice as set forth in paragraph (a) of this section, shall be the issuer's.

(c) Compliance with the requirements of this section is not a condition to reliance on Rule 172.

(d) A purchaser may request from the person responsible for sending a notice a copy of the final prospectus if one has not been sent.

(e) After the effective date of the registration statement with respect to an offering, notices as set forth in paragraph (a) of this section, are exempt from the provisions of section 5(b)(1) of the Act.

(f) *Exclusions.* This section shall not apply to any:

(1) Transaction solely between brokers or dealers in reliance on Rule 153 (§ 230.153);

(2) Offering of any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*);

(3) Offering of any business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48));

(4) A business combination transaction as defined in Rule 165(f)(1) (§ 230.165(f)(1)); or

(5) Offering registered on Form S–8 (§ 239.16b of this chapter).

■ 24. Amend § 230.174 by removing the authority citations following the section and adding paragraph (h) to read as follows:

§ 230.174 Delivery of prospectus by dealers; exemptions under section 4(3) of the Act.

* * * * *

(h) Any obligation pursuant to Section 4(3) of the Act and this section to deliver a prospectus, other than pursuant to paragraph (g) of this section, may be satisfied by compliance with the provisions of Rule 172 (§ 230.172).

■ 25. Amend § 230.401 by removing the authority citations following the section and revising paragraph (g) to read as follows:

§ 230.401 Requirements as to proper form.

* * * * *

(g)(1) Subject to paragraph (g)(2) of this section, except for registration statements and post-effective amendments that become effective immediately pursuant to Rule 462 and Rule 464 (§ 230.462 and § 230.464), a registration statement or any amendment thereto is deemed filed on the proper registration form unless the Commission objects to the registration form before the effective date.

(2) An automatic shelf registration statement as defined in Rule 405 (§ 230.405) and any post-effective amendment thereto are deemed filed on the proper registration form unless and until the Commission notifies the issuer of its objection to the use of such form. Following any such notification, the issuer must amend its automatic shelf registration statement onto the registration form it is then eligible to use; *provided, however,* that any continuous offering of securities pursuant to Rule 415 (§ 230.415) that the issuer has commenced pursuant to the registration statement before the Commission has notified the issuer of its objection to the use of such form may continue until the effective date of a new registration statement or post-effective amendment to the registration statement that the issuer has filed on the proper registration form, if the issuer files promptly after notification the new registration statement or post-effective amendment and if the offering is permitted to be made under the new registration statement or post-effective amendment.

■ 26. Amend § 230.405 as follows:

■ a. Add new definitions of "automatic shelf registration statement," "free writing prospectus," "ineligible issuer," "well-known seasoned issuer," and "written communication," in alphabetical order; and

■ b. Revise the definition of "graphic communication."

The additions and revision read as follows:

§ 230.405 Definition of terms.

* * * * *

Automatic shelf registration statement. The term *automatic shelf registration statement* means a registration statement filed on Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter) by a well-known seasoned issuer pursuant to General Instruction I.D. or I.C. of such forms, respectively.

* * * * *

Free writing prospectus. Except as otherwise specifically provided or the context otherwise requires, a *free writing prospectus* is any written communication as defined in this section that constitutes an offer to sell or a solicitation of an offer to buy the securities relating to a registered offering that is used after the registration statement in respect of the offering is filed (or, in the case of a well-known seasoned issuer, whether or not such registration statement is filed) and is made by means other than:

(1) A prospectus satisfying the requirements of section 10(a) of the Act, Rule 430 (§ 230.430), Rule 430A (§ 230.430A), Rule 430B (§ 230.430B), Rule 430C (§ 230.430C), or Rule 431 (§ 230.431);

(2) A written communication used in reliance on Rule 167 and Rule 426 (§ 230.167 and § 230.426); or

(3) A written communication that constitutes an offer to sell or solicitation of an offer to buy such securities that falls within the exception from the definition of prospectus in clause (a) of section 2(a)(10) of the Act.

Graphic communication. The term *graphic communication*, which appears in the definition of "write, written" in section 2(a)(9) of the Act and in the definition of written communication in this section, shall include all forms of electronic media, including, but not limited to, audiotapes, videotapes, facsimiles, CD–ROM, electronic mail, Internet Web sites, substantially similar messages widely distributed (rather than individually distributed) on telephone answering or voice mail systems, computers, computer networks and other forms of computer data compilation. Graphic communication shall not include a communication that, at the time of the communication, originates live, in real-time to a live audience and does not originate in recorded form or otherwise as a graphic communication, although it is transmitted through graphic means.

Ineligible issuer. (1) An *ineligible issuer* is an issuer with respect to which any of the following is true as of the relevant date of determination:

(i) Any issuer that is required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) that has not filed all reports and other materials required to be filed during the preceding 12 months (or for such shorter period that the issuer was required to file such reports pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934), other than reports on Form 8–K (§ 249.308 of this chapter) required solely pursuant to an item specified in General Instruction I.A.3(b) of Form S–3 (§ 239.13 of this chapter) (or in the case of an asset-backed issuer, to the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor (as such terms are defined in Item 1101 of Regulation AB (§ 229.1101 of this chapter) are or were at any time during the preceding 12 calendar months required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all reports and other material required to be filed for such period (or such shorter period that each such entity was required to file such reports), other than reports on Form 8–K required solely pursuant to an item specified in General Instruction I.A.4 of Form S–3);

(ii) The issuer is, or during the past three years the issuer or any of its predecessors was:

(A) A blank check company as defined in Rule 419(a)(2) (§ 230.419(a)(2));

(B) A shell company, other than a business combination related shell company, each as defined in this section;

(C) An issuer in an offering of penny stock as defined in Rule 3a51–1 of the Securities Exchange Act of 1934 (§ 240.3a51–1 of this chapter);

(iii) The issuer is a limited partnership that is offering and selling its securities other than through a firm commitment underwriting;

(iv) Within the past three years, a petition under the federal bankruptcy laws or any state insolvency law was filed by or against the issuer, or a court appointed a receiver, fiscal agent or similar officer with respect to the business or property of the issuer subject to the following:

(A) In the case of an involuntary bankruptcy in which a petition was filed against the issuer, ineligibility will occur upon the earlier to occur of:

(*1*) 90 days following the date of the filing of the involuntary petition (if the case has not been earlier dismissed); or

(*2*) The conversion of the case to a voluntary proceeding under federal bankruptcy or state insolvency laws; and

(B) Ineligibility will terminate under this paragraph (1)(iv) if an issuer has filed an annual report with audited financial statements subsequent to its emergence from that bankruptcy, insolvency, or receivership process;

(v) Within the past three years, the issuer or any entity that at the time was a subsidiary of the issuer was convicted of any felony or misdemeanor described in paragraphs (i) through (iv) of section 15(b)(4)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(4)(B)(i) through (iv));

(vi) Within the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that:

(A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws;

(B) Requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws; or

(C) Determines that the person violated the anti-fraud provisions of the federal securities laws;

(vii) The issuer has filed a registration statement that is the subject of any pending proceeding or examination under section 8 of the Act or has been the subject of any refusal order or stop order under section 8 of the Act within the past three years; or

(viii) The issuer is the subject of any pending proceeding under section 8A of the Act in connection with an offering.

(2) An issuer shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. Any such determination shall be without prejudice to any other action by the Commission in any other proceeding or matter with respect to the issuer or any other person.

(3) The date of determination of whether an issuer is an ineligible issuer is as follows:

(i) For purposes of determining whether an issuer is a well-known seasoned issuer, at the date specified for purposes of such determination in paragraph (2) of the definition of well-known seasoned issuer in this section; and

(ii) For purposes of determining whether an issuer or offering participant may use free writing prospectuses in respect of an offering in accordance with the provisions of Rules 164 and 433 (§ 230.164 and § 230.433), at the date in respect of the offering specified in paragraph (h) of Rule 164.

* * * * *

Well-known seasoned issuer. A *well-known seasoned issuer* is an issuer that, as of the most recent determination date determined pursuant to paragraph (2) of this definition:

(1)(i) Meets all the registrant requirements of General Instruction I.A. of Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter) and either:

(A) As of a date within 60 days of the determination date, has a worldwide market value of its outstanding voting and non-voting common equity held by non-affiliates of $700 million or more; or

(B)(*1*) As of a date within 60 days of the determination date, has issued in the last three years at least $1 billion aggregate principal amount of non-convertible securities, other than common equity, in primary offerings for cash, not exchange, registered under the Act; and

(*2*) Will register only non-convertible securities, other than common equity, and full and unconditional guarantees permitted pursuant to paragraph (1)(ii) of this definition unless, at the determination date, the issuer also is eligible to register a primary offering of its securities relying on General Instruction I.B.1. of Form S–3 or Form F–3.

(*3*) Provided that as to a parent issuer only, for purposes of calculating the aggregate principal amount of outstanding non-convertible securities under paragraph (1)(i)(B)(*2*) of this definition, the parent issuer may include the aggregate principal amount of non-convertible securities, other than common equity, of its majority-owned subsidiaries issued in registered primary offerings for cash, not exchange, that it has fully and unconditionally guaranteed, within the meaning of Rule 3–10 of Regulation S–X (§ 210.3–10 of this chapter) in the last three years; or

(ii) Is a majority-owned subsidiary of a parent that is a well-known seasoned issuer pursuant to paragraph (1)(i) of this definition and, as to the subsidiaries' securities that are being or may be offered on that parent's registration statement:

(A) The parent has provided a full and unconditional guarantee, as defined in Rule 3–10 of Regulation S–X, of the payment obligations on the subsidiary's securities and the securities are non-convertible securities, other than common equity;

(B) The securities are guarantees of:

(*1*) Non-convertible securities, other than common equity, of its parent being registered; or

(*2*) Non-convertible securities, other than common equity, of another majority-owned subsidiary being registered where there is a full and unconditional guarantee, as defined in Rule 3–10 of Regulation S–X, of such non-convertible securities by the parent; or

(C) The securities of the majority-owned subsidiary meet the conditions of General Instruction I.B.2 of Form S–3 or Form F–3.

(iii) Is not an ineligible issuer as defined in this section.

(iv) Is not an asset-backed issuer as defined in Item 1101 of Regulation AB (§ 229.1101(b) of this chapter).

(v) Is not an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)).

(2) For purposes of this definition, the determination date as to whether an issuer is a well-known seasoned issuer shall be the latest of:

(i) The time of filing of its most recent shelf registration statement; or

(ii) The time of its most recent amendment (by post-effective amendment, incorporated report filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d) of this chapter), or form of prospectus) to a shelf registration statement for purposes of complying with section 10(a)(3) of the Act (or if such amendment has not been made within the time period required by section 10(a)(3) of the Act, the date on which such amendment is required); or

(iii) In the event that the issuer has not filed a shelf registration statement or amended a shelf registration statement for purposes of complying with section 10(a)(3) of the Act for sixteen months, the time of filing of the issuer's most recent annual report on Form 10–K (§ 249.310 of this chapter) or Form 20–F (§ 249.220f of this chapter) (or if such report has not been filed by its due date, such due date).

* * * * *

Written communication. Except as otherwise specifically provided or the context otherwise requires, a *written communication* is any communication that is written, printed, a radio or television broadcast, or a graphic communication as defined in this section.

Note: Note to definition of "written communication."

A communication that is a radio or television broadcast is a written communication regardless of the means of transmission of the broadcast.

■ 27. Amend § 230.408 as follows:

■ a. Designate the current text as paragraph (a); and

■ b. Add paragraph (b).

The addition reads as follows:

§ 230.408 Additional information.

* * * * *

(b) Notwithstanding paragraph (a) of this section, unless otherwise required to be included in the registration statement, the failure to include in a registration statement information included in a free writing prospectus will not, solely by virtue of inclusion of the information in a free writing prospectus (as defined in Rule 405 (§ 230.405)), be considered an omission of material information required to be included in the registration statement.

■ 28. Amend § 230.412 as follows:

■ a. Remove the authority citation following the section; and

■ b. Revise paragraph (a).

The revision reads as follows:

§ 230.412 Modified or superseded documents.

(a) Any statement contained in a document incorporated or deemed to be incorporated by reference or deemed to be part of a registration statement or the prospectus that is part of the registration statement shall be deemed to be modified or superseded for purposes of the registration statement or the prospectus that is part of the registration statement to the extent that a statement contained in the prospectus that is part of the registration statement or in any other subsequently filed document which also is or is deemed to be incorporated by reference or deemed to be part of the registration statement or prospectus that is part of the registration statement modifies or replaces such statement. Any statement contained in a document that is deemed to be incorporated by reference or deemed to be part of a registration statement or the prospectus that is part of the registration statement after the most recent effective date or after the date of the most recent prospectus that is part of the registration statement may modify or replace existing statements contained in the registration statement or the prospectus that is part of the registration statement.

* * * * *

■ 29. Revise § 230.413 to read as follows:

§ 230.413 Registration of additional securities and additional classes of securities.

(a) Except as provided in section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–24(f)) and in paragraph (b) of this section, where a registration statement is already in effect, the registration of additional securities shall only be effected through a separate registration statement relating to the additional securities.

(b) Notwithstanding paragraph (a) of this section, the following additional securities or additional classes of securities may be added to an automatic shelf registration statement already in effect by filing a post-effective amendment to that automatic shelf registration statement:

(1) Securities of a class different than those registered on the effective automatic shelf registration statement identified as provided in Rule 430B(a) (§ 230.430B(a)); or

(2) Securities of a majority-owned subsidiary that are permitted to be included in an automatic shelf registration statement, provided that the subsidiary and the securities are identified as provided in Rule 430B and the subsidiary satisfies the signature requirements of an issuer in the post-effective amendment.

■ 30. Amend § 230.415 as follows:
■ a. Remove the authority citations following the section;
■ b. Revise paragraph (a)(1)(x);
■ c. Revise paragraph (a)(2);
■ d. Revise paragraph (a)(3);
■ e. Revise paragraph (a)(4) including the undesignated paragraph;
■ f. Add paragraph (a)(5); and
■ g. Add paragraph (a)(6).

The revisions and addition read as follows:

§ 230.415 Delayed or continuous offering and sale of securities.

(a) * * *

(1) * * *

(x) Securities registered (or qualified to be registered) on Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter) which are to be offered and sold on an immediate, continuous or delayed basis by or on behalf of the registrant, a majority-owned subsidiary of the registrant or a person of which the registrant is a majority-owned subsidiary; or

* * * * *

(2) Securities in paragraph (a)(1)(viii) of this section and securities in paragraph (a)(1)(ix) of this section that are not registered on Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter) may only be registered in an amount which, at the time the registration statement becomes effective, is reasonably expected to be offered and sold within two years from the initial effective date of the registration.

(3) The registrant furnishes the undertakings required by Item 512(a) of Regulation S–K (§ 229.512(a) of this chapter) or Item 512(a) or Item 512(g) of Regulation S–B (§ 228.512(a) or (g) of this chapter), except that a registrant that is an investment company filing on Form N–2 (§§ 239.14 and 274.11a–1 of this chapter) must furnish the undertakings required by Item 34.4 of Form N–2.

(4) In the case of a registration statement pertaining to an at the market offering of equity securities by or on behalf of the registrant, the offering must come within paragraph (a)(1)(x) of this section. As used in this paragraph, the term "at the market offering" means an offering of equity securities into an existing trading market for outstanding shares of the same class at other than a fixed price.

(5) Securities registered on an automatic shelf registration statement and securities described in paragraphs (a)(1)(vii), (ix), and (x) of this section may be offered and sold only if not more than three years have elapsed since the initial effective date of the registration statement under which they are being offered and sold, *provided, however,* that if a new registration statement has been filed pursuant to paragraph (a)(6) of this section:

(i) If the new registration statement is an automatic shelf registration statement, it shall be immediately effective pursuant to Rule 462(e) (§ 230.462(e)); or

(ii) If the new registration statement is not an automatic shelf registration statement:

(A) Securities covered by the prior registration statement may continue to be offered and sold until the earlier of the effective date of the new registration statement or 180 days after the third anniversary of the initial effective date of the prior registration statement; and

(B) A continuous offering of securities covered by the prior registration statement that commenced within three years of the initial effective date may continue until the effective date of the new registration statement if such offering is permitted under the new registration statement.

(6) Prior to the end of the three-year period described in paragraph (a)(5) of this section, an issuer may file a new registration statement covering securities described in such paragraph (a)(5) of this section, which may, if permitted, be an automatic shelf registration statement. The new registration statement and prospectus included therein must include all the information that would be required at that time in a prospectus relating to all offering(s) that it covers. Prior to the effective date of the new registration statement (including at the time of filing in the case of an automatic shelf registration statement), the issuer may include on such new registration statement any unsold securities covered by the earlier registration statement by identifying on the bottom of the facing page of the new registration statement or latest amendment thereto the amount of such unsold securities being included and any filing fee paid in connection with such unsold securities, which will continue to be applied to such unsold securities. The offering of securities on the earlier registration statement will be deemed terminated as of the date of effectiveness of the new registration statement.

* * * * *

■ 31. Amend § 230.418 as follows:
■ a. Revise the introductory text of paragraph (a)(3);
■ b. Remove the word "and" at the end of paragraph (a)(6);
■ c. Remove the period at the end of the paragraph (a)(7) and in its place add "; and";
■ d. Add paragraph (a)(8); and
■ e. Revise the introductory text of paragraph (b).

The addition and revisions read as follows:

§ 230.418 Supplemental information.

(a) * * *

(3) Except in the case of a registrant eligible to use Form S–3 (§ 239.13 of this chapter), any engineering, management or similar reports or memoranda relating to broad aspects of the business, operations or products of the registrant, which have been prepared within the past twelve months for or by the registrant and any affiliate of the registrant or any principal underwriter, as defined in Rule 405 (§ 230.405), of the securities being registered except for:

* * * * *

(8) Any free writing prospectuses used in connection with the offering.

(b) Supplemental information described in paragraph (a) of this section shall not be required to be filed with or deemed part of and included in the registration statement, unless otherwise required. The information shall be returned to the registrant upon request, provided that:

* * * * *

■ 32. Amend § 230.424 as follows:
■ a. Revise the introductory text of paragraph (b);

■ b. Revise paragraph (b)(2);
■ c. Revise paragraph (b)(7);
■ d. Add paragraph (b)(8) before the Instruction 1;
■ e. Remove Instruction 2;
■ f. Revise the heading to "Instruction 1" to read "Instruction;" and
■ g. Add paragraph (g).

The additions and revisions read as follows:

§ 230.424 Filing of prospectuses, number of copies.

* * * * *

(b) Ten copies of each form of prospectus purporting to comply with section 10 of the Act, except for documents constituting a prospectus pursuant to Rule 428(a) (§ 230.428(a)) or free writing prospectuses pursuant to Rule 164 and Rule 433 (§ 230.164 and § 230.433), shall be filed with the Commission in the form in which it is used after the effectiveness of the registration statement and identified as required by paragraph (e) of this section; *provided, however,* that only a form of prospectus that contains substantive changes from or additions to a previously filed prospectus is required to be filed; *Provided, further,* that this paragraph (b) shall not apply in respect of a form of prospectus contained in a registration statement and relating solely to securities offered at competitive bidding, which prospectus is intended for use prior to the opening of bids. Ten copies of the form of prospectus shall be filed or transmitted for filing as follows:

* * * * *

(2) A form of prospectus that is used in connection with a primary offering of securities pursuant to Rule 415(a)(1)(x) (§ 230.415(a)(1)(x)) or a primary offering of securities registered for issuance on a delayed basis pursuant to Rule 415(a)(1)(vii) or (viii) (§ 230.415(a)(1)(vii) or (viii)) and that, in the case of Rule 415(a)(1)(viii) discloses the public offering price, description of securities or similar matters, and in the case of Rule 415(a)(1)(vii) and (x) discloses information previously omitted from the prospectus filed as part of an effective registration statement in reliance on Rule 430B (§ 230.430B), shall be filed with the Commission no later than the second business day following the earlier of the date of the determination of the offering price or the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

* * * * *

(7) A form of prospectus that identifies selling security holders and the amounts to be sold by them that was previously omitted from the registration statement and the prospectus in reliance upon Rule 430B (§ 230.430B) shall be filed with the Commission no later than the second business day following the earlier of the date of sale or the date of first use or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

(8) A form of prospectus otherwise required to be filed pursuant to paragraph (b) of this section that is not filed within the time frames specified in paragraph (b) of this section must be filed pursuant to this paragraph as soon as practicable after the discovery of such failure to file.

Note to paragraph (b)(8) of Rule 424. A form of prospectus required to be filed pursuant to another paragraph of Rule 424(b) that is filed under Rule 424(b)(8) shall nonetheless be "required to be filed" under such other paragraph.

