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9–19–05 Monday
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

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: Thursday, September 22, 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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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
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Monday, September 19, 2005

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Docket No. FV05–922–1 FIR]

Apricots Grown in Designated Counties in Washington; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the Washington Apricot Marketing Committee (Committee) for the 2005–2006 and subsequent fiscal periods from $2.50 per ton to $1.00 per ton of fresh apricots handled. The Committee locally administers the marketing order which regulates the handling of apricots grown in designated counties in Washington. Assessments upon apricot handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period began April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: October 19, 2005.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Portland, Oregon; Telephone: (503) 326–2724; Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938; or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 922 (7 CFR 922) regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, handlers in designated counties in Washington are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Washington apricots beginning April 1, 2005, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that decreased the assessment rate established for the Committee for the 2005–2006 and subsequent fiscal periods from $2.50 per ton to $1.00 per ton of fresh Washington apricots handled under the order.

The order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Washington apricots. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2004–2005 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of $2.50 per ton of apricots handled. This assessment rate would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 10, 2005, and unanimousiy recommended 2005–2006 expenditures of $10,594—the same as approved for the 2004–2005 fiscal period—and a decreased assessment rate of $1.00 per ton of apricots handled. The $1.00 assessment rate is $1.50 lower than the rate approved for the 2004–2005 and subsequent fiscal periods. Based on the Committee's 2005–2006 crop estimate of 3,800 tons, assessment income should approximate $3,800. The Committee recommended the lower assessment rate after taking into account the potential economic impact the anticipated crop shortfall might have on the apricot industry, and also to reduce the Committee's authorized monetary reserve to a level commensurate with program requirements. The anticipated $3,800 assessment revenue, when combined with $6,794 from the monetary reserve, is adequate to cover budgeted expenses for the 2005–2006 fiscal period. By drawing funds from the

reserve ($13,962 on April 1, 2005), the Committee estimates that by the end of the current fiscal period the reserve will approximate $7,168. This amount is within the maximum permitted by the order of approximately one fiscal period's operational expenses (§ 922.42).

The major expenditures recommended by the Committee for the 2005–2006 fiscal period include staff salaries ($5,892), rent and maintenance ($864), compliance ($100), and Committee travel and compensation ($1,000). These budgeted expenses are the same as those approved for the 2004–2005 fiscal period.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committees or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of the Committee's meetings are available from the Committee or USDA. The Committee's meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate the Committee's recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2005–2006 budget has been reviewed and approved by USDA, which will also review, and as appropriate, approve, budgets for subsequent fiscal periods.

Final 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 final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 272 apricot producers within the regulated production area and approximately 28 regulated handlers. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,000,000.

For the 2004 apricot season, Washington Agricultural Statistics Service reported that the total 6,400 ton apricot utilization sold for an average of $973 per ton. Based on the number of producers in the production area (272), the average annual producer revenue from the sale of apricots in 2004 can thus be estimated at approximately $22,894. In addition, based on information from the Committee and USDA's Market News Service, 2004 f.o.b. prices ranged from $14.50 to $18.50 per 24-pound loose-pack container, and from $18.00 to $24.00 for 2-layer tray pack containers. With about half of the 2004 season fresh apricot pack-out of 4,911 tons in loose-pack containers and about half in tray-pack containers (weighing an average of about 20 pounds each), each of the industry's 28 handlers would have averaged less than $225,000 from the sale of fresh apricots. Thus, the majority of producers and handlers of Washington apricots may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2005–2006 and subsequent fiscal periods from $2.50 to $1.00 per ton of fresh apricots handled. The Committee unanimously recommended 2005–2006 expenditures of $10,594. With the 2005–2006 crop estimate of 3,800 tons, the Committee anticipates assessment income of $3,800, which, when combined with $6,794 from the monetary reserve, will be adequate to cover budgeted expenses for the 2005–2006 fiscal period. At this assessment rate and expense level, the Committee's reserve fund will approximate $7,168 by March 30, 2006. This amount is within the maximum permitted by the order of approximately one fiscal period's operational expenses (§ 922.42).