* * * * *

(g) A form of prospectus filed pursuant to this section that operates to reflect the payment of filing fees for an offering or offerings pursuant to Rule 456(b) (§ 230.456(b)) must include on its cover page the calculation of registration fee table reflecting the payment of such filing fees for the securities that are the subject of the payment.

■ 33. Amend § 230.426 by adding paragraph (c)(8) to read as follows:

§ 230.426 Filing of certain prospectuses under § 230.167 in connection with certain offerings of asset-backed securities.

* * * * *

(c) * * *

(8) Any free writing prospectus used in reliance on Rule 164 and Rule 433 (§ 230.164 and § 230.433).

* * * * *

■ 34. Amend § 230.430A to add paragraph (f) immediately preceding the note to read as follows:

§ 230.430A Prospectus in a registration statement at the time of effectiveness.

* * * * *

(f) This section may apply to registration statements that are immediately effective pursuant to Rule 462(e) and (f) (§ 230.462(e) and (f)).

■ 35. Add § 230.430B to read as follows:

§ 230.430B Prospectus in a registration statement after effective date.

(a) A form of prospectus filed as part of a registration statement for offerings pursuant to Rule 415(a)(1)(vii) or (a)(1)(x) (§ 230.415(a)(1)(vii) or (a)(1)(x)) may omit from the information required by the form to be in the prospectus information that is unknown or not reasonably available to the issuer pursuant to Rule 409 (§ 230.409). In addition, a form of prospectus filed as part of an automatic shelf registration statement for offerings pursuant to Rule 415(a) (§ 230.415(a)), other than Rule 415(a)(1)(vii) or (viii), also may omit information as to whether the offering is a primary offering or an offering on behalf of persons other than the issuer, or a combination thereof, the plan of distribution for the securities, a description of the securities registered other than an identification of the name or class of such securities, and the identification of other issuers. Each such form of prospectus shall be deemed to have been filed as part of the registration statement for the purpose of section 7 of the Act.

(b) A form of prospectus filed as part of a registration statement for offerings pursuant to Rule 415(a)(1)(i) by an issuer eligible to use Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter) for primary offerings pursuant to General Instruction I.B.1 of such forms, may omit the information specified in paragraph (a) of this section, and may also omit the identities of selling security holders and amounts of securities to be registered on their behalf if:

(1) The registration statement is an automatic shelf registration statement as defined in Rule 405 (§ 230.405); or

(2) All of the following conditions are satisfied:

(i) The initial offering transaction of the securities (or securities convertible into such securities) the resale of which are being registered on behalf of each of the selling security holders, was completed;

(ii) The securities (or securities convertible into such securities) were issued and outstanding prior to the original date of filing the registration statement covering the resale of the securities;

(iii) The registration statement refers to any unnamed selling security holders in a generic manner by identifying the initial offering transaction in which the securities were sold; and

(iv) The issuer is not and during the past three years neither the issuer nor any of its predecessors was:

(A) A blank check company as defined in Rule 419(a)(2) (§ 230.419(a)(2));

(B) A shell company, other than a business combination related shell company, each as defined in Rule 405; or

(C) An issuer in an offering of penny stock as defined in Rule 3a51–1 of the

Securities Exchange Act of 1934 (§ 240.3a51–1 of this chapter).

(c) A form of prospectus that is part of a registration statement that omits information in reliance upon paragraph (a) or (b) of this section meets the requirements of section 10 of the Act for the purpose of section 5(b)(1) thereof. This provision shall not limit the information required to be contained in a form of prospectus in order to meet the requirements of section 10(a) of the Act for the purposes of section 5(b)(2) thereof or exception (a) of section 2(a)(10) thereof.

(d) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) or (b) of this section may be included subsequently in the prospectus that is part of a registration statement by:

(1) A post-effective amendment to the registration statement;

(2) A prospectus filed pursuant to Rule 424(b) (§ 230.424(b)); or

(3) If the applicable form permits, including the information in the issuer's periodic or current reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) that are incorporated or deemed incorporated by reference into the prospectus that is part of the registration statement in accordance with applicable requirements, subject to the provisions of paragraph (h) of this section.

(e) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) or (b) of this section and contained in a form of prospectus required to be filed with the Commission pursuant to Rule 424(b), other than as provided in paragraph (f) of this section, shall be deemed part of and included in the registration statement as of the date such form of filed prospectus is first used after effectiveness.

(f)(1) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) or (b) of this section and is contained in a form of prospectus required to be filed with the Commission pursuant to Rule 424(b)(2), (b)(5), or (b)(7), shall be deemed to be part of and included in the registration statement on the earlier of the date such subsequent form of prospectus is first used or the date and time of the first contract of sale of securities in the offering to which such subsequent form of prospectus relates.

(2) The date on which a form of prospectus is deemed to be part of and included in the registration statement pursuant to paragraph (f)(1) of this section shall be deemed, for purposes of liability under section 11 of the Act of the issuer and any underwriter at the time only, to be a new effective date of the part of such registration statement relating to the securities to which such form of prospectus relates, such part of the registration statement consisting of all information included in the registration statement and any prospectus relating to the offering of such securities (including information relating to the offering in a prospectus already included in the registration statement) as of such date and all information relating to the offering included in reports and materials incorporated by reference into such registration statement and prospectus as of such date, and in each case not modified or superseded pursuant to Rule 412 (§ 230.412). The offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) If a registration statement is amended to include or is deemed to include, through incorporation by reference or otherwise, except as otherwise provided in Rule 436 (§ 230.436), a report or opinion of any person made on such person's authority as an expert whose consent would be required under section 7 of the Act because of being named as having prepared or certified part of the registration statement, then for purposes of this section and for liability purposes under section 11 of the Act, the part of the registration statement for which liability against such person is asserted shall be considered as having become effective with respect to such person as of the time the report or opinion is deemed to be part of the registration statement and a consent required pursuant to section 7 of the Act has been provided as contemplated by section 11 of the Act.

(4) Except for an effective date resulting from the filing of a form of prospectus filed for purposes of including information required by section 10(a)(3) of the Act or pursuant to Item 512(a)(1)(ii) of Regulation S–K or Regulation S–B (§ 229.512(a)(1)(ii) or § 228.512(a)(1)(ii) of this chapter), the date a form of prospectus is deemed part of and included in the registration statement pursuant to this paragraph shall not be an effective date established pursuant to paragraph (f)(2) of this section as to:

(i) Any director (or person acting in such capacity) of the issuer;

(ii) Any person signing any report or document incorporated by reference into the registration statement, except for such a report or document incorporated by reference for purposes of including information required by section 10(a)(3) of the Act or pursuant to Item 512(a)(1)(ii) of Regulation S–K or Regulation S–B (such person except for such reports being deemed not to be a person who signed the registration statement within the meaning of section 11(a) of the Act).

(5) The date a form of prospectus is deemed part of and included in the registration statement pursuant to paragraph (f)(2) of this section shall not be an effective date established pursuant to paragraph (f)(2) of this section as to:

(i) Any accountant with respect to financial statements or other financial information contained in the registration statement as of a prior effective date and for which the accountant previously provided a consent to be named as required by section 7 of the Act, unless the form of prospectus contains new audited financial statements or other financial information as to which the accountant is an expert and for which a new consent is required pursuant to section 7 of the Act or Rule 436; and

(ii) Any other person whose report or opinion as an expert or counsel has, with their consent, previously been included in the registration statement as of a prior effective date, unless the form of prospectus contains a new report or opinion for which a new consent is required pursuant to section 7 of the Act or Rule 436.

(g) Notwithstanding paragraph (e) or (f) of this section or paragraph (a) of Rule 412, no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement after the effective date of such registration statement or portion thereof in respect of an offering determined pursuant to this section will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(h) Where a form of prospectus filed pursuant to Rule 424(b) relating to an offering does not include disclosure of omitted information regarding the terms of the offering, the securities, or the plan of distribution, or selling security holders for the securities that are the subject of the form of prospectus, because such omitted information has

been included in periodic or current reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 incorporated or deemed incorporated by reference into the prospectus, the issuer shall file a form of prospectus identifying the periodic or current reports that are incorporated or deemed incorporated by reference into the prospectus that is part of the registration statement that contain such omitted information. Such form of prospectus shall be required to be filed, depending on the nature of the incorporated information, pursuant to Rule 424(b)(2), (b)(5), or (b)(7).

(i) Issuers relying on this section shall furnish the undertakings required by Item 512(a) of Regulation S–K or Item 512(a) or (g) of Regulation S–B.

Note to Rule 430B: The provisions of paragraph (b) of Rule 401 (§ 230.401(b)) shall apply to any prospectus filed for purposes of including information required by section 10(a)(3) of the Act.

■ 36. Add § 230.430C to read as follows:

§ 230.430C Prospectus in a registration statement pertaining to an offering other than pursuant to Rule 430A or Rule 430B after the effective date.

(a) In offerings made other than in reliance on Rule 430B (§ 230.430B) and other than for prospectuses filed in reliance on Rule 430A (§ 230.430A), information contained in a form of prospectus required to be filed with the Commission pursuant to Rule 424(b) (§ 230.424(b)) or Rule 497(b), (c), (d), or (e) (§ 230.497(b), (c), (d) or (e)), shall be deemed to be part of and included in the registration statement on the date it is first used after effectiveness.

(b) Notwithstanding paragraph (a) of this section or paragraph (a) of Rule 412 (§ 230.412), no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(c) Nothing in this section shall affect the information required to be included in an issuer's registration statement and prospectus.

(d) Issuers subject to paragraph (a) of this section shall furnish the undertakings required by Item 512(a) of Regulation S–K (§ 229.512(a) of this chapter), Item 512(a) and (g) of Regulation S–B (§ 229.512(a) and (g) of this chapter), or Item 34.4 of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), as applicable.

■ 37. Add § 230.433 to read as follows:

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

(a) *Scope of section.* This section applies to any free writing prospectus with respect to securities of any issuer (except as set forth in Rule 164 (§ 230.164)) that are the subject of a registration statement that has been filed under the Act. Such a free writing prospectus that satisfies the conditions of this section may include information the substance of which is not included in the registration statement. Such a free writing prospectus that satisfies the conditions of this section will be a prospectus permitted under section 10(b) of the Act for purposes of sections 2(a)(10), 5(b)(1), and 5(b)(2) of the Act and will, for purposes of considering it a prospectus, be deemed to be public, without regard to its method of use or distribution, because it is related to the public offering of securities that are the subject of a filed registration statement.

(b) *Permitted use of free writing prospectus.* Subject to the conditions of this paragraph (b) and satisfaction of the conditions set forth in paragraphs (c) through (g) of this section, a free writing prospectus may be used under this section and Rule 164 in connection with a registered offering of securities:

(1) *Eligibility and prospectus conditions for seasoned issuers and well-known seasoned issuers.* Subject to the provisions of Rule 164(e), (f), and (g), the issuer or any other offering participant may use a free writing prospectus in the following offerings after a registration statement relating to the offering has been filed that includes a prospectus that, other than by reason of this section or Rule 431, satisfies the requirements of section 10 of the Act:

(i) Offerings of securities registered on Form S–3 (§ 239.33 of this chapter) pursuant to General Instruction I.B.1, I.B.2, I.B.5, I.C., or I.D. thereof;

(ii) Offerings of securities registered on Form F–3 (§ 239.13 of this chapter) pursuant to General Instruction I.A.5, I.B.1, I.B.2, or I.C. thereof;

(iii) Any other offering not excluded from reliance on this section and Rule 164 of securities of a well-known seasoned issuer; and

(iv) Any other offering not excluded from reliance on this section and Rule 164 of securities of an issuer eligible to use Form S–3 or Form F–3 for primary offerings pursuant to General Instruction I.B.1 of such Forms.

(2) *Eligibility and prospectus conditions for non-reporting and unseasoned issuers.* If the issuer does not fall within the provisions of paragraph (b)(1) of this section, then, subject to the provisions of Rule 164(e), (f), and (g), any person participating in the offer or sale of the securities may use a free writing prospectus as follows:

(i) If the free writing prospectus is or was prepared by or on behalf of or used or referred to by an issuer or any other offering participant, if consideration has been or will be given by the issuer or other offering participant for the dissemination (in any format) of any free writing prospectus (including any published article, publication, or advertisement), or if section 17(b) of the Act requires disclosure that consideration has been or will be given by the issuer or other offering participant for any activity described therein in connection with the free writing prospectus, then a registration statement relating to the offering must have been filed that includes a prospectus that, other than by reason of this section or Rule 431, satisfies the requirements of section 10 of the Act, including a price range where required by rule, and the free writing prospectus shall be accompanied or preceded by the most recent such prospectus; *provided, however,* that use of the free writing prospectus is not conditioned on providing the most recent such prospectus if a prior such prospectus has been provided and there is no material change from the prior prospectus reflected in the most recent prospectus; *provided further,* that after effectiveness and availability of a final prospectus meeting the requirements of section 10(a) of the Act, no such earlier prospectus may be provided in satisfaction of this condition, and such final prospectus must precede or accompany any free writing prospectus provided after such availability, whether or not an earlier prospectus had been previously provided.

Notes to paragraph (b)(2)(i) of Rule 433.

1. The condition that a free writing prospectus shall be accompanied or preceded by the most recent prospectus satisfying the requirements of section 10 of the Act would be satisfied if a free writing prospectus that is an electronic communication contained an active hyperlink to such most recent prospectus; and

2. A communication for which disclosure would be required under section 17(b) of the Act as a result of consideration given or to be given, directly or indirectly, by or on behalf of an issuer or other offering participant is an offer by the issuer or such other offering participant as the case may be and is, if written, a free writing prospectus of the issuer or other offering participant.

(ii) Where paragraph (b)(2)(i) of this section does not apply, a registration statement relating to the offering has been filed that includes a prospectus that, other than by reason of this section or Rule 431 satisfies the requirements of section 10 of the Act, including a price range where required by rule.

(3) *Successors.* A successor issuer will be considered to satisfy the applicable provisions of this paragraph (b) if:

(i) Its predecessor and it, taken together, satisfy the conditions, provided that the succession was primarily for the purpose of changing the state or other jurisdiction of incorporation of the predecessor or forming a holding company and the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or

(ii) All predecessors met the conditions at the time of succession and the issuer has continued to do so since the succession.

(c) *Information in a free writing prospectus.* (1) A free writing prospectus used in reliance on this section may include information the substance of which is not included in the registration statement but such information shall not conflict with:

(i) Information contained in the filed registration statement, including any prospectus or prospectus supplement that is part of the registration statement (including pursuant to Rule 430B or Rule 430C) (§ 230.430B or § 230.430C) and not superseded or modified; or

(ii) Information contained in the issuer's periodic and current reports filed or furnished to the Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) that are incorporated by reference into the registration statement and not superseded or modified.

(2)(i) A free writing prospectus used in reliance on this section shall contain substantially the following legend:

> The issuer has filed a registration statement (including a prospectus) with the SEC for the offering to which this communication relates. Before you invest, you should read the prospectus in that registration statement and other documents the issuer has filed with the SEC for more complete information about the issuer and this offering. You may get these documents for free by visiting EDGAR on the SEC Web site at *www.sec.gov*. Alternatively, the issuer, any underwriter or any dealer participating in the offering will arrange to send you the prospectus if you request it by calling toll-free 1–8[xx–xxx–xxxx].

(ii) The legend also may provide an e-mail address at which the documents can be requested and may indicate that the documents also are available by accessing the issuer's Web site and provide the Internet address and the particular location of the documents on the Web site.

(d) *Filing conditions.* (1) Except as provided in paragraphs (d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8), and (f) of this section, the following shall be filed with the Commission under this section by a means reasonably calculated to result in filing no later than the date of first use. The free writing prospectus filed for purposes of this section will not be filed as part of the registration statement:

(i) The issuer shall file:

(A) Any issuer free writing prospectus, as defined in paragraph (h) of this section;

(B) Any issuer information that is contained in a free writing prospectus prepared by or on behalf of or used by any other offering participant (but not information prepared by or on behalf of a person other than the issuer on the basis of or derived from that issuer information); and

(C) A description of the final terms of the issuer's securities in the offering or of the offering contained in a free writing prospectus or portion thereof prepared by or on behalf of the issuer or any offering participant, after such terms have been established for all classes in the offering; and

(ii) Any offering participant, other than the issuer, shall file any free writing prospectus that is used or referred to by such offering participant and distributed by or on behalf of such person in a manner reasonably designed to lead to its broad unrestricted dissemination.

(2) Each free writing prospectus or issuer information contained in a free writing prospectus filed under this section shall identify in the filing the Commission file number for the related registration statement or, if that file number is unknown, a description sufficient to identify the related registration statement.

(3) The condition to file a free writing prospectus under paragraph (d)(1) of this section shall not apply if the free writing prospectus does not contain substantive changes from or additions to a free writing prospectus previously filed with the Commission.

(4) The condition to file issuer information contained in a free writing prospectus of an offering participant other than the issuer shall not apply if such information is included (including through incorporation by reference) in a prospectus or free writing prospectus previously filed that relates to the offering.

(5) Notwithstanding the provisions of paragraph (d)(1) of this section:

(i) To the extent a free writing prospectus or portion thereof otherwise required to be filed contains a description of terms of the issuer's securities in the offering or of the offering that does not reflect the final terms, such free writing prospectus or portion thereof is not required to be filed; and

(ii) A free writing prospectus or portion thereof that contains only a description of the final terms of the issuer's securities in the offering or of the offerings shall be filed by the issuer within two days of the later of the date such final terms have been established for all classes of the offering and the date of first use.

(6)(i) Notwithstanding the provisions of paragraph (d) of this section, in an offering of asset-backed securities, a free writing prospectus or portion thereof required to be filed that contains only ABS informational and computational materials as defined in Item 1101(a) of Regulation AB (§ 229.1101 of this chapter), may be filed under this section within the timeframe permitted by Rule 426(b) (§ 230.426(b)) and such filing will satisfy the filing conditions under this section.

(ii) In the event that a free writing prospectus is used in reliance on this section and Rule 164 and the conditions of this section and Rule 164 (which may include the conditions of paragraph (d)(6)(i) of this section) are satisfied with respect thereto, then the use of that free writing prospectus shall not be conditioned on satisfaction of the provisions, including without limitation the filing conditions, of Rule 167 and Rule 426 (§ 230.167 and § 230.426). In the event that ABS informational and computational materials are used in reliance on Rule 167 and Rule 426 and the conditions of those rules are satisfied with respect thereto, then the use of those materials shall not be conditioned on the satisfaction of the conditions of Rule 164 and this section.

(iii) If a free writing prospectus used in an offering of asset-backed securities in reliance on this section and Rule 164 includes the specific address of or a hyperlink to an Internet Web site containing static pool information and is filed in accordance with this paragraph (d), the static pool information relating to the asset-backed securities offering at that specific address is included in the free writing prospectus, and the filing including such address or hyperlink satisfies the filing conditions under this section.

(7) The condition to file a free writing prospectus or issuer information

pursuant to this paragraph (d) for a free writing prospectus used at the same time as a communication in a business combination transaction subject to Rule 425 (§ 230.425) shall be satisfied if:

(i) The free writing prospectus or issuer information is filed in accordance with the provisions of Rule 425, including the filing timeframe of Rule 425;

(ii) The filed material pursuant to Rule 425 indicates on the cover page that it also is being filed pursuant to Rule 433; and

(iii) The filed material pursuant to Rule 425 contains the information specified in paragraph (c)(2) of this section.

(8) Notwithstanding any other provision of this paragraph (d):

(i) A road show for an offering that is a written communication is a free writing prospectus, provided that, except as provided in paragraph (d)(8)(ii) of this section, a written communication that is a road show shall not be required to be filed; and

(ii) In the case of a road show that is a written communication for an offering of common equity or convertible equity securities by an issuer that is, at the time of the filing of the registration statement for the offering, not required to file reports with the Commission pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934, such a road show is required to be filed pursuant to this section unless the issuer of the securities makes at least one version of a *bona fide* electronic road show available without restriction by means of graphic communication to any person, including any potential investor in the securities (and if there is more than one version of a road show for the offering that is a written communication, the version available without restriction is made available no later than the other versions).

Note to paragraph (d)(8): A communication that is provided or transmitted simultaneously with a road show and is provided or transmitted in a manner designed to make the communication available only as part of the road show and not separately is deemed to be part of the road show. Therefore, if the road show is not a written communication, such a simultaneous communication (even if it would otherwise be a graphic communication or other written communication) is also deemed not to be written. If the road show is written and not required to be filed, such a simultaneous communication is also not required to be filed. Otherwise, a written communication that is an offer contained in a separate file from a road show, whether or not the road show is a written communication, or otherwise transmitted separately from a road show, will be a free writing prospectus subject to any applicable filing conditions of paragraph (d) of this section.

(e) *Treatment of information on, or hyperlinked from, an issuer's Web site.*

(1) An offer of an issuer's securities that is contained on an issuer's Web site or hyperlinked by the issuer from the issuer's Web site to a third party's Web site is a written offer of such securities by the issuer and, unless otherwise exempt or excluded from the requirements of section 5(b)(1) of the Act, the filing conditions of paragraph (d) of this section apply to such offer.

(2) Notwithstanding paragraph (e)(1) of this section, historical issuer information that is identified as such and located in a separate section of the issuer's Web site containing historical issuer information, that has not been incorporated by reference into or otherwise included in a prospectus of the issuer for the offering and that has not otherwise been used or referred to in connection with the offering, will not be considered a current offer of the issuer's securities and therefore will not be a free writing prospectus.

(f) *Free writing prospectuses published or distributed by media.* Any written offer for which an issuer or any other offering participant or any person acting on its behalf provided, authorized, or approved information that is prepared and published or disseminated by a person unaffiliated with the issuer or any other offering participant that is in the business of publishing, radio or television broadcasting or otherwise disseminating written communications would be considered at the time of publication or dissemination to be a free writing prospectus prepared by or on behalf of the issuer or such other offering participant for purposes of this section subject to the following:

(1) The conditions of paragraph (b)(2)(i) of this section will not apply and the conditions of paragraphs (c)(2) and (d) of this section will be deemed to be satisfied if:

(i) No payment is made or consideration given by or on behalf of the issuer or other offering participant for the written communication or its dissemination; and

(ii) The issuer or other offering participant in question files the written communication with the Commission, and includes in the filing the legend required by paragraph (c)(2) of this section, within four business days after the issuer or other offering participant becomes aware of the publication, radio or television broadcast, or other dissemination of the written communication.

(2) The filing obligation under paragraph (f)(1)(ii) of this section shall be subject to the following:

(i) The issuer or other offering participant shall not be required to file a free writing prospectus if the substance of that free writing prospectus has previously been filed with the Commission;

(ii) Any filing made pursuant to paragraph (f)(1)(ii) of this section may include information that the issuer or offering participant in question reasonably believes is necessary or appropriate to correct information included in the communication; and

(iii) In lieu of filing the actual written communication as published or disseminated as required by paragraph (f)(1)(ii) of this section, the issuer or offering participant in question may file a copy of the materials provided to the media, including transcripts of interviews or similar materials, provided the copy or transcripts contain all the information provided to the media.

(3) For purposes of this paragraph (f) of this section, an issuer that is in the business of publishing or radio or television broadcasting may rely on this paragraph (f) as to any publication or radio or television broadcast that is a free writing prospectus in respect of an offering of securities of the issuer if the issuer or an affiliate:

(i) Is the publisher of a *bona fide* newspaper, magazine, or business or financial publication of general and regular circulation or *bona fide* broadcaster of news including business and financial news;

(ii) Has established policies and procedures for the independence of the content of the publications or broadcasts from the offering activities of the issuer; and

(iii) Publishes or broadcasts the communication in the ordinary course.

(g) *Record retention.* Issuers and offering participants shall retain all free writing prospectuses they have used, and that have not been filed pursuant to paragraph (d) or (f) of this section, for 3 years following the initial *bona fide* offering of the securities in question.

Note to paragraph (g) of § 230.433. To the extent that the record retention requirements of Rule 17a–4 of the Securities Exchange Act of 1934 (§ 240.17a–4 of this chapter) apply to free writing prospectuses required to be retained by a broker-dealer under this section, such free writing prospectuses are required to be retained in accordance with such requirements.

(h) *Definitions. For purposes of this section:*

(1) An *issuer free writing prospectus* means a free writing prospectus

prepared by or on behalf of the issuer or used or referred to by the issuer and, in the case of an asset-backed issuer, prepared by or on behalf of a depositor, sponsor, or servicer (as defined in Item 1101 of Regulation AB) or affiliated depositor or used or referred to by any such person.

(2) *Issuer information* means material information about the issuer or its securities that has been provided by or on behalf of the issuer.

(3) A written communication or information is prepared or provided by or on behalf of a person if the person or an agent or representative of the person authorizes the communication or information or approves the communication or information before it is used. An offering participant other than the issuer shall not be an agent or representative of the issuer solely by virtue of its acting as an offering participant.

(4) A *road show* means an offer (other than a statutory prospectus or a portion of a statutory prospectus filed as part of a registration statement) that contains a presentation regarding an offering by one or more members of the issuer's management (and in the case of an offering of asset-backed securities, management involved in the securitization or servicing function of one or more of the depositors, sponsors, or servicers (as such terms are defined in Item 1101 of Regulation AB) or an affiliated depositor) and includes discussion of one or more of the issuer, such management, and the securities being offered; and

(5) A *bona fide electronic road show* means a road show that is a written communication transmitted by graphic means that contains a presentation by one or more officers of an issuer or other persons in an issuer's management (and in the case of an offering of asset-backed securities, management involved in the securitization or servicing function of one or more of the depositors, sponsors, or servicers (as such terms are defined in Item 1101 of Regulation AB) or an affiliated depositor) and, if more than one road show that is a written communication is being used, includes discussion of the same general areas of information regarding the issuer, such management, and the securities being offered as such other issuer road show or shows for the same offering that are written communications.

Note to § 230.433. This section does not affect the operation of the provisions of clause (a) of section 2(a)(10) of the Act providing an exception from the definition of "prospectus."

§ 230.434 [Removed]

■ 38. Remove § 230.434.

■ 39. Amend § 230.439 by revising paragraph (b) to read as follows:

§ 230.439 Consent to use of material incorporated by reference.

* * * * *

(b) Notwithstanding paragraph (a) of this section, any required consent may be incorporated by reference into a registration statement filed pursuant to Rule 462(b) (§ 230.462(b)) or a post-effective amendment filed pursuant to Rule 462(e) (§ 230.462(e)) from a previously filed registration statement relating to that offering, provided that the consent contained in the previously filed registration statement expressly provides for such incorporation.

■ 40. Amend § 230.456 as follows:

■ a. Revise the section heading;

■ b. Designate the current text as paragraph (a); and

■ c. Add paragraph (b).

The revisions and additions read as follows:

§ 230.456 Date of filing; timing of fee payment.

* * * * *

(b)(1) Notwithstanding paragraph (a) of this section, a well-known seasoned issuer that registers securities offerings on an automatic shelf registration statement, or registers additional securities or classes of securities thereon pursuant to Rule 413(b) (§ 230.413(b)), may, but is not required to, defer payment of all or any part of the registration fee to the Commission required by section 6(b)(2) of the Act on the following conditions:

(i) If the issuer elects to defer payment of the registration fee, it shall pay the registration fees (pay-as-you-go registration fees) calculated in accordance with Rule 457(r) (§ 230.457(r)) in advance of or in connection with an offering of securities from the registration statement within the time required to file the prospectus supplement pursuant to Rule 424(b) (§ 230.424(b)) for the offering, *provided, however*, that if the issuer fails, after a good faith effort to pay the filing fee within the time required by this section, the issuer may still be considered to have paid the fee in a timely manner if it is paid within four business days of its original due date; and

(ii) The issuer reflects the amount of the pay-as-you-go registration fee paid or to be paid in accordance with paragraph (b)(1)(i) of this section by updating the "Calculation of Registration Fee" table to indicate the class and aggregate offering price of securities offered and the amount of registration fee paid or to be paid in connection with the offering or offerings either in a post-effective amendment filed at the time of the fee payment or on the cover page of a prospectus filed pursuant to Rule 424(b) (§ 230.424(b)).

(2) A registration statement filed relying on the pay-as-you-go registration fee payment provisions of paragraph (b)(1) of this section will be considered filed as to the securities or classes of securities identified in the registration statement for purposes of this section and section 5 of the Act when it is received by the Commission, if it complies with all other requirements of the Act and the rules with respect to it.

(3) The securities sold pursuant to a registration statement will be considered registered, for purposes of section 6(a) of the Act, if the pay-as-you-go registration fee has been paid and the post-effective amendment or prospectus including the amended "Calculation of Registration Fee" table is filed pursuant to paragraph (b)(1) of this section.

■ 41. Amend § 230.457 by adding paragraph (r) to read as follows:

§ 230.457 Computation of fee.

* * * * *

(r) Where securities are to be offered pursuant to an automatic shelf registration statement, the registration fee is to be calculated in accordance with this section. When the issuer elects to defer payment of the fees pursuant to Rule 456(b) (§ 230.456(b)), the "Calculation of Registration Fee" table in the registration statement must indicate that the issuer is relying on Rule 456(b) but does not need to include the number of shares or units of securities or the maximum aggregate offering price of any securities until the issuer updates the "Calculation of Registration Fee" table to reflect payment of the registration fee, including a pay-as-you-go registration fee in accordance with Rule 456(b). The registration fee shall be calculated based on the fee payment rate in effect on the date of the fee payment.

■ 42. Amend § 230.462 by adding paragraphs (e) and (f) to read as follows:

§ 230.462 Immediate effectiveness of certain registration statements and post-effective amendments

* * * * *

(e) An automatic shelf registration statement, including an automatic shelf registration statement filed in accordance with Rule 415(a)(6) (§ 230.415(a)(6)), and any post-effective amendment thereto, including a post-effective amendment filed to register additional classes of securities pursuant to Rule 413(b) (§ 230.413(b)), shall

become effective upon filing with the Commission.

(f) A post-effective amendment filed pursuant to paragraph (e) of this section for purposes of adding a new issuer and its securities as permitted by Rule 413(b) (§ 230.413(b)) that satisfies the requirements of Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter), as applicable, including the signatures required by Rule 402(e) (§ 230.402(e)), and contains a prospectus satisfying the requirements of Rule 430B (§ 230.430B), shall become effective upon filing with the Commission.

■ 43. Amend § 230.473 by revising paragraph (d) to read as follows:

§ 230.473 Delaying amendments.

* * * * *

(d) No amendments pursuant to paragraph (a) of this section may be filed with a registration statement on Form F–7, F–8 or F–80 (§ 239.37, § 239.38 or § 239.41 of this chapter); on Form F–9 or F–10 (§ 239.39 or § 239.40 of this chapter) relating to an offering being made contemporaneously in the United States and the issuer's home jurisdiction; on Form S–8 (§ 239.16b of this chapter); on Form S–3 or F–3 (§ 239.13 or § 239.33 of this chapter) relating to a dividend or interest reinvestment plan; on Form S–3 or Form F–3 relating to an automatic shelf registration statement; or on Form S–4 (§ 239.25 of this chapter) complying with General Instruction G of that Form.

§ 230.497 [Amended]

■ 44. Amend § 230.497 as follows:

■ a. Remove paragraph (h)(2); and

■ b. Redesignate paragraph (h)(1) as paragraph (h).

■ 45. Amend § 230.902 as follows:

■ a. Remove the word "and" at the end of paragraph (c)(3)(v)(B);

■ b. Remove the period at the end of paragraph (c)(3)(vi) and add in its place a semi-colon;

■ c. Remove the period at the end of paragraph (c)(3)(vii) and add in its place "; and"; and

■ d. Add paragraphs (c)(3)(viii) and (h)(4).

The amendments and additions read as follows:

§ 230.902 Definitions.

* * * * *

(c) *Directed selling efforts.* * * *

(3) * * *

(viii) Publication or distribution of a research report by a broker or dealer in accordance with Rule 138(c) (§ 230.138(c)) or Rule 139(b) (§ 230.139(b)).

* * * * *

(h) *Offshore transaction.* * * *

(4) Notwithstanding paragraph (h)(1) of this section, publication or distribution of a research report in accordance with Rule 138(c) (§ 230.138(c)) or Rule 139(b) (§ 230.139(b)) by a broker or dealer at or around the time of an offering in reliance on Regulation S (§§ 230.901 through 230.905) will not cause the transaction to fail to be an offshore transaction as defined in this section.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 46. The general authority citation for part 239 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 78mm, 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§ 239.11 [Amended]

■ 47. Remove the authority citation following § 239.11.

■ 48. Amend Form S–1 (referenced in § 239.11) as follows:

■ a. Remove the sentence and check box immediately preceding the "Calculation of Registration Fee" table;

■ b. Add General Instruction VII.;

■ c. Add Item 11A to Part I;

■ d. Redesignate Item 12 to Part I as Item 12A; and

■ e. Add new Item 12 to Part I.

The additions read as follows:

Note: The text of Form S–1 does not and this amendment will not appear in the Code of Federal Regulations

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM S–1—REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

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GENERAL INSTRUCTIONS

* * * * *

VII. Eligibility To Use Incorporation by Reference

If a registrant meets the following requirements immediately prior to the time of filing a registration statement on this Form, it may elect to provide information required by Items 3 through 11 of this Form in accordance with Item 11A and Item 12 of this Form:

A. The registrant is subject to the requirement to file reports pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 ("Exchange Act").

B. The registrant has filed all reports and other materials required to be filed by Sections 13(a), 14, or 15(d) of the Exchange Act during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials).

C. The registrant has filed an annual report required under Section 13(a) or Section 15(d) of the Exchange Act for its most recently completed fiscal year.

D. The registrant is not:

1. And during the past three years neither the registrant nor any of its predecessors was:

(a) A blank check company as defined in Rule 419(a)(2) (§ 230.419)(a)(2);

(b) A shell company, other than a business combination related shell company, each as defined in Rule 405 (§ 230.405); or

(c) A registrant for an offering of penny stock as defined in Rule 3a51–1 of the Exchange Act (§ 240.3a51–1 of this chapter).

2. Registering an offering that effectuates a business combination transaction as defined in Rule 165(f)(1) (§ 230.165(f)(1) of this chapter).

E. If a registrant is a successor registrant it shall be deemed to have satisfied conditions, A., B., C., and D.2 above if:

1. Its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or

2. All predecessors met the conditions at the time of succession and the registrant has continued to do so since the succession.

F. The registrant makes its periodic and current reports filed pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporate by reference pursuant to Item 11A or Item 12 of this Form readily available and accessible on a Web site maintained by or for the registrant and containing information about the registrant.

* * * * *

PART I—INFORMATION REQUIRED IN PROSPECTUS

* * * * *

Item 11A. Material Changes.

If the registrant elects to incorporate information by reference pursuant to General Instruction VII., describe any and all material changes in the registrant's affairs which has occurred since the end of the latest fiscal year for which audited financial statements were included in the latest Form 10–K for Form 10–KSB and which have not been described in a Form 10–Q, Form 10–QSB, or Form 8–K filed under the Exchange Act.

Item 12. Incorporation of Certain Information by Reference.

If the registrant elects to incorporate information by reference pursuant to General Instruction VII.:

(a) It must specifically incorporate by reference into the prospectus contained in the registration statement the following documents by means of a statement to that effect in the prospectus listing all such documents:

(1) The registrant's latest annual report on Form 10–K or Form 10–KSB filed pursuant to Section 13(a) or Section 15(d) of the Exchange Act which contains financial

statements for the registrant's latest fiscal year for which a Form 10–K for Form 10–KSB was required to have been filed; and

(2) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act or proxy or information statements filed pursuant to Section 14 of the Exchange Act since the end of the fiscal year covered by the annual report referred to in paragraph (a)(1) above.

Note to Item 12(a). Attention is directed to Rule 439 (§ 230.439) regarding consent to use of material incorporated by reference.

(b)(1) The registrant must state:

(i) That it will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the reports or documents that have been incorporated by reference in the prospectus contained in the registration statement but not delivered with the prospectus;

(ii) That it will provide these reports or documents upon written or oral request;

(iii) That it will provide these reports or documents at no cost to the requester;

(iv) The name, address, telephone number, and e-mail address, if any, to which the request for these reports or documents must be made; and

(v) The registrant's Web site address, including the uniform resource locator (URL) where the incorporated reports and other documents may be accessed.

Note to Item 12(b)(1). If the registrant sends any of the information that is incorporated by reference in the prospectus contained in the registration statement to security holders, it also must send any exhibits that are specifically incorporated by reference in that information.

(2) The registrant must:

(i) Identify the reports and other information that it files with the SEC; and

(ii) State that the public may read and copy any materials it files with the SEC at the SEC's Public Reference Room at 100 F Street, NE., Washington, DC 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If the registrant is an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*).

* * * * *

§ 239.12 [Removed and reserved]

■ 49. Remove and reserve § 239.12 and remove Form S–2 referenced in that section.

■ 50. Amend § 239.13 as follows:

■ a. Revise the introductory paragraph;

■ b. Remove the word "or" at the end of paragraph (c)(2);

■ c. Revise paragraph (c)(3);

■ d. Add paragraphs (c)(4) and (c)(5);

■ e. Add a note to paragraph (c);

■ f. Redesignate paragraph (d) as paragraph (e); and

■ g. Add new paragraph (d).

The revision and additions read as follows:

§ 239.13 Form S–3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

This instruction sets forth registrant requirements and transaction requirements for the use of Form S–3. Any registrant which meets the requirements of paragraph (a) of this section ("Registrant Requirements") may use this Form for the registration of securities under the Securities Act of 1933 ("Securities Act") which are offered in any transaction specified in paragraph (b) of this section ("Transaction Requirement") provided that the requirement applicable to the specified transaction are met. With respect to majority-owned subsidiaries, see paragraph (c) of this section. With respect to well-known seasoned issuers and majority-owned subsidiaries of well-known seasoned issuers, see paragraph (d) of this section.

* * * * *

(c) * * *

(3) The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement, and provides a full and unconditional guarantee, as defined in Rule 3–10 of Regulation S–X (§ 210.3–10 of this chapter), of the payment obligations on the securities being registered, and the securities being registered are non-convertible securities, other than common equity;

(4) The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement, and the securities of the registrant-subsidiary being registered are full and unconditional guarantees, as defined in Rule 3–10 of Regulation S–X, of the payment obligations on the parent's non-convertible securities, other than common equity, being registered; or

(5) The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement, and the securities of the registrant-subsidiary being registered are guarantees of the payment obligations on the non-convertible securities, other than common equity, being registered by another majority-owned subsidiary of the parent, where the parent provides a full and unconditional guarantee, as defined in Rule 3–10 of Regulation S–X, of such non-convertible securities.

Note to paragraph (c): With regard to paragraphs (c)(3), (c)(4), and (c)(5) of this section, the guarantor is the issuer of a separate security consisting of the guarantee, which must be concurrently registered, but may be registered on the same registration statement as are the guaranteed non-convertible securities.

(d) *Automatic shelf offerings by well-known seasoned issuers.* Any registrant that is a well-known seasoned issuer as defined in Rule 405 (§ 230.405 of this chapter) at the most recent eligibility determination date specified in paragraph (2) of that definition may use this Form for registration under the Securities Act of securities offerings, other than pursuant to Rule 415(a)(1)(vii) or (viii) (§ 230.415(a)(1)(vii) or (viii) of this chapter), as follows:

(1) The securities to be offered are:

(i) Any securities to be offered pursuant to Rule 415, Rule 430A, or Rule 430B (§ 230.415, § 230.430A, or § 230.430B of this chapter) by:

(A) A registrant that is a well-known seasoned issuer by reason of paragraph (1)(i)(A) of the definition in Rule 405; or

(B) A registrant that is a well-known seasoned issuer only by reason of paragraph (1)(i)(B) of the definition in Rule 405 if the registrant also is eligible to register a primary offering of its securities pursuant to paragraph (b)(1) of this section;

(ii) Non-convertible securities, other than common equity, to be offered pursuant to Rule 415, Rule 430A, or Rule 430B by a registrant that is a well-known seasoned issuer only by reason of paragraph (1)(i)(B) of the definition in Rule 405 and does not fall within paragraph (b)(1) of this section;

(iii) Securities of majority-owned subsidiaries of the parent registrant to be offered pursuant to Rule 415, Rule 430A, or Rule 430B if the parent registrant is a well-known seasoned issuer and the securities of the majority-owned subsidiary being registered meet the following requirements:

(A) Securities of a majority-owned subsidiary that is a well-known seasoned issuer at the time it becomes a registrant, other than by virtue of paragraph (1)(ii) of the definition of well-known seasoned issuer in Rule 405;

(B) Securities of a majority-owned subsidiary that are non-convertible securities, other than common equity, and the parent registration provides a full and unconditional guarantee, as defined in Rule 3–10 of Regulation S–X, of the payment obligations on the non-convertible securities;

(C) Securities of a majority-owned subsidiary that are a guarantee of:

(*1*) Non-convertible securities, other than common equity, of the parent registrant being registered;

(*2*) Non-convertible securities, other than common equity, of another

majority-owned subsidiary being registered and the parent has provided a full and unconditional guarantee, as defined in Rule 3–10 of Regulation S–X, of the payment obligations on such non-convertible securities; or

(D) Securities of a majority-owned subsidiary that meet the conditions of the Transaction Requirement set forth in paragraph (b)(2) of this section (Primary offerings of non-convertible investment grade securities).