The Committee discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the programs.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2005–2006 season could range from about $973 per ton to about $1,100 per ton for Washington apricots. Therefore, the estimated assessment revenue for the 2005–2006 fiscal period as a percentage of total producer revenue could range between 0.09 and 0.10 percent.

This action continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Washington apricot industry and all interested persons were invited to attend and participate in the Committee's deliberations on all issues. Like all marketing order committee meetings, the May 10, 2005, meeting was a public meeting and all entities, both large and small, were able to express views on the issues. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large Washington apricot handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on June 27, 2005, (70 FR 36812). Copies of that publication were mailed or distributed via facsimile to all Committee members and made available to handlers at the office of the Committee. The interim final rule was also made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period was provided for interested persons to respond to the interim final rule. No comments were received during the comment period that ended on August 26, 2005.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ama.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ Accordingly, the interim final rule amending 7 CFR part 922 which was published at 70 FR 36812 on June 27, 2005, is adopted as a final rule without change.

Dated: September 14, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–18584 Filed 9–16–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 300

RIN 1901–AB11

Guidelines for Voluntary Greenhouse Gas Reporting

AGENCY: Office of Policy and International Affairs, U.S. Department of Energy.

ACTION: Final rule; delay of effective date.

SUMMARY: The Department of Energy (DOE) published interim final General Guidelines for its Voluntary Reporting of Greenhouse Gases Program on March 24, 2005 (70 FR 15169), and published in the same issue of the **Federal Register** a notice of availability inviting public comment on draft Technical Guidelines needed to fully implement the revised Voluntary Reporting of Greenhouse Gases Program (70 FR 15164). DOE today is delaying the effective date of the guidelines to address the comments received by DOE in response to the March 24, 2005 **Federal Register** notice and to align the effective date with the likely availability of final reporting forms being developed by the Energy Information Administration.

DATES: The effective date of the rule establishing 10 CFR part 300 published in the **Federal Register** at 70 FR 15169 on March 24, 2005, is delayed until June 1, 2006.

FOR FURTHER INFORMATION CONTACT: Mark Friedrichs, PI–40, Office of Policy and International Affairs, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, or e-mail: *1605bguidelines.comments@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: As DOE explained in the notice of interim final rulemaking, the Technical Guidelines that supplement the General Guidelines will provide the specificity necessary for DOE to fully implement the greenhouse gas emissions inventory and emissions reduction elements of the voluntary reporting guidelines (70 FR 15171). DOE received a substantial number of written comments on the Interim Final General Guidelines and draft Technical Guidelines, and DOE expects to issue final General and Technical Guidelines by the end of 2005. At that time, the Energy Information Administration (EIA) will prepare reporting forms that conform to the Final General Guidelines and Final Technical Guidelines and begin developing the electronic reporting software necessary to implement the revised Program.

Because DOE does not expect to issue final guidelines until the end of the calendar year, and because the Office of Management and Budget (OMB) clearance process under the Paperwork Reduction Act for EIA's revised reporting forms will take at least 120 days following the issuance of the final guidelines, DOE is delaying the September 20, 2005 effective date of the rule published on March 24, 2005 until June 1, 2006. This delay in the effective date will allow EIA time to complete the development of revised reporting forms, including an opportunity for public review, after the final General and Technical Guidelines are issued at the end of 2005. Once EIA has completed the development of its planned electronic reporting system, approximately 9 to 12 months after the guidelines are finalized, reporting entities would be able to use it to report under the revised guidelines. Since it is unlikely that entities will be able to report under the revised guidelines by July 1, 2006, DOE will revise the General Guidelines to provide that entities may use DOE's October 1994 guidelines for reporting in calendar year 2006. Entities that wish to report their emissions and reductions for 2005, or prior years, using the revised guidelines will be able to do so during the normal 2007 reporting cycle.

Issued in Washington, DC, on September 13, 2005.