(iv) Securities to be offered for the account of any person other than the issuer ("selling security holders"), provided that the registration statement and the prospectus are not required to separately identify the selling security holders or the securities to be sold by such persons until the filing of a prospectus, prospectus supplement, post-effective amendment to the registration statement, or periodic or current report under the Exchange Act that is incorporated by reference into the registration statement and prospectus, identifying the selling security holders and the amount of securities to be sold by each of them and, if included in a periodic or current report, a prospectus or prospectus supplement is filed, as required by Rule 430B, pursuant to Rule 424(b)(7) (§ 230.424(b)(7) of this chapter);

(2) The registrant pays the registration fee pursuant to Rule 456(b) and Rule 457(r) (§ 230.456(b) and § 230.457(r) of this chapter) or in accordance with Rule 456(a) (§ 230.456(a) of this chapter);

(3) If the registrant is a majority-owned subsidiary, it is required to file and has filed reports pursuant to section 13 or section 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) and satisfies the requirements of this Form with regard to incorporation by reference or information about the majority-owned subsidiary is included in the registration statement (or a post-effective amendment to the registration statement);

(4) The registrant may register additional securities or classes of its or its majority-owned subsidiaries' securities on a post-effective amendment pursuant to Rule 413(b) (§ 230.413(b) of this chapter); and

(5) An automatic shelf registration statement and post-effective amendment will become effective immediately pursuant to Rule 462(e) and (f) (§ 230.462(e) and (f) of this chapter) upon filing. All filings made on or in connection with automatic shelf registration statements on this Form become public upon filing with the Commission.

* * * * *

■ 51. Amend Form S–3 (referenced in § 239.13) as follows:

■ a. Remove the sentence and check box immediately preceding the "Calculation of Registration Fee" table;

■ b. Add two check boxes to the cover page immediately before "Calculation of Registration Fee" table;

■ c. Revise the Note to the "Calculation of Registration Fee" Table;

■ d. Revise the introductory paragraph to General Instruction I;

■ e. Remove the word "or" at the end of General Instruction I.C.2.;

■ f. Revise paragraph 3., and add paragraphs 4., and 5. to General Instruction I.C.;

■ g. Add a note to General Instruction 1.C.;

■ h. Add paragraph D. to General Instruction I.;

■ i. Revise paragraph D. of General Instruction II.;

■ j. Add paragraphs E., F., and G. to General Instruction II.;

■ k. Revise the heading of General Instruction IV.;

■ l. Designate the current text under General Instruction IV. as paragraph A;

■ m. Add a heading to paragraph A to General Instruction IV.;

■ n. Add paragraph B. to General Instruction IV.;

■ o. In Item 12(c)(2)(ii) to Part I revise the phrase "450 Fifth Street, NW.," to read "100 F Street, NE.,"; and

■ p. Add paragraph (d) of Item 12 to Part I.

The revisions and additions read as follows:

Note: The text of Form S–3 does not and this amendment will not appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM S–3—REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box. ☐

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. ☐

* * * * *

Notes to the "Calculation of Registration Fee" Table ("Fee Table")

1. Specific details relating to the fee calculation shall be furnished in notes to the Fee Table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the Fee Table.

2. If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities, and the amount of registration fee need to appear in the Fee Table. Where two or more classes of securities are being registered pursuant to General Instruction II.D., however, the Fee Table need only specify the maximum aggregate offering price for all classes; the Fee Table need not specify by each class the proposed maximum aggregate offering price (see General Instruction II.D.).

3. If the filling fee is calculated pursuant to Rule 457(r) under the Securities Act, the Fee Table must state that it registers an unspecified amount of securities of each identified class of securities and must provide that the issuer is relying on Rule 456(b) and Rule 457(r). If the Fee Table is amended in a post-effective amendment to the registration statement or in a prospectus filed in accordance with Rule 456(b)(1)(ii) (§ 230.456(b)(1)(ii) of chapter), the Fee Table must specify the aggregate offering price for all classes of securities in the referenced offering or offerings and the applicable registration fee.

4. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 457 under the Securities Act.

General Instructions

I. Eligibility Requirements for Use of Form S–3

This instruction sets forth registrant requirements and transaction requirements for the use of Form S–3. Any registrant which meets the requirements of I.A. below ("Registrant Requirements") may use this Form for the registration of securities under the Securities Act of 1933 ("Securities Act") which are offered in any transaction specified in I.B. below ("Transaction Requirement") provided that the requirement applicable to the specified transaction are met. With respect to majority-owned subsidiaries, see Instruction I.C. below. With respect to well-known seasoned issuers and majority-owned subsidiaries of well-known seasoned issuers, see Instruction I.D. below.

* * * * *

C. Majority-Owned Subsidiaries

If a registrant is a majority-owned subsidiary, security offerings may be registered on this Form if:

* * * * *

3. The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement, and provides a full and unconditional guarantee, as defined in Rule 3–10 of Regulation S–X (§ 210.3–10 of this chapter), of the payment obligations on the securities being registered, and the securities being registered are non-convertible securities, other than common equity;

4. The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement, and the securities of the registrant-subsidiary being registered are full and unconditional guarantees, as defined in Rule 3–10 of Regulation S–X, of the payment obligations on the parent's non-convertible securities, other than common equity, being registered; or

5. The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement, and the securities of the registrant-subsidiary being registered are guarantees of the payment obligations on the non-convertible securities, other than common equity, being registered by another majority-owned subsidiary of the parent where the parent provides a full and unconditional guarantee, as defined in Rule 3–10 of Regulation S–X, of such non-convertible securities.

Note to General Instruction I.C.: With regard to paragraphs I.C.3, I.C.4, and I.C.5 above, the guarantor is the issuer of a separate security consisting of the guarantee, which must be concurrently registered, but may be registered on the same registration statement as are the non-convertible guaranteed securities.

D. Automatic Shelf Offerings by Well-Known Seasoned Issuers

Any registrant that is a well-known seasoned issuer, as defined in Rule 405, at the most recent eligibility determination date specified in paragraph (2) of that definition may use this Form for registration under the Securities Act of securities offerings, other than pursuant to Rule 415(a)(1)(vii) or (viii) (§ 230.415(a)(1)(vii) or (viii) of this chapter), as follows:

1. The securities to be offered are:

(a) Any securities to be offered pursuant to Rule 415, Rule 430A, or Rule 430B (§ 230.415, § 230.430A, or § 230.430B of this chapter) by:

(i) A registrant that is a well-known seasoned issuer by reason of paragraph (1)(i)(A) of the definition in Rule 405; or

(ii) A registrant that is a well-known seasoned issuer only by reason of paragraph (1)(i)(B) of the definition in Rule 405 if the registrant also is eligible to register a primary offering of its securities pursuant to Transaction Requirement I.B.I of this Form;

(b) Non-convertible securities, other than common equity, to be offered pursuant to Rule 415, Rule 430A, or Rule 430B by a registrant that is a well-known seasoned issuer only by reason of paragraph (1)(i)(B) of the definition of Rule 405 and does not fall within Transaction Requirement I.B.1 of this Form;

(c) Securities of majority-owned subsidiaries of the parent registrant to be offered pursuant to Rule 415, Rule 430A, or Rule 430B if the parent registrant is a well-known seasoned issuer and the securities of the majority-owned subsidiary being registered meet the following requirements:

(i) Securities of a majority-owned subsidiary that is a well-known seasoned issuer at the time it becomes a registrant, other than by virtue of paragraph (1)(ii) of the definition of well-known seasoned issuer in Rule 405;

(ii) Securities of a majority-owned subsidiary that are non-convertible securities, other than common equity, and the parent registrant provides a full and unconditional guarantee, as defined in Rule 3–10 of Regulation S–X, of the payment obligations on the non-convertible securities;

(iii) Securities of a majority-owned subsidiary that are a guarantee of:

(A) Non-convertible securities, other than common equity, of the parent registrant being registered;

(B) Non-convertible securities, other than common equity, of another majority-owned subsidiary being registered and the parent registrant has provided a full and unconditional guarantee, as defined in Rule 3–10 of Regulation S–X, of the payment obligations on such non-convertible securities; or

(iv) Securities of a majority-owned subsidiary that meet the conditions of Transaction Requirement I.B.2. of this Form (Primary Offerings of Non-Convertible Investment Grade Securities).

(d) Securities to be offered for the account of any person other than the issuer ("selling security holders"), provided that the registration statement and the prospectus are not required to separately identify the selling security holders or the securities to be sold by such persons until the filing of a prospectus, prospectus supplement, post-effective amendment to the registration statement, or periodic or current report under the Exchange Act that is incorporated by reference into the registration statement and prospectus, identifying the selling security holders and the amount of securities to be sold by each of them and, if included in a periodic or current report, a prospectus or prospectus supplement is filed, as required by Rule 430B, pursuant to Rule 424(b)(7) (§ 230.424(b)(7) of this chapter).

2. The registrant pays the registration fee pursuant to Rules 456(b) and 457(r) or in accordance with Rule 456(a).

3. If the registrant is a majority-owned subsidiary, it is required to file and has filed reports pursuant to Section 13 or Section 15(d) of the Exchange Act and satisfies the requirements of the Form with regard to incorporation by reference or information about the majority-owned subsidiary is included in the registration statement (or a post-effective amendment to the registration statement).

4. The registrant may register additional securities or classes of its or its majority-owned subsidiaries' securities on a post-effective amendment pursuant to Rule 413(b) (§ 203.413(b) of this chapter).

5. An automatic shelf registration statement and post-effective amendment will become effective immediately pursuant to Rule 462(e) and (f) (§ 230.462(e) and (f) of this chapter) upon filing. All filings made on or in connection with automatic shelf registration statements on this Form become public upon filing with the Commission.

II. Application of General Rules and Regulations

* * * * *

D. Non-Automatic Shelf Registration Statements

Where two or more classes of securities being registered on this Form pursuant to General Instruction I.B.1. or I.B.2. are to be offered pursuant to Rule 415(a)(1)(x) (§ 230.415(a)(1)(x) of this chapter), and where this Form is not an automatic shelf registration statement, Rule 457(o) permits the registration fee to be calculated on the basis of the maximum offering price of all the securities listed in the Fee Table. In this event, while the Fee Table would list each of the classes of securities being registered and the aggregate proceeds to be raised, the Fee Table need not specify by each class information as to the amount to be registered, proposed maximum offering price per unit, and proposed maximum aggregate offering price.

E. Automatic Shelf Registration Statements

Where securities are being registered on this Form pursuant to General Instruction I.D., Rule 456(b) permits, but does not require, the registrant to pay the registration fee on a pay-as-you-go basis and Rule 457(r) permits, but does not require, the registration fee to be calculated on the basis of the aggregate offering price of the securities to be offered in an offering or offerings off the registration statement. If a registrant elects to pay all or a portion of the registration fee on a deferred basis, the Fee Table in the initial filing must identify the classes of securities being registered and provide that the registrant elects to rely on Rule 456(b) and Rule 457(r), but the Fee Table does not need to specify any other information. When the registrant amends the Fee Table in accordance with Rule 456(b)(1)(ii), the amended Fee Table must include either the dollar amount of securities being registered if paid in advance of or in connection with an offering or offerings or the aggregate offering price for all classes of securities referenced in the offerings and the applicable registration fee.

F. Information in Automatic and Non-Automatic Shelf Registration Statements

Where securities are being registered on this Form pursuant to General Instruction I.B.1, I.B.2, I.B.5, I.C., or I.D., information is only required to be furnished as of the date of initial effectiveness of the registration statement to the extent required by Rule 430A or Rule 430B. Required information about a specific transaction must be included in the prospectus in the registration statement by means of a prospectus that is deemed to be part of and included in the registration statement pursuant to Rule 430A or Rule 430B, a post-effective amendment to the registration statement, or a periodic or current report under the Exchange Act incorporated by reference into the registration statement and the prospectus and identified in a prospectus filed, as required by Rule 430B, pursuant to Rule 424(b) (§ 230.424(b) of this chapter).

G. Selling Security Holder Offerings

Where a registrant eligible to register primary offerings on this Form pursuant to General Instruction I.B.1 registers securities

offerings on this Form pursuant to General Instruction I.B.1 or I.B.3 for the account of persons other than the registrant, if the offering of the securities, or securities convertible into such securities, that are being registered on behalf of the selling security holders was completed and the securities, or securities convertible into such securities, were issued and outstanding prior to the original date of filing the registration statement covering the resale of the securities, the registrant may, as permitted by Rule 430B(b), in lieu of identifying selling security holders prior to effectiveness of the resale registration statement, refer to unnamed selling security holders in a generic manner by identifying the initial transaction in which the securities were sold. Following effectiveness, the registrant must include in a prospectus filed pursuant to Rule 424(b)(7), a post-effective amendment to the registration statement, or an Exchange Act report incorporated by reference into the prospectus that is part of the registration statement (which Exchange Act report is identified in a prospectus filed, as required by Rule 430B, pursuant to Rule 424(b)(7)) the names of previously unidentified selling security holders and amounts of securities that they intend to sell. If this Form is being filed pursuant to General Instruction I.D. by a well-known seasoned issuer to registerer securities being offered for the account of persons other than the issuer, the registration statement and the prospectus included in the registration statement do not need to designate the securities that will be offered for the account of such persons, identify them, or identify the initial transaction in which the securities, or securities convertible into such securities, were sold until the registrant files a post-effective amendment to the registration statement, a prospectus pursuant to Rule 424(b), or an Exchange Act report (and prospectus filed, as required by Rule 430B, pursuant to Rule 434(b)(7)) containing information for the offering on behalf of such persons.

* * * * *

IV. Registration of Additional Securities and Additional Classes of Securities

A. Registration of Additional Securities Pursuant to Rule 462(b)

* * * * *

B. Registration of Additional Securities or Classes of Securities or Additional Registrants After Effectiveness

A well-known seasoned issuer relying on General Instruction I.D. of this Form may register additional securities or classes of securities, pursuant to Rule 413(b) by filing a post-effective amendment to the effective registration statement. The well-known seasoned issuer may add majority-owned subsidiaries as additional registrants whose securities are eligible to be sold as part of the automatic shelf registration statement by filing a post-effective amendment identifying the additional registrants, and the registrant and the additional registrants and other persons required to sign the registration statement must sign the post-effective amendment. The post-effective amendment must consist of the facing page; any disclosure required by this Form that is necessary to update the registration statement to reflect the additional securities, additional classes of securities, or additional registrants; any required opinions and consents; and the signature page. Required information, consents, or opinions may be included in the prospectus and the registration statement through a post-effective amendment or may be provided through a document incorporated or deemed incorporated by reference into the registration statement and the prospectus that is part of the registration statement, or, as to the required information only, contained in a prospectus filed pursuant to Rule 424(b) that is deemed part of and included in the registration statement and prospectus that is part of the registration statement.

* * * * *

PART I—INFORMATION REQUIRED IN PROSPECTUS

* * * * *

Item 12. Incorporation of Certain Information by Reference

* * * * *

(d) Any information required in the prospectus in response to Item 3 through Item 11 of this Form may be included in the prospectus through documents filed pursuant to Section 13(a), 14, or 15(d) of the Exchange Act that are incorporated or deemed incorporated by reference into the prospectus that is part of the registration statement.

* * * * *

■ 52. Amend Form S–4 (referenced in § 239.25) as follows:

■ a. Revise paragraphs B.1.b., B.1.c., C.1.b., and C.1.c. to the General Instructions;

■ b. In Item 11(c)(2) to Part I revise the phrase "450 Fifth Street, N.W.," to read "100 F Street, N.E.,";

■ c. Revise the heading and introductory text of Item 12 of Part I;

■ d. Revise the introductory text of Item 13 of Part I;

■ e. In Item 13(d)(2) to Part I revise the phrase "450 Fifth Street, N.W.," to read "100 F Street, N.E.,";

■ f. Revise the heading and introductory text of Item 14 of Part I;

■ g. Revise the reading and paragraph (a) of Item 16 of Part I;

■ h. Revise the heading and introductory text of Item 17 of Part I;

■ i. Revise paragraph (b) of Item 18 of Part I; and

■ j. Revise paragraph (c) of Item 19 of Part I.

The revisions read as follows:

Note: The text of Form S–4 does not and this amendment will not appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM S–4—REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

B. Information With Respect to the Registrant

1. * * *

a. * * *

b. Items 12 and 13 of this Form, if the registrant meets the requirements for use of Form S–3 and elects this alternative; or

c. Item 14 of this Form, if the registrant does not meet the requirements for use of Form S–3, or if it otherwise elects to use this alternative.

* * * * *

C. Information With Respect to the Company Being Acquired

1. * * *

b. Item 16 of this Form, if the Company being acquired meets the requirements for use of Form S–3 and this alternative is elected; or

c. Item 17 of this Form, if the Company being acquired does not meet the requirements for use of Form S–3, or if this alternative is otherwise elected.

* * * * *

PART I—INFORMATION REQUIRED IN PROSPECTUS

* * * * *

B. Information About the Registrant

* * * * *

Item 12. Information with Respect to S–3 Registrants

If the registrant meets the requirements for use of Form S–3 and elects to comply with this Item, furnish the information required by either paragraph (a) or paragraph (b) of this Item. The information required by paragraph (b) shall be furnished if the registrant satisfies the conditions of paragraph (c) of this Item.

* * * * *

Item 13. Incorporation of Certain Information by Reference

If the registrant meets the requirements for use of Form S–3 and elects to furnish information in accordance with the provisions of Item 12 of this Form:

* * * * *

Item 14. Information With Respect to Registrants Other Than S–3 Registrants

If the registrant does not meet the requirements for use of Form S–3, or otherwise elects to comply with this Item in lieu of Item 10 or 12, furnish the information required by:

* * * * *

C. INFORMATION ABOUT THE COMPANY BEING ACQUIRED

* * * * *

Item 16. Information With Respect to S–3 Companies

(a) If the company being acquired meets the requirements for use of Form S–3 and elects to comply with this Item, furnish the information that would be required by Items 12 and 13 of this Form if securities of such company were being registered.

* * * * *

Item 17. Information With Respect to Companies Other Than S–3 Companies

If the company being acquired does not meet the requirements for use of Form S–3, or compliance with this Item is otherwise elected in lieu of Item 15 or 16, furnish the information reuqired by paragraph (a) or (b) of this Item, whichever is applicable.

* * * * *

D. VOTING AND MANAGEMENT INFORMATION

Item 18. Information if Proxies, Consents or Authorizations Are To Be Solicited

* * * * *

(b) If the registrant or the company being acquired meets the requirements for use of Form S–3, any information required by paragraphs (a)(5)(ii) and (7) of this Item with respect to such company may be incorporatated by reference from its latest annual report on Form 10–K or Form 10–KSB.

* * * * *

Item 19. Information if Proxies, Consents or Authorizations are not to be Solicited or in an Exchange Officer

* * * * *

(c) If the registrant or the company being acquired meets the requirements for use of Form S–3, any information required by paragraphs (a)(5) and (7) of this Item with respect to such company may be incorporated by reference from its latest annual report on Form 10–K or Form 10–KSB.

* * * * *

■ 53. Amend Form F–1 (referenced in § 239.31) as follows:

■ a. Remove the sentence and check box immediately preceding the "Calculation of Registration Fee" table;

■ b. Add General Instruction VI.;

■ c. Add Item 4A to Part I;

■ d. Redesignate Item 5 as Item 5A to Part I.; and

■ e. Add new Item 5 to Part I.

The additions read as follows:

Note: The text of Form F–1 does not and this amendment will not appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM F–1—REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

* * * * *

VI. Eligibility To Use Incorporation by Reference

If a registrant meets the following requirements immediately prior to the time of filing a registration statement on this Form, it may elect to provide information required by Item 3 and Item 4 of this Form in accordance with Item 4A and Item 5 of this Form:

A. The registrant is subject to the requirement to file reports pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 ("Exchange Act");

B. The registrant has filed all reports and other materials required to be filed by Section 13(a) or 15(d) of the Exchange Act during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials);

C. The registrant has filed an annual report required under Section 13(a) or 15(d) of the Exchange Act for its most recently completed fiscal year;

D. The registrant is not:

1. And during the past three years neither the registrant nor any of its predecessors was:

(a) A blank check company as defined in Rule 419(a)(2) (§ 230.419(a)(2) of this chapter);

(b) A shell company, other than a business combination related shell company, each as defined in Rule 405 (§ 230.405 of this chapter); or

(c) A registrant for an offering of penny stock as defined in Rule 3a51–1 of the Exchange Act (§ 240.3a51–1 of this chapter);

2. Registering an offering that effectuates a business combination transaction as defined in Rule 165(f)(1) (§ 230.165(f)(1) of this chapter);

E. If a registrant is a successor registrant it shall be deemed to have satisfied conditions A., B., C., and D.2. above if:

1. Its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state or other jurisdiction of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or

2. All predecessors met the conditions at the time of succession and the registrant has continued to do so since the succession; and

F. The registrant makes it reports filed pursuant to Sections 13 or 15(d) of the Exchange Act that are incorporated by reference pursuant to Item 4A of Item 5 of this Form readily available and accessible on a Web site maintained by or for the registrant and containing information about the registrant.

* * * * *

PART I—INFORMATION REQUIRED PROSPECTUS

* * * * *

Item 4A. Material Changes

(a) If the registrant elects to incorporate information by reference pursuant to General Instruction VI., described any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which audited financial statements were included in accordance with Item 5 of this Form and which have not been described in a report on Form 6–K, Form 10–Q or Form 8–K filed under the Exchange Act and incorporated by reference pursuant to Item 5 of this Form.

(b)1. Include in the prospectus contained in the registration statement, if not included in the reports filed under the Exchange Act which are incorporated by reference into the prospectus contained in the registration statement pursuant to Item 5:

i. Information required by Rule 3–05 and Article 11 of Regulation S–X (§ 210.3–05 and § 210.11 *et seq.* of this chapter);

ii. Restated financial statement if there has been a change in accounting principles or a correction of an error where such change or correction requires material retroactive restatement of financial statements;

iii. Restated financial statements where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant under Rule 11–01(b) (§ 210.11–01(b) (§ 210.11–01(b) of this chapter); or

iv. Any financial information required because of a material disposition of assets outside the normal course of business.

2. If the financial statements included in this registration statement in accordance with Item 5 are not sufficiently current to comply with the requirements of Item 8.A of Form 20–F, financial statements necessary to comply with that Item shall be presented;

i. Directly in the prospectus;

ii. Through incorporation by reference and delivery of a Form 6–K identified in the prospectus as containing such financial statements; or

iii. Through incorporation by reference of an amended Form 20–F, Form 40–F, or Form 10–K, in which case the prospectus shall disclose that the Form 20–F, Form 40–F, or Form 10–K has been so amended.

Instruction. Financial statements or information required to be furnished by this Item shall be reconciled pursuant to either Item 17 or Item 18 of Form 20–F, whichever is applicable to the primary financial statements.

Item 5. Incorporation of Certain Information by Reference

If the registrant elects to incorporate information by reference pursuant to General Instruction VI.:

(a) It must specifically incorporate by reference into the prospectus contained in the registration statement the following documents by means of a statement to that effect in the prospectus all such documents:

1. The registrant's latest annual report on Form 20–F, Form 40–F or Form 10–K filed under the Exchange Act.

2. Any report on Form 10–Q or Form 8–K filed since the date of filing of the annual report. The registrant may also incorporate by reference any Form 6–K meeting the requirements of this Form.

Note to Item 5(a): Attention is directed to Rule 439 (§ 230.439) regarding consent to use of material incorporated by reference.

(b)1. The registrant must state:

i. That it will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the reports or documents that have been incorporated by reference in the prospectus contained in the registration statement but not delivered with prospectus;

ii. That it will provide these reports or documents upon written or oral request;

iii. That it will provide these reports or documents at no cost to the requester;

iv. The name, address, telephone number, and e-mail address, if any, to which the request for these reports or documents must be made; and

v. The registrant's Web site address, including the uniform resource locator (URL) where the incorporated reports and other documents may be accessed.

Note to Item 5.(b)1. If the registrant sends any of the information that is incorporated by reference in the prospectus contained in the registration statement to security holders, it also must send any exhibits that are specifically incorporated by reference in that information.

2. The registrant must:

i. Identify the reports and other information that it files with the SEC; and

ii. State that the public may read and copy any materials it files with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Washington, DC 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If the registrant is an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*).

* * * * *

§ 239.32 [Removed and Reserved]

■ 54. Remove and reserve § 239.32 and remove Form F–2 referenced in that section.

■ 55. Amend § 293.33 as follows:

■ a. Revise the introductory paragraph;

■ b. Remove the word "or" at the end of paragraph (a)(5)(ii);

■ c. Revise paragraph (a)(5)(iii) and remove the note following paragraph (a)(5)(iii);

■ d. Add paragraphs (a)(5)(iv) and (a)(5)(v);

■ e. Add a note to paragraph (a)(5); and

■ f. Add paragraph (c).

The revisions and additions read as follows:

§ 239.33 Form F–3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions

This instruction set forth registrant requirements and transaction requirements for the use of Form F–3. Any foreign private issuer, as defined in Rule 405 (§ 230.405 of this chapter), which meets the requirements of paragraph (a) of this section (the "Registrant Requirements") may use this Form for the registration of securities under the Securities Act of 1933 (the "Securities Act") which are offered in any transaction specified in paragraph (b) of this section (the "Transaction Requirements"), provided that the requirements applicable to the specified transaction are met. With respect to majority-owned subsidiaries, see paragraph (a)(5) of this section. With respect to well-known seasoned issuers and majority-owned subsidiaries of well-known seasoned issuers, see paragraph (c) of this section.

* * * * *

(a) * * *

(5) * * *

(iii) The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement, and provides a full and unconditional guarantee, as defined in Rule 3–10 of Regulation S–X (§ 210.33–10 of this chapter), of the payment obligation on the securities being registered, and the securities being registered are non-convertible securities, other than common equity;

(iv) The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement, and the securities of the registrant-subsidiary being registered are full and unconditional guarantees, as defined in Rule 3–10 of Regulation S–X, of the payment obligations on the parent's non-convertible securities, other than common equity, being registered; or

(v) The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement, and the securities of the registrant-subsidiary being registered are guarantees of the payment obligations on the non-convertible securities, other than common equity, being registered by another majority-owned subsidiary of the parent, where the parent provides a full and unconditional guarantee, as defined in Rule 3–10 of Regulation S–X, of such non-convertible securities.

Note to paragraph (a)(5): In the situations described in paragraphs (a)(5)(iii), (a)(5)(iv); and (a)(5)(v) of this section, the parent or majority-owned subsidiary guarantor is the issuer of a separate security consisting of the guarantee, which must be concurrently registered, but may be registered on the same registration statement as are the guaranteed non-convertible securities. Both the parent and majority-owned subsidiary shall each disclose the information required by this Form as if each were the only registrant except that if the majority-owned subsidiary will not be eligible to file annual reports on Form 20–F or Form 40–F (§ 249.220f or § 249.240f of this chapter) after the effective date of the registration statement, then is shall disclose the information specified in Form S–3 (§ 239.13). Rule 3–10 of Regulation S–X specifies the financial statements required.

* * * * *

(c) *Automatic shelf offerings by well-known seasoned issuers.* Any registrant that is a well-known seasoned issuer as defined in Rule 405 (§ 230.405 of this chapter) at the most recent eligibility determination date specified in paragraph (2) of such definition may use this Form for registration under the Securities Act of securities offerings, other then pursuant to Rule 415(a)(1)(vii) or (viii) (§ 230.415(a)(1)(vii) or (viii) of this chapter), as follows:

(1) The securities to be offered are:

(i) Any securities to be offered pursuant to Rule 415, Rule 430A, or Rule 430B (§ 230.415, § 230.430A, or § 230.430B of this chapter) by:

(A) A registrant that is a well-known seasoned issuer by reason of paragraph (1)(i)(A) of the definition in rule 405; or

(B) A registrant that is a well-known seasoned issuer only by reason of paragraph (1)(i)(B) of the definition in Rule 405 if the registrant also is eligible to register a primary offering of its securities pursuant to paragraph (b)(1) of this section;

(ii) Non-convertible securities, other than common equity, to be offered pursuant to Rule 415, Rule 430A, or Rule 430B by a registrant that is a well-known seasoned issuer only by reason of paragraph (1)(i)(B) of the definition in Rule 405 and does not fall within paragraph (b)(1) of this section;

(iii) Securities of majority-owned subsidiaries of the parent registrant to be offered pursuant to Rule 415, Rule 430A, or Rule 430B if the parent registrant is a well-known seasoned issuer and the securities of the majority-owned subsidiary being registered meet the following requirements:

(A) Securities of a majority-owned subsidiary that is a well-known seasoned issuer at the time it becomes a registrant, other than by virtue of paragraph (1)(ii) of the definition of well-known seasoned issuer in Rule 405;

(B) Securities of a majority-owned subsidiary that are non-convertible securities, other than common equity, and the parent registrant provides a full and unconditional guarantee, as defined in Rule 3–10 of Regulation S–X, of the payment obligations on the non-convertible securities;

(C) Securities of a majority-owned subsidiary that are a guarantee of:

(*1*) Non-convertible securities, other than common equity, of the parent registrant being registered;

(*2*) Non-convertible securities, other than common equity, of another majority-owned subsidiary being registered and the parent registrant has provided a full and unconditional guarantee, as defined in Rule 3–10 of Regulation S–X, of the payment

obligations on such non-convertible securities; or

(D) Securities of a majority-owned subsidiary that meet the conditions of the Transaction Requirement set forth in paragraph (b)(2) of this section (Primary offerings of non-convertible investment grade securities).

(iv) Securities to be offered for the account of any person other than the issuer ("selling security holders"), provided that the registration statement and the prospectus are not required to separately identify the selling security holders or the securities to be sold by such persons until the filing of a prospectus, prospectus supplement, post-effective amendment to the registration statement, or report under the Exchange Act that is incorporated by reference into the registration statement and prospectus, identifying the selling security holders and the amount of securities to be sold by each of them and, if included in a report under the Exchange Act that is incorporated by reference, a prospectus or prospectus supplement is filed, as required by Rule 430B, pursuant to Rule 424(b)(7) (§ 230.424(b)(7) of this chapter).

(2) The registrant pays the registration fee pursuant to Rules 456(b) and 457(r) (§ 230.456(b) and § 230.457(r) of this chapter) or in accordance with Rule 456(a) (§ 230.456(a) of this chapter);

(3) If the registrant is a majority-owned subsidiary, it is required to file and has filed reports pursuant to section 13 or section 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) and satisfies the requirements of this Form with regard to incorporation by reference or information about the majority-owned subsidiary is included in the registration statement (or a post-effective amendment to the registration statement);

(4) The registrant may register additional securities or classes of its or its subsidiaries' securities on a post-effective amendment pursuant to Rule 413(b) (§ 230.413(b) of this chapter); and

(5) An automatic shelf registration statement and post-effective amendment will become effective immediately pursuant to Rule 462(e) and (f) (§ 230.462(e) and (f) of this chapter) upon filing. All filings made on or in connection with automatic shelf registration statements on this Form become public upon filing with the Commission.

■ 56. Amend Form F–3 (referenced in § 239.33) as follows:

■ a. Remove the sentence and check box immediately preceding the "Calculation of Registration Fee" table;

■ b. Add two check boxes to the cover page immediately before "Calculation of Registration Fee" table;

■ c. Revise the Note to the "Calculation of Registration Fee" table;

■ d. Revise the introductory paragraph to General Instruction I.;

■ e. Remove the word "or" at the end of paragraph (ii), revise paragraph (iii) and add paragraphs (iv), (v), and (vi) to General Instruction I.A.5.;

■ f. Revise the note to General Instruction I.A.5.;

■ g. Add paragraph C. to General Instruction I.;

■ h. Revise paragraph C. of General Instruction II.;

■ i. Revise in paragraph D. to General Instruction II the phrase "(202) 942–8900." to read "(202) 551–8900." and the phrase "(202) 942–2940" to read "(202) 551–3610.";

■ j. Add paragraphs F., G., and H. to General Instruction II.;

■ k. Revise the heading of General Instruction IV. and designate the current text under General Instruction IV. as paragraph A.;

■ l. Add a heading to paragraph A. of General Instruction IV.;

■ m. Add paragraph B. to General Instruction IV.;

■ n. In Item 6(e)(2) of Part I revise the phrase "450 Fifth Street, NW.," to read "100 F Street, NE.,"; and

■ o. Add paragraph (f) to Item 6 of Part I.

The revisions and additions read as follows:

Note: The text of Form F–3 does not and this amendment will not appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM F–3—REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

If this Form is a registration statement pursuant to General Instruction I.C. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box. ☐

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.C. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. ☐

* * * * *

Notes to the "Calculation of Registration Fee" Table ("Fee Table")

1. Specific details relating to the fee calculation shall be furnished in notes to the Fee Table, including reference to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the Fee Table.

2. If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities, and the amount of registration fee need to appear in the Fee Table. Where two or more classes of securities are being registered pursuant to General Instruction II.C., however, the Fee Table need only specify the maximum aggregate offering price for all classes; the Fee Table need not specify by each class the proposed maximum aggregate offering price (see General Instruction II.C.).

3. If the filing fee is calculated pursuant to Rule 457(r) of this chapter) under the Securities Act, the Fee Table must state that it registers an unspecified amount of securities of each identified class of securities and must provide that the issuer is relying on Rule 456(b) and Rule 457(r). If the Fee Table is amended in a post-effective amendment to the registration statement or in a prospectus filed in accordance with Rule 456(b)(1)(ii) (§ 230.456(b)(1)(ii) of this chapter), the Fee Table must specify the aggregate offering price for all classes of securities in the referenced offering or offerings and the applicable registration fee.

4. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 457 under the Securities Act.

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form F–3

This instruction sets forth registrant requirements and transaction requirements for the use of Form F–3. Any foreign private issuer, as defined in Rule 405 (§ 230.405 of this chapter), which meets the requirements of I.A. below (the "Registrant Requirements") may use this Form for the registration of securities under the Securities Act of 1933 (the "Securities Act") which are offered in any transaction specified in I.B. below (the "Transaction Requirements"), provided that the requirements applicable to the specified Transaction are met. With respect to majority-owned subsidiaries, see Instruction I.A.5 below. With respect to well-known seasoned issuers and majority-owned subsidiaries of well-known seasoned issuers, see Instruction I.C. below.

* * * * *

A. Registrant Requirements

* * * * *

5. Majority-Owned Subsidiaries

If a registrant is a majority-owned subsidiary, security offerings may be registered on this Form if:

* * * * *

(iii) The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement, and provides a full and unconditional guarantee, as defined in Rule 3–10 of Regulation S–X (§ 210.3–10 of this chapter), of the payment obligations on the securities being registered,

and the securities being registered are non-convertible securities, other than common equity;

(iv) The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement, and the securities of the registrant-subsidiary being registered are full and unconditional guarantees, as defined in Rule 3–10 of Regulation S–X, of the payment obligations on the parent's non-convertible securities, other than common equity, being registered; or

(v) The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement, and the securities of the registrant-subsidiary being registered are guarantees of the payment obligations on the non-convertible securities, other than common equity, being registered by another majority-owned subsidiary of the parent where the parent provides a full and unconditional guarantee, as defined in Rule 3–10 of Regulation S–X, of such non-convertible securities.

Note: In the situation described in paragraphs I.A.5(iii), I.A.5(iv), and I.A.5(v) above, the parent or majority-owned subsidiary guarantor is the issuer of a separate security consisting of the guarantee, which must be concurrently registered, but may be registered on the same registration statement as are the guaranteed non-convertible securities. Both the parent or majority-owned subsidiary shall each disclose the information required by this Form as if each were the only registrant except that if the majority-owned subsidiary will not be eligible to file annual reports on Form 20–F or Form 40–F after the effective date of the registration statement, then it shall disclose the information specified in Form S–3. Rule 3–10 of Regulation S–X specifies the financial statements required.

* * * * *

C. Automatic Shelf Offerings by Well-Known Seasoned Issuers

Any registrant that is a well-known seasoned issuer, as defined in Rule 405, at the most recent eligibility determination date specified in paragraph (2) of that definition may use this Form for registration under the Securities Act of securities offerings, other than pursuant to Rule 415(a)(1)(vii) or (viii)(§ 230.415(a)(1)(vii) or (viii) of this chapter), as follows:

1. The securities to be offered are:

(a) Any securities to be offered pursuant to Rule 415, Rule 430A, or Rule 430B (§ 230.415, § 230.430A, or § 230.430B of this chapter) by:

(i) A registrant that is a well-known seasoned issuer by reason of paragraph (1)(i)(A) of the definition in Rule 405; or

(ii) A registrant that is a well-known seasoned issuer only by reason of paragraph (1)(i)(B) of the definition in Rule 405 if the registrant also is eligible to register a primary offering of its securities pursuant to Transaction Requirement I.B.1 of this Form;

(b) Non-convertible securities, other than common equity, to be offered pursuant to Rule 415, Rule 430A, or Rule 430B by a registrant that is a well-known seasoned issuer only by reason of paragraph (1)(i)(B) of the definition in Rule 405 and does not fall within General Instruction I.B.1 of this Form;

(c) Securities of majority-owned subsidiaries of the parent registrant to be offered pursuant to Rule 415, Rule 430A, or Rule 430B if the parent registrant is a well-known seasoned issuer and the securities of the majority-owned subsidiary being registered meet the following requirements:

(i) Securities of a majority-owned subsidiary that is a well-known seasoned issuer at the time it becomes a registrant, other than by virtue of paragraph (1)(ii) of the definition of well-known seasoned issuer in Rule 405;

(ii) Securities of a majority-owned subsidiary that are non-convertible securities, other than common equity, and the parent registrant provides a full and unconditional guarantee, as defined in Rule 3–10 of Regulation S–X, of the payment obligations on such non-convertible securities;

(iii) Securities of a majority-owned subsidiary that are a guarantee of:

(A) Non-convertible securities, other than common equity of the parent registrant being registered;

(B) Non-convertible securities, other than common equity, of another majority-owned subsidiary being registered and the parent has provided a full and unconditional guarantee, as defined in Rule 3–10 of Regulation S–X, of the payment obligations on such non-convertible securities; or

(iv) Securities of a majority-owned subsidiary that meet the conditions of Transaction Requirement I.B.2. of this Form (Primary Offerings of Non-Convertible Investment Grade Securities).

(d) Securities to be offered for the account of any person other than the issuer ("selling security holders"), provided that the registration statement and the prospectus are not required to separately identify the selling security holders or the securities to be sold by such persons until the filing of a prospectus, prospectus supplement, post-effective amendment to the registration statement, or report under the Exchange Act that is incorporated by reference into the registration statement and prospectus, identifying the selling security holders and the amount of securities to be sold by each of them, and if included in a report under the Exchange Act that is incorporated by reference, a prospectus or prospectus supplement is filed, as required by Rule 430B, pursuant to Rule 424(b)(7)(§ 230.424(b)(7) of this chapter).

2. The registrant pays the registration fee pursuant to Rules 456(b) and 457(r) or in accordance with Rule 456(a).

3. If the registrant is a majority-owned subsidiary, it is required to file and has filed reports pursuant to Section 13 or Section 15(d) of the Exchange Act and satisfies the requirements of the Form with regard to incorporation by reference or information about the majority-owned subsidiary is included in the registration statement (or a post-effective amendment to the registration statement).

4. The registrant may register additional securities or classes of its or its majority-owned subsidiaries' securities on a post-effective amendment pursuant to Rule 413(b)(§ 203.413(b) of this chapter).

5. An automatic shelf registration statement and post-effective amendment will become effective immediately pursuant to Rule 462(e) and (f) (§ 230.462(e) and (f) of this chapter) upon filing. All filings made on or in connection with automatic shelf registration statements on this Form become public upon filing with the Commission.

II. Application of General Rules and Regulations

* * * * *

C. Non-Automatic Shelf Registration Statements

Where two or more classes of securities being registered on this Form pursuant to General Instruction I.B.1. or I.B.2. are to be offered pursuant to Rule 415(a)(1)(x) (§ 230.415(a)(1)(x)), and where this Form is not an automatic shelf registration statement, Rule 457(o) permits the registration fee to be calculated on the basis of the maximum offering price of all the securities listed in the Fee Table. In this event, while the Fee Table would list each of the classes of securities being registered and the aggregate proceeds to be raised, the Fee Table need not specify by each class information as to the amount to be registered, proposed maximum offering price per unit, and proposed maximum aggregate offering price.

* * * * *

F. Automatic Shelf Registration Statements

Where securities are being registered on this Form pursuant to General Instruction I.C., Rule 456(b) permits, but does not require, the registrant to pay the registration fee on a pay-as-you-go basis and Rule 457(r) permits, but does not require, the registration fee to be calculated on the basis of the aggregate offering price of the securities to be offered in an offering or offerings off the registration statement. If a registrant elects to pay all or a portion of the registration fee on a deferred basis, the Fee Table in the initial filing must identify the classes of securities being registered and provide that the registrant elects to rely on Rule 456(b) and Rule 457(r), but the Fee Table does not need to specify any other information. When the registrant amends the Fee Table in accordance with Rule 456(b)(1)(ii), the amended Fee Table must include either the dollar amount of securities being registered if paid in advance of or in connection with an offering or offerings or the aggregate offering price for all classes of securities referenced in the offerings and the applicable registration fee.