Karen A. Harbert,

Assistant Secretary, Policy and International Affairs.

[FR Doc. 05–18628 Filed 9–15–05; 9:21 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20944; Directorate Identifier 2003–NE–64–AD; Amendment 39–14247; AD 2005–18–01]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CT7–5, –7, and –9 Series Turboprop Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for General Electric Company (GE) CT7–5A2, –5A3, –7A, –7A1, –9B, –9B1, and –9B2 turboprop engines, with stage 2 turbine aft cooling plate, part number (P/N) 6064T07P01, 6064T07P02, 6064T07P05, or 6068T36P01 installed. This AD requires a onetime eddy current inspection (ECI) of certain P/N stage 2 turbine aft cooling plate boltholes. This AD results from reports of six stage 2 turbine aft cooling plates found cracked during inspection. We are issuing this AD to prevent stage 2 aft cooling plate separation, resulting in uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective October 24, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of October 24, 2005.

ADDRESSES: You can get the service information identified in this AD from General Electric Aircraft Engines CT7 Series Turboprop Engines, 1000 Western Ave., Lynn, MA 01910; telephone (781) 594–3140, fax (781) 594–4805.

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine

and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7148; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to GE CT7–5A2, –5A3, –7A, –7A1, –9B, –9B1, and –9B2 turboprop engines, with stage 2 turbine aft cooling plate, P/N 6064T07P01, 6064T07P02, 6064T07P05, or 6068T36P01 installed. We published the proposed AD in the **Federal Register** on April 15, 2005 (70 FR 19893). That action proposed to require a onetime ECI of certain P/N stage 2 turbine aft cooling plate boltholes.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the Document Management Facility receives them.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 1,240 GE CT7–5, –7, and –9 series turboprop engines of the affected design in the worldwide fleet. We estimate that 550 engines installed on airplanes of U.S. registry will be affected by this AD. We also estimate that it would take about one work hour per engine to perform the actions, and that the average labor rate is $65 per work hour. We estimate that 2.5% (or 14) of the 550 engines will require stage 2 turbine aft cooling plates being rejected by the onetime ECI. Required parts will cost about $17,000 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $270,700.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–18–01 General Electric Company: Amendment 39–14241. Docket No. FAA–2005–20944; Directorate Identifier. 2003–NE–64–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 24, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CT7–5A2, –5A3, –7A, –7A1, –93, –9B1, and –9B2 turboprop engines, with stage 2 turbine aft cooling plate, part number (P/N) 6064T07P01, 6064T07P02, 6064T07P05, or 6068T36P01 installed. These engines are installed on, but not limited to, Construcciones Aeronauticas, SA CN–235 series and SAAB Aircraft AB SF340 series airplanes.

Unsafe Condition

(d) This AD results from reports of six stage 2 turbine aft cooling plates found cracked during inspection. The actions specified in this AD are intended to prevent stage 2 aft cooling plate separation, resulting in uncontained engine failure and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed at the next engine or hot section module shop visit, but before accumulating an additional 6,000 cycles-in-service after the effective date of the AD, unless already done.

Onetime Eddy Current Inspection (ECI)

(f) Perform a onetime ECI of the stage 2 turbine aft cooling plate boltholes, using paragraph 3.B. of GE Alert Service Bulletin (ASB) No. CT7–TP S/B 72–A0464, Revision 2, dated May 9, 2003.

(g) Remove from service any stage 2 turbine aft cooling plate that does not pass the return to service criteria specified in paragraph 3.B.(2) of GE Alert Service Bulletin (ASB) No. CT7–TP S/B 72–A0464, Revision 2, dated May 9, 2003.

Previous Credit

(h) Previous credit is allowed for onetime ECIs of the stage 2 turbine aft cooling plate boltholes that were done using GE ASB No. CT7–TP S/B 72–A0464, dated February 25, 2003, or GE ASB No. CT7–TP S/B 72–A0464, Revision 1, dated March 12, 2003, before the effective date of this AD.