G. Information in Automatic and Non-Automatic Shelf Registration Statements

Where securities are being registered on this Form pursuant to General Instruction I.A.5, I.B.1, I.B.2, or I.C., information is only required to be furnished as of the date of initial effectiveness of the registration statement to the extent required by Rule 430A or Rule 430B. Required information about a specific transaction must be included in the prospectus in the registration statement by means of a prospectus that is deemed to be part of and included in the registration statement pursuant to Rule 430A

or Rule 430B, a post-effective amendment to the registration statement, or an Exchange Act report incorporated by reference into the registration statement and the prospectus and identified in a prospectus filed, as required by Rule 430B, pursuant to Rule 424(b) (§ 230.424(b) of this chapter).

H. Selling Security Holder Offerings

Where a registrant eligible to register primary offerings on this Form pursuant to General Instruction I.B.1 registers securities offerings on this Form pursuant to General Instruction I.B.1 or I.B.3 for the account of persons other than the registrant, if the offering of the securities, or securities convertible into such securities, that are being registered on behalf of the selling security holders was completed and the securities, or securities convertible into such securities, were issued and outstanding prior to the original date of filing the registration statement covering the resale of the securities, the registrant may, as permitted by Rule 430B(b), in lieu of identifying selling security holders prior to effectiveness of the resale registration statement, refer to unnamed selling security holders in a generic manner by identifying the initial transaction in which the securities were sold. Following effectiveness, the registrant must include in a prospectus filed pursuant to Rule 424(b)(7), a post-effective amendment to the registration statement, or an Exchange Act report incorporated by reference into the prospectus that is part of the registration statement (which Exchange Act report is identified in a prospectus filed, as required by Rule 430B, pursuant to Rule 424(b)(7)), the names of previously unidentified selling security holders and amounts of securities that they intend to sell. If this Form is being filed pursuant to General Instruction I.C. by a well-known seasoned insurer to register securities being offered for the account of persons other than the issuer, the registration statement and the prospectus included in the registration statement do not need to designate the securities that will be offered for the account of such persons, identify them, or identify the initial transaction in which the securities, or securities convertible into such securities, were sold until the registrant files a post-effective amendment to the registration statement, a prospectus pursuant to Rule 424(b), or an Exchange Act report (and prospectus filed, as required by Rule 430B, pursuant to Rule 424(b)(7)) containing information for the offering on behalf of such persons.

* * * * *

IV. Registration of Additional Securities and Additional Classes of Securities

A. Registration of Additional Securities Pursuant to Rule 462(b)

* * * * *

B. Registration of Additional Securities or Classes of Securities or Additional Registrants After Effectiveness

A well-known seasoned issuer relying on General Instruction I.C. or this Form may register additional securities or classes of securities, pursuant to Rule 413(b) by filing a post-effective amendment to the effective registration statement. The well-known seasoned issuer may add majority-owned subsidiaries as additional registrants whose securities are eligible to be sold as part of the automatic shelf registration statement by filing a post-effective amendment identifying the additional registrants, and the registrant and the additional registrants and other persons required to sign the registration statement must sign the post-effective amendment. The post-effective amendment must consist of the facing page; any disclosure required by this Form that is necessary to update the registration statement to reflect the additional securities, additional classes of securities, or additional registrants; any required opinions and consents; and the signature page. Required information, consents or opinions may be included in the prospectus and the registration statement through a post-effective amendment or may be provided through a document incorporated or deemed incorporated by reference into the registration statement and the prospectus that is part of the registration statement, or, as to the required information only, contained in a prospectus filed pursuant to Rule 424(b) that is deemed part of and included in the registration statement and prospectus that is part of the registration statement.

* * * * *

PART I—INFORMATION REQUIRED IN PROSPECTUS

* * * * *

Item 6. Incorporation of Certain Information by Reference

* * * * *

(f) Any information required in the prospectus in response to Item 3 through Item 5 of this Form may be included in the prospectus through documents filed pursuant to Sections 13(a), 14, or 15(d) of the Exchange Act that are incorporated or deemed incorporated by reference into the prospectus that is part of the registration.

* * * * *

■ 57. Amend Form F–4 (reference in § 239.34) as follows:

■ a. Revise paragraph B.1.(b), B.1.(c), C.1.(b), and C.1.(c) to the General Instructions;

■ b. Revise, in paragraph D.4. to the General Instructions the phrase "(202) 942–8900." to read "(202) 551–8900." and the phrase "(202) 942–2940." to read "(202) 551–3610.";

■ c. Redesignate the second paragraph (b) of Item 11 in Part I as paragraph (c);

■ d. Revise in newly redesignated paragraph (c)(2) of Item 11 in Part I the phrase "450 Fifth Street, N.W.," to read "100 F Street, N.E.,";

■ e. In Item 12 to Part I, revise the heading and introductory text, the introductory text of paragraph (b)(2), and paragraph (b)(3)(vii);

■ f. Revise Instructions 1. and 3. of paragraph (c) of Item 13 in Part I;

■ g. Revise in Item 13(c)(2) in Part I., the phrase "450 Fifth Street, N.W.," to read "100 F Street, N.E.,"

■ h. Revise the heading and introductory text of Item 14 in Part I;

■ i. Revise the heading and text of Item 16 in Part I;

■ j. Revise the heading and introductory text of Item 17 in Part I;

■ k. Revise paragraph (b) of Item 18 in Part I; and

■ l. Revise the heading and paragraph (c) of Item 19 in Part I.

The revisions read as follows:

Note: The text of Form F–4 does not and this amendment will not appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM F–4—REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

General Instructions

* * * * *

B. Information With Respect to the Registrant

* * * * *

1. * * *

(b) Items 12 and 13 of this Form, if the registrant meets the requirements for use of Form F–3 and elects this alternative; or

(c) Item 14 of this Form, if the registrant does not meet the requirements for use of Form F–3, or if it otherwise elects this alternative.

* * * * *

C. Information With Respect to the Company Being Acquired

1. * * *

(b) Item 16 of this Form, if the company being acquired meets the requirements for use of Form F–3 and this alternative is elected; or

(c) Item 17 of this Form, if the company being acquired does not meet the requirements for use of Form F–3, or if this alternative is otherwise elected.

* * * * *

PART I—INFORMATION REQUIRED IN THE PROSPECTUS

* * * * *

B. INFORMATION ABOUT THE REGISTRANT

* * * * *

Item 12. Information With Respect to F–3 Registrants

If the registrant meets the requirements for use of Form F–3 or Form S–3 and elects to comply with this Item, furnish the information required by either paragraph (a) or (b) of this Item. However, the registrant shall not provide prospectus information in the manner allowed by paragraph (a) of this Item if the financial statements incorporated by reference pursuant to Item 13 reflect:

* * * * *

(b) * * *

(2) Include financial statements and information as required by Item 18 of Form

20–F, except that financial statements of the registrant may comply with Item 17 of Form 20–F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F–3. In addition, provide:

* * * * *

(3) * * *

(vii) Financial statements required by Item 18 of Form 20–F, except that financial statements of the registrant may comply with Item 17 of Form 20–F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F–3, and financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued (Schedules required under Regulation S–X shall be filed as "Financial Statement Schedules" pursuant to Item 21 of this Form, but need not be provided with respect to the company being acquired if information is being furnished pursuant to Item 17(a) of this Form); and

* * * * *

Item 13. Incorporation of Certain Information by Reference

* * * * *

Instructions.

1. All annual reports incorporated by reference pursuant to Item 13 of this Form shall contain financial statements that comply with Item 18 of Form 20–F, except that financial statements of the registrants may comply with Item 17 of Form 20–F if the only securities being registered are investment grade securities as defined in General Instructions to Form F–3: * * *

* * * * *

3. The registrant may incorporate by reference and deliver with the prospectus any Form 6–K, Form 10–Q or Form 8–K containing information eligible to be incorporated by reference into Form F–1. See Rules 4–01(a)(2) and 10–01 of Regulation S–X and Item 18 of Form 20–F.

* * * * *

Item 14. Information With Respect to Registrants Other Than F–3 Registrants

If the foreign registrant does not meet the requirements for use of Form F–3, or otherwise elects to comply with this Item in lieu of Items 10 and 11 or Items 12 and 13, furnish the following information:

* * * * *

C. INFORMATION ABOUT THE COMPANY BEING ACQUIRED

* * * * *

Item 16. Information With Respect to F–3 Companies

If the company being acquired meets the requirements for use of Form F–3 and compliance with this Item is elected, furnish the information that would be required by Items 12 and 13 of this Form if securities of such company were being registered.

* * * * *

Item 17. Information With Respect to Foreign Companies Other Than F–3 Companies

If the company being acquired does not meet the requirements for use of Form F–3, or compliance with this Item is otherwise elected in lieu of Item 15 or 16, furnish the information required by paragraph (a) or (b) of this Item, whichever is applicable.

* * * * *

D. VOTING AND MANAGEMENT INFORMATION

Item 18. Information if Proxies, Consents or Authorizations Are To Be Solicited

* * * * *

(b) If the registrant or the company being acquired meets the requirements for use of Form F–3, any information required by paragraphs (a)(5)(ii) and (7) of this Item with respect to such company may be incorporated by reference from its latest annual report on Form 20–f.

Item 19. Information if Proxies, Consents or Authorizations Are Not To Be Solicited or in an Exchange Offer

* * * * *

(c) If the registrant or the company being acquired meets the requirements for use of Form F–3, any information required by paragraphs (a)(5)(ii) and (7) of this Item with respect to such company may be incorporated by reference from its latest annual report on Form 20–F.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 58. The authority citation for part 240 continues to read inpart as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 59. Amend § 240.14a–2 as follows:

■ a. Remove the authority citation following the section; and

■ b. Add paragraph (b)(5).

The addition reads as follows:

§ 240.14a–2 Solicitations to which § 240.14a–3 to § 240.14a–15 apply.

* * * * *

(b) * * *

(5) Publication or distribution by a broker or a dealer of a research report in accordance with Rule 138 (§ 230.138 of this chapter) or Rule 139 (§ 230.139 of this chapter) during a transaction in which the broker or dealer or its affiliate participates or acts in a an advisory role.

PART 243—REGULATION FD

■ 60. The authority citation for part 243 continues to read as follows:

Authority: 15 U.S.C. 78c, 78i, 78j, 78m, 78o, 78w, 78mm, and 80a–29, unless otherwise noted.

■ 61. Amend § 243.100 by revising paragraph (b)(2)(iv) to read as follows:

§ 243.100 General rule regarding selective disclosure.

* * * * *

(b) * * *

(2) * * *

(iv) In connection with a securities offering registered under the Securities Act, other than an offering of the type described in any of Rule 415(a)(1)(i) through (vi) under the Securities Act (§ 230.415(a)(1)(i) through (vi) of this chapter) (except an offering of the type described in Rule 415(a)(1)(i) under the Securities Act (§ 230.415(a)(1)(i) of this chapter) also involving a registered offering, whether or not underwritten, for capital formation purposes for the account of the issuer (unless the issuer's offering is being registered for the purpose of evading the requirements of this section)), if the disclosure is by any of the following means:

(A) A registration statement filed under the Securities Act, including a prospectus contained therein;

(B) A free writing prospectus used after filing of the registration statement for the offering or a communication falling within the exception to the definition of prospectus contained in clause (a) of section 2(a)(10) of the Securities Act;

(C) Any other Section 10(b) prospectus;

(D) A notice permitted by Rule 135 under the Securities Act (§ 230.135 of this chapter);

(E) A communication permitted by Rule 134 under the Securities Act (§ 230.134 of this chapter); or

(F) An oral communication made in connection with the registered securities offering after filing of the registration statement for the offering under the Securities Act.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 62. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

■ 63. Amend Form 10 (referenced in § 249.210) by adding Item 1A. to read as follows:

Note: The text of Form 10 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 10

* * * * *

Item 1A. Risk Factors

Set forth, under the caption, "Risk Factors," where appropriate, the risk factors described in Item 503(c) of Regulation S–K (§ 229.503(c) of this chapter) applicable to the registrant. Provide any discussion of risk factors in plain English in accordance with Rule 421(d) of the Securities Act of 1933 (§ 230.421(d) of this chapter).

* * * * *

■ 64. Amend Form 20–F (referenced in § 249.220f) as follows:

■ a. Add two check boxes to the cover page before the paragraph that starts "Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months * * *";

■ b. Revise in paragraph (a) of General Instruction D the phrase "(202) 942–8900." to read "(202) 551–8900." and the phrase "(202) 942–2940." to read "(202) 551–3610.";

■ c. Revise in paragraph (c) to General Instruction D the phrase "450 Fifth Street, NW.," to read "100 F Street, NE.,";

■ d. Revise paragraph (c) to General Instruction E; and

■ e. Add Item 4A. to Part I.

The revision and additions read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 20–F

* * * * *

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes____ No ____

If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

Yes_____ No_____

Note —Checking the box above will not relieve any registrant required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 from their obligations under those Sections.

* * * * *

GENERAL INSTRUCTIONS

* * * * *

E. Which Items To Respond to in Registration Statements and Annual Reports

* * * * *

(c) *Financial Statement.* An Exchange Act registration statement or annual report filed on this Form must contain the financial statements and related information specified in Item 17 of this Form. We encourage you to provide the financial statements and related information specified in Item 18 of this Form in lieu of Item 17, but the Item 18 statements and information are not required. In certain circumstances, Form F–1, F–3, or F–4 for the registration of securities under the Securities Act require that you provide the financial statements and related information specified in Item 18 in your annual report on Form 20–F. Consult those Securities Act forms for the specified requirements and consider the potential advantages of complying with Item 18 instead of Item 17 of this form. Note that Items 17 and 18 may require you to file financial statements of other entities in certain circumstances. These circumstances are described in Regulations S–X.

The financial statements must be audited in accordance with U.S. generally accepted auditing standards, and the auditor must comply with the U.S. standards for auditor independence. If you have any questions about these requirements, contact the Office of Chief Accountant in the Division of Corporation Finance at (202) 551–3400.

* * * * *

Part I

* * * * *

Item 4. * * *

Item 4A. Unresolved Staff Comments

If the registrant is an accelerated filer as defined in Rule 12b–2 of the Exchange Act (§ 240.12b–2 of this chapter) or is a well-known seasoned issuer as defined in rule 405 of the Securities Act (§ 230.405 of this chapter) and has received written comments from the Commission staff regarding its periodic reports under the Exchange Act not less than 180 days before the end of its fiscal year to which the annual report relates, and such comments remain unresolved, disclose the substance of any such unresolved comments that the registrant believes are material. Such disclosure may provide other information including the position of the registrant with respect to any such comment.

* * * * *

■ 65. Amend Form 10–Q (reference in § 249.308a) by adding Item 1A to Part II to read as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 10–Q

* * * * *

PART II. OTHER INFORMATION

* * * * *

Item 1. * * *

Item 1A. Risk Factors

Set forth any material changes from risk factors as previously disclosed in the registrant's Form 10–K (249.310) in response to Item 1A. to Part I of Form 10–K.

* * * * *

■ 66. Amend Form 10–K (referenced in § 249.310) as follows:

■ a. In General Instruction J., redesignate paragraphs (1)(b) through (1)(m) as paragraph (1)(c) through (1)(n), and add new paragraph (b);

■ b. Add two check boxes to the cover page before the paragraph that starts "Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months * * *"; and

■ c. Add Items 1A. and 1.B. to Part I.

The additions read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 10–K

* * * * *

GENERAL INSTRUCTIONS

* * * * *

J. Use of this Form by Asset-Backed Issuers.

(1) *Items that May be Omitted.* * * *

(a) * * *

(b) Item 1A. Risk Factors;

* * * * *

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes _____ No _____.

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes _____ No _____.

Note: Checking the box above will not relieve any registrant required to file reports pursuant to Section 13 or 15(d) of the Exchange Act from their obligations under those Sections.

* * * * *

PART I

* * * * *

Item 1. * * *

Item 1A. Risk Factors

Set forth, under the caption "Risk Factors," where appropriate, the risk factors described in Item 503(c) of Regulation S–K (§ 229.503(c) of this chapter) applicable to the registrant. Provide any discussion of risk factors in plain English in accordance with Rule 421(d) of the Securities Act of 1933 (§ 230.421(d) of this chapter).

Item 1B. Unresolved Staff Comments

If the registrant is an accelerated filer as defined in Rule 12b–2 of the Exchange Act (§ 240.12b–2 of this chapter) or is a well-known seasoned issuer as defined in Rule 405 of the Securities Act (230.405 of this chapter) and has received written comments from the Commission staff regarding its periodic or current reports under the Act not less than 180 days before the end of its fiscal year to which the annual report relates, and such comments remain unresolved, disclose the substance of any such unresolved comments that the registrant believes are material. Such disclosure may provide other information including the position of the registrant with respect to any such comment.

* * * * *

■ 67. Amend Form 10–KSB (referenced in § 249.310b) by adding a check box to the cover page before the paragraph that starts "Check whether the issuer (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past 12 month * * *" to read as follows:

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 10–KSB

* * * * *

Check whether the issuer is not required to file reports pursuant to Section 13 or 15(d) of the Exchange Act.[ ]

Note— Checking the box above will not relieve any registrant required to file reports pursuant to Section 13 or 15(d) of the Exchange Act from their obligations under those Sections.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 68. The authority citation for Part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

■ 69. Amend Form N–2 (referenced in § 239.14 and § 274.11a–1) as follows:

■ a. Revise in the third paragraph of the Instructions after the Calculation of Registration Fee table the phrase "450 5th Street, NW.," to read "100 F Street, NE.,";

■ b. Revise in Item 18.15, the phrase "1–202–942–8090," to read "1–202–551–8090,";

■ c. Remove the period at the end of paragraph 4.a(3) to Item 34 and in its place add a semi-colon;

■ d. Remove the word "and" at the end of paragraph 4.b to Item 34;

■ e. Remove the period at the end of the paragraph 4.c to Item 34 and in its place add a semi-colon; and

■ f. Add paragraphs 4.d and 4.e to Item 34.

The additions read as follows:

Note: The text of Form N–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N–2

* * * * *

Item 34. Undertakings

* * * * *

4. * * *

d. That, for the purpose of determining liability under the 1933 Act to any purchaser, if the Registrant is subject to Rule 430C [17 CFR 230.430C]: Each prospectus filed pursuant to Rule 497(b), (c), (d) or (e) under the 1933 Act [17 CFR 230.497(b), (c), (d), or (e)] as part of a registration statement relating to an offering, other than prospectuses filed in reliance on Rule 430A under the 1933 Act [17 CFR 230.430A], shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. *Provided however,* that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

e. That for the purpose of determining liability of the Registrant under the 1933 Act to any purchaser in the initial distribution of securities:

The undersigned Registrant undertakes that in a primary offering of securities of the undersigned Registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to the purchaser:

(1) Any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 497 under the 1933 Act [17 CFR 230.497]:

(2) The portion of any advertisement pursuant to Rule 482 under the 1933 Act [17 CFR 230.482] relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and

(3) Any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.

* * * * *

Dated: July 19, 2005.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 05–14560 Filed 8–2–05; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Wednesday,
August 3, 2005

Part III

Department of Education

Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind—Priorities and Definitions and Notice of Availability; Notices

DEPARTMENT OF EDUCATION

Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities and definitions.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces three priorities and definitions under the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program. The Assistant Secretary may use these priorities and definitions for competitions in fiscal year (FY) 2005 and later years. We take this action to focus on training and education as an identified area of national and regional need. We intend for the priorities to improve the quality of interpreters in the field by providing quality educational opportunities with consumer involvement throughout the process and with a specific focus on interpreters working with consumers of vocational rehabilitation (VR) services.

EFFECTIVE DATE: These priorities and definitions are effective September 2, 2005.

FOR FURTHER INFORMATION CONTACT: Annette Reichman, U.S. Department of Education, 400 Maryland Avenue, SW., room 5032, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7489 or via Internet: *Annette.Reichman@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call (202) 205–8352.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Section 302(f) of the Rehabilitation Act of 1973, as amended (Act), and the regulations for this program in 34 CFR 396.1 state that the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program is designed to establish interpreter training programs or to assist ongoing training programs to train a sufficient number of qualified interpreters in order to meet the communications needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind. The Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program provides financial assistance to pay part of the costs to—

(1) Train manual, tactile, oral, and cued speech interpreters;

(2) Ensure the maintenance of the skills of interpreters; and

(3) Provide opportunities for interpreters to raise their level of competence.

Federal statutes, such as the Rehabilitation Act of 1973, as amended, the Individuals with Disabilities Education Act, and the Americans with Disabilities Act established the legal requirements for communication and language access. These requirements led to an ever-increasing demand for qualified interpreters, outstripped the available pool of qualified interpreters, and created a serious ongoing national shortage. In addition, many States have passed, or are now proposing, licensure laws for interpreters, requiring interpreters working in these States to meet specific qualifications. In the last several years the shortage of qualified interpreters has been exacerbated by the establishment of "Video Relay Services" call centers throughout the country. These centers actively recruit interpreters from surrounding communities and postsecondary institutions to work as video relay interpreters in these call centers.

Simultaneously, deaf consumers of interpreting services are demanding higher quality interpreting services that meet their individual needs. Consumers and consumer organizations have expressed interest in being substantively involved in the identification, development, and delivery of the educational opportunities provided through these priorities.

In order to train qualified interpreters to better meet the demand from consumers and consumer organizations, interpreter educators must be sufficient in number and knowledgeable of current best practices. There are, however, very few programs that prepare interpreter educators to teach the interpreting process and the skill of interpreting. Consequently, many educators teaching at approximately 137 interpreter training programs throughout the country have had little or no opportunity to study how to teach interpretation.

To address these issues and to contribute toward the education and training of a sufficient number of qualified interpreters to meet the communications needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind, the Assistant Secretary proposed to establish priorities for a National Interpreter Education Center and a coordinated Regional Interpreter Education Center or Centers working with and through Local Partner Networks.

We published a notice of proposed priorities and definitions for this program in the **Federal Register** on November 3, 2004 (69 FR 64240). That notice included a discussion of significant issues and analysis used in the development of the priorities and definitions.

Except for minor editorial and technical revisions, there are four differences between the notice of proposed priorities and definitions and this final notice. They are:

1. We have established a new priority within the existing priority from 34 CFR 396.33 to support applications from postsecondary institutions that offer and have awarded at least a bachelor's degree in interpreter education.

2. The National Interpreter Education Center and the Regional Interpreter Education Centers will be required to reserve 10 percent of their annual budgets to cover the costs of specific collaborative efforts between the centers.

3. A special focus on training opportunities for trilingual deaf and hearing interpreters, particularly those who are Spanish and English speaking and fluent in both American Sign Language and Mexican Sign Language or other sign languages used by Spanish-speaking communities has been added to Priority 2.

4. In deciding whether to continue the projects for the fourth and fifth years, a review of the National Interpreter Education Center and the Regional Interpreter Education Center or Centers will be conducted by a team consisting of experts selected by the Secretary during the first half of the projects' third year, instead of the last half of the projects' second year as originally proposed.

Analysis of Comments and Changes

In response to our invitation in the notice of proposed priorities and definitions, 60 parties submitted comments. An analysis of the comments and of any changes in the priorities and definitions since publication of the notice of proposed priorities and definitions follows.

Generally, we do not address technical and other minor changes—and suggested changes that we are not authorized to make under the applicable statutory authority.

Comments: Three commenters stated that the priorities should promote the accreditation process for interpreter training programs as a mechanism to document the quality of their outcomes. The commenters suggested that the National Interpreter Education Center partner with the accreditation body under the Conference of Interpreter Trainers as a coordinated effort to strengthen the field of interpreter education.

Discussion: Section 302(f) of the Act and the regulations for this program in 34 CFR 396.1 state that the purpose of grants awarded under this program is to train a sufficient number of qualified interpreters to meet the communications needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind. To accomplish this, grants may be awarded to public and private nonprofit agencies and organizations to pay part of the costs for the establishment of interpreter training programs or to assist those agencies or organizations to conduct training at existing interpreter training programs. The statute and regulations, however, do not provide authority for the program to become directly involved with accreditation of interpreter training programs. The National Interpreter Education Center and the Regional Interpreter Education Centers nonetheless could choose to use the rigors of the accreditation process as one mechanism to document the quality of their educational outcomes.

Change: None.

Comments: Seven commenters suggested that we limit eligibility for the National Interpreter Education Center grant to postsecondary institutions that offer bachelor's degrees or master's degrees in interpreter training. These commenters also suggested that we include interpreter education programs that offer, or that are able to demonstrate that they are well on their way to establishing, a bachelor's degree in interpreter education as eligible applicants for the Regional Interpreter Education Centers grants. Another commenter suggested that one of the functions of the National Interpreter Education Center should be to provide guidance to interpreters who are transitioning from associate's degree level training programs to bachelor's degree level training programs, as part of demonstrating effective practices in interpreter education.

Discussion: The Registry of Interpreters for the Deaf, Inc. (RID), a national and professional organization that certifies interpreters, has recently passed a mandate requiring candidates for certification to have an academic degree. Effective June 30, 2012, candidates for RID certification must have a minimum of a bachelor's degree, and effective June 30, 2016, deaf candidates for RID certification must have a minimum of a bachelor's degree. (See *http://www.rid.org/ntsnews.html* for the text of the motion that passed.) National Association of the Deaf (NAD), another national and professional organization that certifies interpreters, continues to work closely with RID in blending the two certifying organizations into one entity with the same requirements just outlined.

While RID and NAD do not specify a particular discipline for the bachelor's degree, it is generally recognized that the effectiveness of the message rendered by an interpreter directly correlates with the level of education of the interpreter. We agree that it is important that projects supported by the Rehabilitation Services Administration (RSA) reflect standards currently being established by the field.

The regulations for this program in 34 CFR 396.33 state that the Secretary gives priority to public or private nonprofit agencies or organizations with existing programs that have demonstrated their capacity for providing interpreter training services, including institutions of higher education that meet these criteria.

Within the priority as currently written, the National Interpreter Education Center can choose to provide a special focus on developing guidance for interpreters who are transitioning from associate's degree level training programs to bachelor's degree level training programs, as part of demonstrating effective practices in interpreter education.

Change: We are establishing a new priority within the existing priority from 34 CFR 396.33 to support applications from postsecondary institutions that offer and have awarded at least a bachelor's degree in interpreter education.

Comments: Three commenters stated that we should require that the proposed National Interpreter Education Center and the Regional Interpreter Education Center or Centers become directly involved with the national interpreter certification testing and certification maintenance programs that are provided jointly through NAD and RID.

Discussion: While we recognize the importance of national interpreter certification organizations, including NAD and RID, in clearly defining the parameters of a qualified interpreter, the Act requires that this program train a sufficient number of interpreters through grant awards to pay part of the costs for the establishment of interpreter training programs or to assist existing interpreter training programs. The statute and regulations do not provide authorization for the program to become directly involved with the certification of interpreters.

Change: None.

Comments: Two commenters suggested that 10 percent of the projects' annual budgets be reserved to support the collaboration between the National Interpreter Education Center and the Regional Interpreter Education Center or Centers including travel, communications, materials development, Web site development, and other collaborative efforts.

Discussion: The National Interpreter Education Center will be required, in part, to coordinate the activities of the Regional Interpreter Education Center or Centers and to ensure the effectiveness of the educational opportunities offered by the Regional Interpreter Education Center or Centers. We agree that the budgets of the National Interpreter Education Center and the Regional Interpreter Education Center or Centers should allow for these collaborative efforts.

Change: We are revising the priorities to require that 10 percent of the annual budget for the National Interpreter Education Center and the Regional Interpreter Education Center or Centers be reserved for specific collaborative efforts.

Comments: One commenter suggested that the Regional Interpreter Education Centers specifically incorporate opportunities for informal interaction with the community at large, as a required part of the training opportunities.

Discussion: We concur with the suggestion that opportunities for informal interaction with the community at large should be provided. We believe that the requirement for the use of language immersion experiences in American Sign Language, Conceptually Accurate Signed English, oral communication, tactile communication, and cued speech as written would include this informal interaction with deaf consumers in the local communities.

Change: None.

Comments: Eight commenters emphasized the importance of using distance technologies, including videoconferencing capabilities, to deliver interpreter services from remote locations and to enable interpreter education programs to offer distance education opportunities. One commenter stated that the National

Interpreter Education Center should focus on emerging videoconferencing technologies as a resource.

Discussion: The priorities explicitly require the Regional Interpreter Education Center or Centers to use "state-of-the-art" technologies for training on how to deliver interpreter services from remote locations and in handling various technologies during interpreter assignments. In addition, the priority states that the delivery of educational opportunities may not be limited to traditional methods, and distance technologies and delivery are included in the list of innovative practices to be used.

Change: None.

Comments: Three commenters stated that improvements in interpreting skills should be evaluated by alternative measures of qualitative and quantitative data rather than pre- and post-assessment. Assessment measures should be flexible to allow for the development of an individualized training plan based on a person's unique abilities.

Discussion: The National Interpreter Education Center is required to collect, analyze, and report to RSA the pre- and post-assessment data of the educational activities conducted through the Regional Interpreter Education Center or Centers. The National Interpreter Education Center also is required to collect, evaluate, and report to RSA both the qualitative and quantitative data on the educational activities provided by the Regional Interpreter Education Center or Centers, based on clear, measurable goals that are linked to results demonstrating overall program effectiveness. The Regional Interpreter Education Center or Centers are required to provide qualitative and quantitative data on the educational activities conducted, pre- and post-assessments, portfolios produced, participant demographics, and other pertinent information to the National Interpreter Education Center for the purpose of evaluating and reporting program effectiveness. These priorities allow for considerable flexibility with assessment measures to be used and at the same time clearly stress the importance of demonstrating measurable program results.

Change: None.

Comments: Three commenters stated that the primary focus of the National Interpreter Education Center on training for interpreter educators should either be eliminated from the final priorities, due to the unrealistic scope of activities, or be limited to in-service training opportunities. In addition, one of the commenters stated that the investment in a pre-service interpreter educator program would not see dividends for several years.

Discussion: One critical issue in the field of interpreter education is that very few programs are available to prepare interpreter educators to teach the interpreting process. As a result, many educators teaching at the approximately 137 interpreter training programs have had few opportunities to study how to teach interpretation or to learn about the current best practices in the field. To address this issue, Priority 1 focuses on the role of the National Interpreter Education Center to provide state-of-the-art educational opportunities to interpreter educators. Priority 1 specifically states that the National Interpreter Education Center must provide educational opportunities to working interpreter educators who need to obtain, enhance, or update their training on effective practices in interpreter education and to new interpreter educators. Priority 1 does not impose limitations on how training, in-service or pre-service, should be or can be offered to interpreter educators, except that the National Interpreter Education Center must identify and promote effective practices in interpreter education. Thus, the scope of required activities for training interpreter educators is realistic. While the initial investment in training interpreter educators may not see dividends for several years, we believe that the long-term return on investment will demonstrate a positive gain and considerable impact on improving the quality of interpreters.

Change: None.

Comments: Four commenters stated that the focus on training interpreters to provide better services to VR consumers, while worthwhile, does not fully encompass the different settings, including postsecondary programs, in which interpreters work, and that this focus would lead to different types of training than currently exist.

Discussion: The Regional Interpreter Education Center or Centers, with all of their training activities, must include cooperative efforts with consumers, consumer organizations, community resources, and service providers, especially VR agencies. The Regional Interpreter Education Center or Centers also must focus on interpreting in specialized environments such as rehabilitation, legal, medical, mental health, or multicultural. While Priority 2 emphasizes that the primary focus of the educational opportunities must be on interpreting for consumers of VR services, the training activities outlined in Priority 2 are not limited solely to rehabilitation settings, but encompass the broader range of environments that participants in the VR process may encounter.

Change: None.

Comments: Eight commenters, while supportive of the emphasis on the Local Partner Networks under the Regional Interpreter Education Center or Centers priority, stated that the requirements for the Local Partner Networks should be expanded to include formal agreements with pertinent stakeholders and partners, including educational institutions and organizations that have similar goals, and should allow for the unique needs of each geographical area. One additional commenter, while also supportive of the emphasis on the Local Partner Networks under this priority, stated that the requirements for the Local Partner Networks were excessively formal and may be too difficult and expensive to achieve.

Discussion: The Regional Interpreter Education Center or Centers must develop formal relationships with Local Partner Networks as defined in the notice of final priorities and definitions. The Local Partner Networks are expected to work with the Regional Interpreter Education Center or Centers to implement effective practices in interpreter education, implement program quality indicators, and provide education activities to interpreters. The mechanism that each Regional Interpreter Education Center chooses to develop the required formal relationships among the specific parties is left to the discretion of the Center to allow for differing geographic and demographic needs.

Change: None.

Comments: Three commenters stated that, while they are supportive of the emphasis on mentoring as an important training component under this project, the priorities need to specifically define "mentoring," since mentoring is not a substitution for the pre-service training that beginning interpreting students need. In addition, one of the three commenters stated that a framework for an "induction system" should be included, in which the students of pre-service interpreter training programs have the opportunity to become mentees and to work with qualified mentors, while being inducted as novice professionals into the field of interpreting.

Discussion: The Regional Interpreter Education Center or Centers are required to educate deaf individuals and practicing deaf and hearing interpreters on how to serve as effective mentors, in addition to providing mentoring to novice and working interpreters who

need additional feedback and experience to become qualified interpreters. When training mentors, grantees are expected to use the materials already developed by the current national project or by other existing mentoring programs. The current national project on Training Interpreter Educators and Mentors has developed a master mentor training program curriculum and an on-line program teaching experienced interpreters how to mentor novice interpreters. (A description of this project can be found at the following Web site: *http://www.asl.neu.edu/tiem.online/*. The materials will also be available at the National Clearinghouse of Rehabilitation Training Materials at Oklahoma State University, 206 W. Sixth Street, Stillwater, OK 74078–4080, upon completion of the national project at the end of September 2005.) While not a requirement, the National Interpreter Education Center and the Regional Interpreter Education Center or Centers may also use this opportunity to establish the framework for an induction system in which the students of pre-service interpreter training programs have the opportunity to become mentees and to work with qualified mentors, while being inducted as novice professionals into the field of interpreting.

Change: None.

Comments: Six commenters stated that these priorities needed to place a greater emphasis on educating individuals who are deaf and individuals who are deaf-blind on how to become effective mentors for deaf sign language interpreters and hearing sign language interpreters. This will give the deaf community a more meaningful and genuine role in the training of novice and working interpreters.

Discussion: The priorities highlight the importance of involving deaf consumers in every aspect of the National Interpreter Education Center and the importance of educating deaf individuals and practicing deaf and hearing interpreters to serve as mentors to novice and working interpreters. In addition, the definition of "deaf" includes all individuals who are deaf, hard of hearing, late deafened, and deaf-blind. Through the priorities we have also emphasized the importance of training not only individuals who are deaf, but also individuals who are deaf-blind, on how to become effective mentors for deaf sign language interpreters and hearing sign language interpreters.

Change: None.

Comments: One commenter stated that spoken Spanish and American Sign Language interpreter training should be included as a priority for those areas serving a large Spanish-speaking population.

Discussion: The Regional Interpreter Education Center or Centers are required to provide training specific to the needs of the population in their regions. This may include a focus on interpreting in specialized environments, including multicultural and multilingual environments. We agree that the demand for qualified interpreters who are fluent in spoken Spanish, spoken English, and American Sign Language is increasing, particularly in those regions with a large Spanish-speaking population. Training tailored for Spanish-speaking individuals who are also fluent with spoken and written English, and with both American Sign Language and Mexican Sign Language or other sign languages used by Spanish-speaking communities, is increasingly needed.

Change: In the priority for the Regional Interpreter Education Center or Centers, we have added a special focus for training opportunities for trilingual deaf and hearing interpreters who are fluent in spoken Spanish and English and fluent in both American Sign Language and Mexican Sign Language or other sign languages used by Spanish-speaking communities.

Comments: Two commenters stated that the objectives for the National Interpreter Education Center were too broad, lacked specific focus, and would not produce significant, long-term outcomes. These commenters also questioned whether the focus was on the training of interpreters, on interpreter-educators, or on research.

Discussion: The Act specifically requires that we focus on training a sufficient number of qualified interpreters. In order to meet the need for training increasing numbers of interpreters throughout the country, the priority for the National Interpreter Education Center was developed to focus on collaborating with the Regional Interpreter Education Center or Centers to offer quality interpreter training programs that can show measurable outcomes and develop new and effective practices in interpreter education. The National Interpreter Education Center will also focus on training working and new interpreter educators on effective practices in interpreter education. Thus, while the National Interpreter Education Center is not conducting research, the center will have a specific focus on promoting quality interpreter education and on training interpreter educators with the clear expectation of producing significant long-term outcomes in improving the skills and qualifications of new and working interpreters.

Change: None.

Comments: Five commenters stated that clarification is needed on the specific responsibilities of the National Interpreter Education Center, including this center's oversight of and authority over the Regional Interpreter Education Center or Centers, especially as related to expectations on budget, personnel, and activities. Two of these five commenters also stated that the National Interpreter Education Center would add another, unnecessary level of oversight.

Discussion: The National Interpreter Education Center will not have direct oversight of or authority over the Regional Interpreter Education Center or Centers, in respect to budget, personnel, and activities. Priorities 1 and 2 require collaboration between the National Interpreter Education Center and the Regional Interpreter Education Center or Centers, including—(a) development and implementation of "Program Quality Indicators," (b) collection, analysis, and reports to RSA of the pre- and post-assessment results and the qualitative and quantitative data of the educational activities conducted through the Regional Interpreter Education Center or Centers, and (c) coordination of activities to ensure effective use of resources and consistency of quality interpreter educational opportunities. Budget expenditures to support these activities will be developed independently by the National Interpreter Education Center and each of the Regional Interpreter Education Center or Centers based on relevant cost principles and any instructions provided by the Department. RSA project officers will maintain the necessary direct oversight of, and authority over, the National Interpreter Education Center and the Regional Interpreter Education Centers in determining appropriate collaborative efforts.

Change: None.

Comments: Six commenters stated that there is great value in the role of the National Interpreter Education Center in developing and applying performance measures and in providing coordination and input for the Regional Interpreter Education Center or Centers based on assessment of needs and outcomes. However, two of these six commenters also cautioned that the effectiveness of the project should not be exclusively based on "numbers" as the primary measuring tool in the provision of

educational opportunities and cautioned that one set of standards will be insufficient to meet the needs of a variety of individuals from different cultural and linguistic backgrounds.

Discussion: To demonstrate the effectiveness of the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program, the U.S. Department of Education requires that grantees provide qualitative and quantitative data based on clear and measurable goals. The measures that will be used for this program are included in the application notice.

Change: None.

Comments: Six commenters stated that these priorities represent a significant change from the projects funded in the past under this program and that the first 18 to 24 months of the project are a critical period of time. As such, an 18-month period before the intensive one-day programmatic review is not enough time for the National Education Interpreter Center to be able to demonstrate evidence of the project's contributions to changed practices and the quality of interpreter education provided.

Discussion: We agree that the first 18 to 24 months of the project, particularly for the National Interpreter Education Center, will be critical, and that additional time will be needed to demonstrate the impact of the project's contributions to changed practices by interpreter training programs and the quality of interpreter education opportunities.

Change: We have modified the priority language to provide that the programmatic review of the National Interpreter Education Center and the Regional Interpreter Education Center or Centers will be conducted during the first half of the projects' third year instead of the last half of the projects' second year.

Comments: Four commenters stated that the priorities must state clearly whether the National Interpreter Education Center and the Regional Interpreter Education Centers will fund interpreter training through either pre-service programs or in-service training activities. While one commenter supported the use of funding solely for in-service training opportunities for those working interpreters without any prior training, the other commenters wanted these funds to be used solely for pre-service educational opportunities.

Discussion: In general, "pre-service" and "in-service" training activities, particularly in postsecondary education settings, are not clearly differentiated. For example, a local college may offer a course over four consecutive weekends, either for working interpreters (in-service) or for undergraduate or graduate credit (pre-service). The intent of these priorities is to support the provision of innovative training opportunities that meet the needs of the field, such as longer-term training of significant scope and sequence that directly result in increasing the number of qualified interpreters. Therefore, grantees have the flexibility to provide training that addresses both pre-service and in-service educational opportunities.

Change: None.

Comments: Thirty commenters stated that the proposed Regional Interpreter Education Center or Centers are a critical component in the structure for providing educational and training opportunities for interpreters. Of these, four commenters stated that there should be a minimum of four to six Regional Interpreter Education Centers. Twenty-six commenters recommended maintaining the current structure of 10 regional projects. The latter commenters expressed concern that the diversity from region to region may not be adequately addressed if the number of regional programs is reduced.

Discussion: In FYs 2000 to 2004, each of the 10 regional interpreter training projects received an average of $150,000 per year. At the same time, there were approximately 137 interpreter training programs throughout the country, which suggests that the national impact of these 10 regional interpreter training projects on enhancing the quality of interpreter educational opportunities has been limited. The diversity within regions will be addressed through the establishment of the Local Partner Networks by the Regional Interpreter Education Centers. We will consider these comments and factors in developing any notice inviting applications for awards under this program.

Change: None.

Comments: Eight commenters stated that to improve the education of interpreters a research component should be added to the priorities through the collection, analysis, and reports to RSA. This research could incorporate the pre- and post-assessment data of the education activities conducted in the Regional Interpreter Education Center or Centers and other data already available in the field.

Discussion: While we understand the need for research related to interpreter education and practice, RSA does not have the authority to conduct research through this program. The data collection, analysis, and reporting that is required under these priorities is for the purpose of ensuring accountability for program performance and results. The comments related to the need for research in the area of interpreter training and services will be forwarded to the National Institute on Disability and Rehabilitation Research for their consideration.