Definition of Engine or Hot Section Module Shop Visit

(i) For the purposes of this AD, an engine or hot section module shop visit is defined as the introduction of the engine or hot section module into a shop that includes separation of CT7 turboprop engine major case flanges.

Alternative Methods of Compliance

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

Related Information

(k) None.

Issued in Burlington, Massachusetts, on August 19, 2005.

Material Incorporated by Reference

(l) You must use GE Alert Service Bulletin (ASB) No. CT7–TP S/B 72–A0464, Revision 2, dated May 9, 2003, to perform the inspection required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact General Electric Aircraft Engines CT7 Series Turboprop Engines, 1000 Western Ave., Lynn, MA 01910; telephone (781) 594–3140, fax (781) 594–4805, for a copy of this service information. You may review copies at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001, on the Internet at *http://dms.dot.gov*, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Burlington, Massachusetts, on August 19, 2005.

Richard Noll,

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

[FR Doc. 05–17493 Filed 9–16–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2003–16091; Airspace Docket No. 03–AGL–12]

RIN 2120–AA66

Establishment of Domestic VOR Federal Airway V–19; OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Domestic Very High Frequency Omni-directional Range (VOR) Federal Airway V–19 northeast of the Cincinnati, OH, VOR/Tactical Air Navigation (VORTAC). The FAA is taking this action to reduce congestion on VOR Federal Airway V–5 between Columbus, OH, and Cincinnati, OH, and to enhance the management of aircraft operations over the Cincinnati, OH area.

EFFECTIVE DATE: 0901 UTC, December 22, 2005.

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

SUPPLEMENTARY INFORMATION:

Background

On December 9, 2003, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish V–19 northeast of the Cincinnati, OH, VORTAC to reduce congestion on V–5 between Columbus, OH, and Cincinnati, OH, and to enhance the management of aircraft operations over the Cincinnati, OH, area (68 FR 68576). Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal to the FAA. No comments were received in response to the proposal. With the exception of editorial changes, this amendment is the same as that proposed in the notice.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9N dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Federal airway listed in this document will be published subsequently in the order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR part 71) by establishing V–19 in the Cincinnati, OH, area. Specifically, this action establishes V–19 between Columbus, OH, and Cincinnati, OH, to the south of V–5 and to the north of the Buckeye Military Operations Area. The FAA is taking this action to reduce congestion on V–5 and to enhance the management of aircraft operations over the Cincinnati, OH, area.

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

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, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–19 (New)

From Cincinnati, OH; INT Cincinnati 063° and Appleton, OH, 229° radials; Appleton.

* * * * *

Issued in Washington, DC, on September 12, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–18502 Filed 9–16–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2005–22400; Airspace Docket No. 05–AWP–10]

RIN 2120–AA66

Amendment to Using Agency for Restricted Areas R–2510 A & B; El Centro, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the using agency of Restricted Areas R–2510A &

R–2510B, from "CO, Yuma MCAS, AZ." to "Commanding Officer, U.S. Navy Fleet Area Control and Surveillance Facility, San Diego, CA." The FAA is taking this action in response to a request from the United States Navy to reflect an administrative change of responsibility for the restricted areas. There are no changes to the boundaries; designated altitudes; time of designation; or activities conducted within the affected restricted areas.

EFFECTIVE DATE: 0901 UTC, December 22, 2005.

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

SUPPLEMENTARY INFORMATION:

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by changing the using agency of R–2510 A & B, El Centro, CA. On July 18, 2005, the U.S. Navy requested that the FAA change the using agency from "CO, Yuma MCAS, AZ," to "Commanding Officer, U.S. Navy Fleet Area Control and Surveillance Facility, San Diego, CA." This action addresses that request. This is an administrative change and does not affect the boundaries; designated altitudes; or activities conducted within the restricted areas. Therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Policies and Procedures for Considering Environmental Impacts. 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–2510A El Centro, CA [Amended]

By removing the words "Using agency. CO, Yuma MCAS, AZ," and inserting the words "Using agency. Commanding Officer, U.S. Navy Fleet Area Control and Surveillance Facility, San Diego, CA."

* * * * *

R–2210B El Centro, CA [Amended]

By removing the words "Using agency. CO, Yuma MCAS, AZ," and inserting the words "Using agency. Commanding Officer, U.S. Navy Fleet Area Control and Surveillance Facility, San Diego, CA."

* * * * *

Issued in Washington, DC, on September 12, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–18503 Filed 9–16–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–05–123]

RIN 1625–AA00

Safety Zone; Milwaukee River Challenge, Milwaukee River, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Milwaukee River, in Milwaukee, WI. This zone is intended to restrict vessels from a portion of the Milwaukee River in Milwaukee, WI during the Milwaukee River Challenge. This temporary safety zone is necessary to protect participants and spectators of the event from the hazards associated with vessel traffic on the Milwaukee River.

DATES: This rule is effective from 10 a.m. (local) on September 17, 2005 through 4:30 p.m. (local) on September 17, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–05–123] and are available for inspection or copying at U.S. Coast Guard Sector Lake Michigan, 2420 S. Lincoln Memorial Dr., Milwaukee, Wisconsin 53207 between 7 a.m. (local) and 3:30 p.m. (local), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Chief Harold Millsap, Prevention Department, Sector Lake Michigan, 2420 S. Lincoln Memorial Dr., Milwaukee, WI 53207, (414) 747–7160.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of participants and vessels during this event and immediate action is necessary to prevent possible

loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of the participants and spectators from hazards associated with vessel traffic on the Milwaukee River. Based on accidents that have occurred in other Captain of the Port zones and the hazards of vessel traffic during non-motorized boat races, the Captain of the Port Lake Michigan has determined boat races in close proximity to vessel traffic on the Milwaukee River pose a significant risk to public safety and property. Establishing a safety zone to control vessel movement around the location of the race will help ensure the safety of participants and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of participants and vessels during the race in conjunction with the Milwaukee River Challenge. The race will occur between 10 a.m. (local) and 4:30 p.m. (local) on September 17, 2005.

The safety zone for the race will encompass all waters of the Milwaukee River from North Water Street Bridge north to Humboldt Avenue Bridge. The Captain of the Port Lake Michigan, or his designated on-scene representative, has the authority to terminate the event.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transit, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This determination is based on the minimal time that vessels will be restricted from the zone and the zone is located in an area where the Coast Guard expects insignificant adverse impact to mariners from the zone's activation.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in a portion of the Milwaukee River in Milwaukee, WI, between 10 a.m. (local) and 4:30 p.m. (local) on September 17 2005.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will be in effect for only six and a half hours, on a portion of the Milwaukee River not significantly affecting commercial traffic. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Lake Michigan to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian

tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule fits the category from paragraph (34)(g) because it establishes a safety zone.

A preliminary "Environmental Analysis Check List" is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary section 165.T09–123 is added as follows:

§ 165.T09–123 Safety zone; Milwaukee River Challenge, Milwaukee River, Milwaukee, WI.

(a) Location: The following area is a temporary safety zone: All waters of the Milwaukee River from the North Water Street Bridge north to the Humboldt Avenue Bridge.

(b) Effective period. This regulation is effective from 10 a.m. (local) until 4:30 p.m. (local), on September 17, 2005.

(c) Enforcement Period. This zone will be enforced from 10 a.m. (local) until 4:30 p.m. (local), on September 17 2005.

(d) Regulations.

(1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Lake Michigan, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone shall comply with all directions given to them by the Captain of the Port Lake Michigan or his on-scene representative.

Dated: September 9, 2005.

S.P. LaRochelle,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. 05–18594 Filed 9–16–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R07–OAR–2005–MO–0003; FRL–7969–6]

Approval and Promulgation of Implementation Plans; State of Missouri; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: On July 13, 2005, EPA published a final rule approving revisions to the Missouri State Implementation Plan (SIP). In the July 13, 2005, rule, EPA inadvertently included an incorrect state effective date for the Missouri statewide NO_X rule. The purpose of this action is to correct the state effective date to August 30, 2003.