Change: None.

Comments: Four commenters stated that the National Interpreter Education Center should set up a national dissemination effort through the creation and maintenance of an electronic resource center that is accessible via the World Wide Web, so that resources are available for interpreter educators as well as practitioners.

Discussion: RSA already maintains a national dissemination center for all training grants, the National Clearinghouse of Rehabilitation Training Materials (NCRTM), at this Web site, *www.nchrtm.okstate.edu/* The National Interpreter Education Center will be responsible for providing all materials to the NCRTM.

Change: None.

Comments: Three commenters stated that training with specialized focus should be emphasized as one of the most important activities of the Regional Interpreter Education Center or Centers, as the field of interpreting is becoming increasingly specialized.

Discussion: We agree that interpreting in specialized environments is a critical component of interpreter education, and this is emphasized in Priority 2—Regional Interpreter Education Center or Centers.

Change: None.

Note: This notice does *not* solicit applications. In any year in which we choose to use these priorities and definitions, we invite applications through a notice in the **Federal Register**. When inviting applications, we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive

preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities

Definitions: For the purposes of these priorities, we use the following definitions:

Deaf means individuals who are deaf, hard of hearing, late deafened, or deaf-blind. The term makes no reference or judgment of preferred mode of communication or language preference.

Interpreter means individuals, both hearing and deaf, who provide interpreting or transliterating, or both, for deaf, hard of hearing, and deaf-blind individuals using a variety of languages and modes of communication including, but not limited to, American Sign Language, Conceptually Accurate Signed English, other forms of signed English, oral communication, tactile communication, and cued speech.

Local Partner Network means a formal network of individuals, organizations, and agencies including consumers, consumer organizations, community resources, service providers (especially VR agencies), VR State coordinators for the deaf, rehabilitation counselors for the deaf, and other appropriate entities with whom the Regional Interpreter Education Center will have Memoranda of Understanding or other recognized mechanisms for the provision of educational activities for interpreters.

National Interpreter Education Center means a project supported by RSA to—(1) coordinate the activities of the Regional Interpreter Education Centers; (2) ensure the effectiveness of the educational opportunities offered by the Regional Interpreter Education Centers; (3) ensure the effectiveness of the program as a whole by evaluating and reporting outcomes; (4) provide technical assistance to the field on effective practices in interpreter education; and (5) provide educational opportunities for interpreter educators.

Novice interpreter means an interpreter who has graduated from an interpreter training program and demonstrates language fluency in American Sign Language and in English, but lacks experience working as an interpreter.

Qualified interpreter means an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary. This definition, which is mentioned in the Senate Report for the Rehabilitation Act Amendments of 1998, Senate Report 105–166 (Second Session 1998), is one way for States to determine if interpreters are sufficiently qualified and is based on the standard specified in the regulations implementing titles II and III of the Americans with Disabilities Act of 1990.

Regional Interpreter Education Center means a coordinated regional center to provide quality educational opportunities for interpreters at all skill levels.

Training and *education* will be used interchangeably.

Priority 1—National Interpreter Education Center

The purpose of this priority is to support a National Interpreter Education Center (National Center) to coordinate the activities of the Regional Interpreter Education Center or Centers, to ensure the effectiveness of the educational opportunities offered by the Regional Interpreter Education Center or Centers, to ensure the effectiveness of the program as a whole by evaluating and reporting outcomes, to provide technical assistance to the field on effective practices in interpreter education, and to provide educational opportunities for interpreter educators. In conducting its activities, the National Center must ensure the provision of quality educational opportunities with substantial consumer involvement throughout the process and with a specific focus on interpreting for consumers of VR services.

The National Center funded under this priority must do the following:

(a) Identify and promote effective practices in interpreter education and provide technical assistance to the Regional Interpreter Education Center or Centers and the field on effective practices in interpreter education.

(b) Provide educational opportunities (based on the model curriculum developed for interpreter educators under Grant Number H160C030001) to working interpreter educators who need to obtain, enhance, or update their training on effective practices in interpreter education and to new interpreter educators.

(c) Promote improved education of interpreters and coordinate the interpreter education activities of the Regional Interpreter Education Center or Centers by—

(1) Developing "Program Quality Indicators" for this program, including the Regional Interpreter Education Center or Centers, and measuring performance against these indicators;

(2) Conducting education needs assessments and, based on the results, developing educational activities for delivery through the Regional Interpreter Education Center or Centers;

(3) Collecting, analyzing, and reporting to RSA the pre- and post-assessment data of the educational activities conducted through the Regional Interpreter Education Center or Centers;

(4) Ensuring that educational opportunities are available to individuals from a variety of cultural and linguistic backgrounds and are sensitive to the needs of those audiences; and

(5) Ensuring that deaf consumers are involved in every aspect of the project.

(d) Develop effective products for use by the Regional Interpreter Education Center or Centers in support of their educational activities for interpreters (*e.g.*, CDs, DVDs, Web-based materials, etc.).

(e) Promote the educational activities of the Regional Interpreter Education Center or Centers and disseminate information to the field through activities such as— developing and maintaining a program Web site; providing materials to the RSA-sponsored National Clearinghouse on Rehabilitation Training Materials; developing and using Web-based activities such as e-newsletters, interpreter forums, consumer forums, events calendars, etc.; making presentations on results of project activities at national conferences related to interpreting and interpreter education; and making presentations on results of project activities at consumer conferences.

(f) Collect, evaluate, and report to RSA on qualitative and quantitative data on the educational activities of the Regional Interpreter Education Center or Centers. Data must be based on clear, measurable goals that are clearly linked to results.

(g) Use the data about the individual educational activities to demonstrate overall program effectiveness. Data must be based on clear, measurable goals that are clearly linked to results.

(h) Coordinate all activities conducted under this program, including the activities of the National Center and the Regional Interpreter Education Center or Centers, to ensure effective use of resources and consistency of quality interpreter educational opportunities to individuals in all geographic areas of the country.

(i) Set aside 10 percent of the project's annual budget submitted to RSA to

cover the costs of specific collaborative activities between the National Center and the Regional Interpreter Education Center or Centers including, but not limited to, travel, communications, materials development, Web site development, and other collaborative efforts.

Fourth and Fifth Years of Project:

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC, during the first half of the project's third year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the award have been or are being met by the project.

(c) Evidence of the degree to which the project's activities have contributed to changed practices and improved the quality of interpreters.

Priority 2—Regional Interpreter Education Center or Centers

The purpose of this priority is to support a coordinated Regional Interpreter Education Center or Centers to provide quality educational opportunities for interpreters at all skill levels. The educational opportunities provided by a Regional Interpreter Education Center, through collaboration with Local Partner Networks and with substantial involvement from deaf consumers, must be of sufficient scope and sequence to demonstrate an increased skill and knowledge base of the participants through the use of pre- and post-assessments. The pre- and post-assessments will measure the knowledge and skill base of the participants, both when first entering the training program and when exiting the training program, to demonstrate their enhanced knowledge and skills as interpreters as a result of the training opportunity. In addition, the primary focus of the educational opportunities must be on interpreting for consumers of VR services. Consequently, this means educating hearing and deaf interpreters to work with consumers from diverse cultural and linguistic backgrounds in diverse environments (*i.e.*, urban, rural, low socioeconomic, territories, etc.) and within a variety of contexts (*i.e.*, employment, job training, technical, medical, etc.).

Further, the educational opportunities must encompass both skill-based and knowledge-based topics, provide for both hearing interpreters and deaf interpreters, and focus on interpreting for a variety of individuals who have communication skills along the full spectrum of language from those with limited language skills to those with high-level, professional language skills. Educational opportunities must be provided for interpreters from all skill levels from novice to advanced, and the skill level of the training must be clearly identified. All training activities must involve cooperative efforts with consumers, consumer organizations, community resources, and service providers, especially VR agencies, VR State coordinators for the deaf, and rehabilitation counselors for the deaf. Delivery of educational opportunities may not be limited to traditional methods. Distance technologies and delivery, use of teams of deaf and hearing presenters, assignment of mentors, immersion experiences, intensive institutes, and other innovative practices must be used.

A Regional Interpreter Education Center funded under this priority also must do the following:

(a) Develop formal relationships with Local Partner Networks as defined in this notice.

(b) In collaboration with the National Center, Local Partner Networks, and consumers, implement effective practices in interpreter education.

(c) In collaboration with the National Center, Local Partner Networks, and consumers, implement the "Program Quality Indicators" for this program.

(d) Coordinate with existing interpreter training programs to identify and conduct outreach activities with recent and new graduates in order to provide training, including mentoring, to make them work-ready.

(e) In collaboration with the National Center, Local Partner Networks, and consumers, provide skill-based, context-based, and knowledge-based interpreter education activities of significant scope and sequence to interpreters in the identified region. Products developed by the National Center must be incorporated into the educational activities to the greatest extent appropriate. Educational opportunities must include, but not be limited to—

(1) Educating deaf individuals and practicing deaf and hearing interpreters to serve as mentors and provide mentoring to novice and working interpreters who need additional feedback and experience to become qualified;

(2) Addressing the various linguistic and cultural preferences within the deaf, hard of hearing, and deaf-blind communities through strands of specialized interpreter education;

(3) Focusing on interpreting in specialized environments such as rehabilitation, legal, medical, mental health, or multicultural environments, working with specific populations such as deaf-blind, oral, trilingual (including those who are fluent in spoken English and spoken Spanish along with both American Sign Language and Mexican Sign Language or other sign languages used by Spanish-speaking communities), or cued speech users, and improving specific skill sets such as sign-to-voice interpreting, team interpreting, sight translation, or ethical decisionmaking and professionalism;

(4) Developing interpretation and transliteration competencies for interpreters working with deaf, hard of hearing, and deaf-blind individuals with differing modes of communication, including, but not limited to, the use of language immersion experiences in American Sign Language, Conceptually Accurate Signed English, oral communication, tactile communication, and cued speech;

(5) Using state-of-the-art technologies for training on how to deliver interpreter services from remote locations and in handling various technologies during interpreter assignments (e.g., microphones, assistive listening devices, cameras, lights, etc.); and

(6) Educating consumers on skills related to self-advocacy and working effectively with interpreters.

(f) In collaboration with the National Center, Local Partner Networks, and consumers, implement and deliver the specific educational activities identified in the education needs assessments.

(g) Provide information to the National Center for the purpose of promoting the educational activities of the National Center.

(h) Provide qualitative and quantitative data on the educational activities conducted, pre- and post-assessments, portfolios produced, participant demographics, and other pertinent information to the National Center for the purpose of evaluating program effectiveness.

(i) Coordinate and collaborate with the other Regional Interpreter Education Centers funded by RSA and funded through this priority.

(j) Set aside 10 percent of the project's annual budget submitted to RSA to cover the costs of specific collaborative activities between the National Center and the Regional Interpreter Education

Center or Centers including, but not limited to, travel, communications, materials development, Web site development, and other collaborative efforts.

Fourth and Fifth Years of Project:

In deciding whether to continue a project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC, during the first half of the project's third year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the award have been or are being met by the project.

(c) Evidence of the degree to which the project's activities have contributed to changed practices and improved quality of interpreters.

(d) Evidence of the degree to which the project's activities have served each State within its designated geographic region.

Priority 3—Programs Offering at Least a Bachelor's Degree in Interpreter Education

Within the existing priority from 34 CFR 396.33, we are establishing a priority to support applications from postsecondary institutions that offer and have awarded at least a bachelor's degree in interpreter education.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Applicable Program Regulations: 34 CFR parts 385 and 396.

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(Catalog of Federal Domestic Assistance Number 84.160 Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind)

Program Authority: 29 U.S.C. 772(f).

Dated: July 28, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–15252 Filed 8–2–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.160A and 84.160B.

Dates: Applications Available: August 3, 2005.

Deadline for Transmittal of Applications: September 2, 2005.

Deadline for Intergovernmental Review: September 12, 2005.

Eligible Applicants: Public and private nonprofit agencies and organizations, including institutions of higher education.

Estimated Available Funds: $2,100,000.

Estimated Range of Awards: Regional Interpreter Education Centers: $250,000 to $300,000; *National Interpreter Education Center:* $500,000 to $600,000.

Estimated Average Size of Awards: Regional Interpreter Education Centers: $275,000; *National Interpreter Education Center:* $550,000.

Maximum Award: Regional Interpreter Education Centers: We will reject any application that proposes a budget exceeding $300,000 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.**

National Interpreter Education Center: We will reject any application that proposes a budget exceeding $600,000 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.**

Estimated Number of Awards: Regional Interpreter Education Centers: 5. One project will be awarded in each of the U.S. Department of Education bi-regions as follows: Region I and Region II, Region III and Region IV, Region V and Region VII, Region VI and Region VIII, and Region IX and Region X.

National Interpreter Education Center: 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: This program provides grants to eligible entities to establish interpreter training programs or to assist ongoing training programs to train a sufficient number of qualified interpreters in order to meet the communications needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind.

Priorities: For these competitions, there are three priorities from the notice of final priorities and definitions for this program, published elsewhere in this issue of the **Federal Register.** Also, in accordance with 34 CFR 75.105(b)(2)(ii), there is a priority from the regulations for this program (34 CFR 396.33).

Absolute Priorities: For FY 2005 priorities 1 and 2 are absolute priorities. For the National Interpreter Education Center, under 34 CFR 75.105(c)(3) we consider only applications that meet Priority 1 from the notice of final priorities and definitions. For the Regional Interpreter Education Center or Centers, under 34 CFR 75.105(c)(3) we consider only applications that meet Priority 2 from the notice of final priorities and definitions. For both competitions, the following priority from the regulations (34 CFR 396.33) applies:

The Secretary, in making awards under this program, gives priority to public or private nonprofit agencies or organizations with existing programs that have demonstrated their capacity for providing interpreter training services.

Competitive Preference Priority: Within the absolute priority in 34 CFR

396.33, for FY 2005 we are designating Priority 3 from the notice of final priorities and definitions as a competitive preference priority. Under 34 CFR 75.105(c)(2)(ii), we give preference to an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority.

Program Authority: 29 U.S.C. 772(f).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) are in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, and 86. (b) The regulations in 34 CFR 385.32, 385.40, 385.44, 385.45, and 385.46. (c) The regulations in 34 CFR part 396. (d) The notice of final priorities and definitions for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,100,000.

Estimated Range of Awards: Regional Interpreter Education Centers: $250,000 to $300,000; *National Interpreter Education Center:* $500,000 to $600,000.

Estimated Average Size of Awards: Regional Interpreter Education Centers: $275,000; *National Interpreter Education Center:* $550,000.

Maximum Award: Regional Interpreter Education Centers: We will reject any application that proposes a budget exceeding $300,000 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**.

National Interpreter Education Center: We will reject any application that proposes a budget exceeding $600,000 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**.

Estimated Number of Awards: Regional Interpreter Education Centers: 5. One project will be awarded in each of the U.S. Department of Education bi-regions as follows: Region I and Region II (Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, U.S. Virgin Islands, and Vermont); Region III and Region IV (Alabama, Delaware, District of Columbia, Florida, Georgia, Kentucky, Maryland, Mississippi, North Carolina, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia); Region V and Region VII (Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin); Region VI and Region VIII (Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming); and Region IX and Region X (Alaska, American Samoa, Arizona, California, Commonwealth of Northern Mariana Islands, Guam, Hawaii, Idaho, Nevada, Oregon, and Washington).

National Interpreter Education Center: 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:* Public and private nonprofit agencies and organizations, including institutions of higher education.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

Note: Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. Indirect costs in excess of the eight percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA numbers 84.160A and 84.160B.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

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. We suggest you limit Part III to the equivalent of no more than 45 pages if you are submitting an application for the National Interpreter Education Center and 35 pages if you are submitting an application for the Regional Interpreter Education Centers, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

3. *Submission Dates and Times:*

Applications Available: August 3, 2005.

Deadline for Transmittal of Applications: September 2, 2005.

Applications for grants under these competitions may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: September 12, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under these competitions may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for these competitions after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Any narrative sections of your application must be attached as files in a .DOC (document), .RFT (rich text), or .PDF (Portable Document) format.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications By Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Numbers 84.160A and 84.160B), 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 Numbers 84.160A and 84.160B), 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 Numbers 84.160A and 84.160B), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.209, 34 CFR 75.210, and 34 CFR 396.31 and are listed in the application package.

2. *Review and Selection Process:* As required by 34 CFR 396.32, an additional factor we consider in selecting an application for an award under 84.160A for the Regional Interpreter Education Centers is the geographical location of the applicant that can best carry out the purposes of this program.

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 Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. The goal of the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program is to establish interpreter training programs or to assist ongoing training programs to train a sufficient number of qualified interpreters in order to meet the communications needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind.

As required by the priorities, grantees must develop and implement program quality indicators and measure their performance against these indicators. In addition, the Rehabilitation Services Administration (RSA) will use the following indicators for the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind National Interpreter Education Center project:

(a) The percentage of interpreter educators receiving educational opportunities (based on the model curriculum developed for interpreter educators under Grant Number H160C030001) from the National Center and who successfully completed those opportunities as demonstrated through pre- and post-activity assessments, the development of portfolios, etc.

(b) The extent to which the educational activities and products for delivery through the five proposed Regional Interpreter Education Centers meet the clear, measurable goals that the grantee is required to establish.

(c) A listing of organizations and individuals that received information related to the activities of this project and the Regional Interpreter Education Center projects.

(d) The degree to which the project's activities have contributed to changed practices and improved the quality of interpreters.

RSA will use the following indicators for each of the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind Regional Interpreter Education Center projects:

(a) A listing of all formal relationships with Local Partner Networks across the region.

(b) The percentage of interpreters at all skill levels receiving educational opportunities by the Regional Interpreter Education Center who successfully completed those opportunities as demonstrated through pre- and post-activity assessments, the development of portfolios, the completion of mentoring goals, the attainment of interpreter certification, etc.

(c) The degree to which the project's activities have contributed to changed practices and improved the quality of interpreters.

(d) The degree to which the project's activities have served each State within its designated geographic region.

Each grantee must report annually to RSA on these indicators through their annual performance report.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Annette Reichman, U.S. Department of Education, 400 Maryland Avenue, SW., room 5032, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7489 or by e-mail: *Annette.Reichman@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call (202) 205–8352.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

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Dated: July 28, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–15253 Filed 8–2–05; 8:45 am]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 3, 2005

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Agricultural Marketing Service

Cherries (sweet) grown in—
- Washington; published 8-2-05

Irish potatoes grown in—
- Washington; published 8-2-05

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Air quality implementation plans; approval and promulgation; various States:
- Northern Mariana Islands; published 8-3-05

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Acetic acid; published 8-3-05
- Alachlor, etc.; published 8-3-05
- Dichlorodifluoromethane, etc.; published 8-3-05

Solid waste:
- Land disposal restrictions—
  - Chemical Waste Management, Chemical Services, LLC; selenium waste site-specific treatment standard variance; published 8-3-05

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- Various States; published 8-3-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:
- Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:
- Fruits and vegetables; irradiation treatment; comments due by 8-9-05; published 6-10-05 [FR 05-11460]

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Reports and guidance documents; availability, etc.:
- National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

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National Oceanic and Atmospheric Administration

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- Threatened status determinations—
  - Elkhorn coral and staghorn coral; comments due by 8-8-05; published 5-9-05 [FR 05-09222]

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- Alaska; fisheries of Exclusive Economic Zone—
  - Yellowfin sole; comments due by 8-9-05; published 7-28-05 [FR 05-14950]
- Northeastern United States fisheries—
  - Atlantic bluefish and summer flounder; comments due by 8-10-05; published 7-26-05 [FR 05-14725]
- West Coast States and Western Pacific fisheries—
  - Hawaii pelagic longline fisheries; seabird incidental catch reduction measures; comments due by 8-12-05; published 7-13-05 [FR 05-13691]
  - Western Pacific bottomfish; comments due by 8-12-05; published 7-13-05 [FR 05-13796]

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- Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

Federal Acquisition Regulation (FAR):
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- Noncommercial modifications of commercial items; submission of cost or pricing data; comments due by 8-8-05; published 6-8-05 [FR 05-11188]

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  - Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

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ENERGY DEPARTMENT

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- Test procedures and efficiency standards—
  - Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

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- Virginia; comments due by 8-11-05; published 7-12-05 [FR 05-13699]

Air programs; State authority delegations:
- Arizona and Nevada; comments due by 8-8-05; published 7-8-05 [FR 05-13484]

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S. 544/P.L. 109–41

Patient Safety and Quality Improvement Act of 2005 (July 29, 2005; 119 Stat. 424)

H.R. 3512/P.L. 109–42

Surface Transportation Extension Act of 2005, Part VI (July 30, 2005; 119 Stat. 435)

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