DATES: This action is effective September 19, 2005.

FOR FURTHER INFORMATION CONTACT: Michael Jay at (913) 551–7460, or by e-mail at *jay.michael@epa.gov*.

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

On July 13, 2005 (70 FR 40193), EPA published a final rule approving a SIP revision for Missouri that included a revision to the statewide NO_X rule, 10 CSR 10–6.350 "Emissions Limitations and Emissions Trading of Oxides of Nitrogen." The purpose of the rule is to reduce the state's contribution to the St. Louis 8-hour ozone nonattainment area. The July 13, 2005, rule inadvertently included an incorrect state effective date for the statewide NO_X rule of June 23, 2003. Today's action is necessary to correct the state effective date to August 30, 2003.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B),

provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is such good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting our identification of the effective date of a state rule. The correction has no effect on the state rule. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

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). Because the agency has made a good cause finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely corrects an incorrect state effective date in a previous action, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

For the same reason, 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). This 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 Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely corrects an incorrect state effective date in a previous action in 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 (CAA). 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, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have 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 CAA. 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 (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. As stated previously, we made such a good cause finding, including the reasons therefore and established an effective date of September 19, 2005. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction to the Missouri SIP table is not a "major rule" as defined by 5 U.S.C. 804 *et seq* (2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 8, 2005.

William Rice,

Acting Regional Administrator, Region 7.

■ 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 AA—Missouri

■ 2. In " 52.1320(c) the table is amended under Chapter 6 by revising the entry for rule A10–6.350" to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
	Missouri Department of Natural Resources			
	. . . . .			
	Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri			
	. . . . .			
10–6.350	Emissions Limitations and Emissions Trading of Oxides of Nitrogen.	08/30/03	09/19/05 [insert FR page number where the document begins].	

EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
*	*	*	*	*

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[FR Doc. 05–18427 Filed 9–16–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2005–MN–0002; FRL–7969–7]

Approval and Promulgation of Implementation Plan; MN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving State Implementation Plan (SIP) revisions to the sulfur dioxide (SO_2) requirements for Flint Hills Resources, L.P. (Flint Hills) of Dakota County, Minnesota. Flint Hills operates a petroleum refinery in Rosemont, Minnesota. The requested revision will allow the refinery to begin producing ultra low sulfur diesel fuel. This expansion will add five sources and will increase SO_2 emissions. An analysis was conducted on the new sources. The analysis indicates that the air quality of Dakota County, Minnesota will remain in compliance with the National Ambient Air Quality Standards (NAAQS) for SO_2. Thus, the public health and welfare in Minnesota will be protected.

DATES: This final rule is effective on October 19, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) Docket ID No. R05–OAR–2005–MN–0002. All documents in the docket are listed in the RME index at *http://docket.epa.gov/rmepub/*, once in the system, select "quick search," then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office.

This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply To Me?

This action applies to a single source, Flint Hills Resources, L.P. of Dakota County, Minnesota.

B. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file for this action that is available both electronically and in hard copy form at the Regional office. The electronic public rulemaking file can be found under RME ID No. R05–OAR–2005–MN–0002. The official public file 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 rulemaking file does not include CBI or other information whose disclosure is restricted by statute. The hard copy version of the official public rulemaking file is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

II. Background

Minnesota submitted a request to revise its SO_2 State Implementation Plan (SIP) on June 17, 2004. The revision allows Flint Hills to install new equipment at a new production line. EPA published a proposed and a direct final rule to approve the requested revisions in the July 1, 2005 **Federal Register** (70 FR 38025–28, 38071–73). EPA received adverse comment from the Leech Lake Band of Ojibwe. The Band is concerned about the increase in SO_2 emissions from the Flint Hills facility. EPA published a withdrawal of the direct final rule in the August 24, 2005 **Federal Register** (70 FR 49498–99) since an adverse comment was received.

III. What Is the EPA Approving?

EPA is approving revisions to the Minnesota SO_2 SIP for the Flint Hills refinery. Flint Hills is installing equipment to begin producing ultra low sulfur diesel fuel. It is adding a Hydrocracker Charge Heater (unit 29H–1), a Hydrocracker Fractionator Heater (29H–2), a charge heater for the #4 Hydrogen Plant (30H–1), an emergency diesel generator (EE–29–401), and an emergency diesel powered cooling water pump (81P 450) to its refinery.

IV. What Is the EPA's Analysis of the Requested Revisions?

Flint Hills conducted air dispersion modeling to assess the effect of its proposed new equipment and operating plan on ambient air quality. The modelers used the ISCST3 dispersion model in the regulatory default mode, with five years of meteorological data from the Minneapolis-St. Paul International Airport. The SO_2 emissions from other nearby companies were included. When the modeling was performed, Flint Hills had not finalized the locations of the new boilers and heaters. It modeled the new sources concurrently at three potential locations, with each source at its full emission rate. The modeled results are more conservative because of this

multiple counting. Flint Hills' proposed revisions include an option of reducing the firing duty of some existing heaters and boilers. To conservatively account for this possibility, the modeling included those boilers and heaters at their current SO_2 emission rates, but at reduced stack exit velocities representative of their new usage scenario. This rulemaking action concerns only the new sources for producing ultra-low sulfur diesel. The modeling also includes the impacts from portable diesel equipment. The sulfur dioxide emissions from these sources were combined and modeled as from an representative average engine located near the facility fence line, where previous modeling analyses had shown high ambient impacts to occur. This also should produce a conservative result. The final results of the Flint Hills modeling, including background SO_2 concentrations, were below the 3-hour, 24-hour, and annual SO_2 NAAQS. The maximum predicted SO_2 concentrations, the modeled plus background concentrations, are 242 $\mu g/m^3$ compared to the 365 $\mu g/m^3$ 24-hour primary standard and 45 $\mu g/m^3$ compared to the 80 $\mu g/m^3$ annual primary standard. The maximum predicted 3-hour SO_2 concentration of 688 $\mu g/m^3$ is below the secondary standard of 1300 $\mu g/m^3$. The primary standards protect public health and the secondary standard guards the public welfare including protection of wildlife and vegetation.

V. What Are the EPA's Responses to the Comments?

The Leech Lake Band of Ojibwe expressed several concerns about the revisions at the Flint Hills facility. The first concern is the transport of emissions to the Leech Lake Reservation airshed. The Band is also concerned about the 125.7 TPY increase in SO_2 emissions and its effect on acid rain and vegetation damage. Further concern was raised about the uncertainty of the exact locations of the units within the Flint Hills facility in the modeling analysis.

The distance from Flint Hills to the Leech Lake Reservation air shed is beyond the limits of the modeling analysis, so the specific impact cannot be quantified. The modeled SO_2 concentrations were highest at the fenceline of the Flint Hills facility. The fenceline SO_2 concentrations are below the NAAQS. The SO_2 plume will disperse as it moves away from its source, resulting in lower concentrations further away from the facility. Therefore, any impact on the Leech Lake Reservation airshed is not expected to threaten the public health or welfare of area residents.

The analysis of the Flint Hills revisions show that concentrations near the facility will remain below the primary and secondary SO_2 NAAQS. Therefore, public health and public welfare including vegetation in Dakota County and rest of Minnesota are expected to be protected. EPA's Acid Rain Program guards against increases in acidified precipitation. The Program covers power plants and other facilities that emit SO_2. It has achieved a 38% reduction in SO_2 emissions from 1980 emissions level. This has led to a 45% reduction in ambient SO_2 levels from 1989–91 to 2001–03. Wet sulfate deposition, which can acidify lakes, streams, and soil, has dropped 36% over the same period.

The new sources were modeled at different locations because at the time the modeling analysis was done the company had not made its final decision on the layout of the new ultra low sulfur diesel production area. The sources were modeled at three different potential locations concurrently. The SO_2 concentrations predicted by the modeling analysis for these sources exceed the actual impact because each new source counted three times. The actual SO_2 emissions will be lower than what was modeled. The model results showed that this revision is anticipated to protect air quality because SO_2 concentration are below the NAAQS.

VI. What Action Is EPA Taking Today?

EPA is approving revisions to the Minnesota sulfur dioxide SIP for the Flint Hills refinery. Flint Hills is adding equipment to begin producing ultra low sulfur diesel fuel. The five new emission sources will cause an increase in SO_2 emissions from the refinery. Flint Hills conducted air dispersion modeling to gauge the impact of the new sources on ambient air quality. The modeling analysis shows that the SO_2 concentrations will remain below the NAAQS.

VII. Statutory and Executive Order Review

Executive Order 12866: Regulatory Planning and Review

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.

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

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," 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).

Regulatory Flexibility Act

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.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (*65 FR 67249*, November 9, 2000).

Executive Order 13132: Federalism

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.

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

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.

National Technology Transfer Advancement Act

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.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 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 November 18, 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, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 7, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart Y—Minnesota

■ 2. In § 52.1220 the table in paragraph (d) is amended by revising the entry for "Flint Hills Resources, L.P." to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED MINNESOTA SOURCE-SPECIFIC PERMITS

Name of source	Permit No.	State effective date	EPA approval date	Comments
Flint Hills Resources, L.P. (formerly Koch Petroleum).		06/14/04	06/05/03, 68 FR 33631	Amendment Seven to Findings and Order

* * * * *

[FR Doc. 05–18426 Filed 9–16–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7780]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities that are participating and suspended from the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of properties located in the communities listed below.

EFFECTIVE DATES: The effective date for each community is listed in the fourth column of the following tables.

ADDRESSES: Flood insurance policies for properties located in the communities listed below can be obtained from any licensed property insurance agent or broker serving the eligible community or from the NFIP by calling 1–800–638–6620.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Mitigation Division, 500 C Street SW, Room 412, Washington, DC 20472, (202) 646–2878.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance that is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Because the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for properties in these communities.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 202 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4016(a), requires the purchase of flood insurance as a condition of Federal or Federally-related financial assistance for acquisition or construction of buildings in the SFHAs shown on the map.

The Administrator finds that delayed effective dates would be contrary to the public interest and that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR Part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

■ The tables published under the authority of § 64.6 are amended as follows:

State	Location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles: Emergency Program				
Missouri	Hallsville, City of, Boone County.	290712	Apr. 6, 2005	Never Mapped.
Arkansas	Leola, City of, Grant County	050261	Apr. 8, 2005	None (FHBM rescinded).
*Do	Polk County, Unincorporated Areas.	050473	.....do	Oct. 18, 1977.
Do	Pope County Unincorporated Areas.	050458	.....do	FHBM dated Dec. 20, 1977.
Missouri	Lake Ozark, City of, Camden County.	290698	Apr. 15, 2005	FHBM dated July 26, 1977.
Iowa	Ryan, City of, Delaware County.	190801	Apr. 26, 2005	FHBM dated Mar. 26, 1976.
Minnesota	Alden, City of, Freeborn County.	275330	May 3, 2005	Never Mapped.
Kansas	Republic County Unincorporated Areas.	200286	May 5, 2005	Do.
Montana	Wolf Point, City of, Roosevelt County.	300068	.....do	Do.
Maine	Burlington, Town of, Penobscot County.	230374	May 6, 2005	FHBM dated Feb. 7, 1975.
Missouri	Wardsville, Village of, Cole County.	290633	May 9, 2005	Never Mapped.
Alaska	Northwest Arctic Borough	02C121	May 17, 2005	Do.
Alabama	Millry, Town of, Washington County.	010207	May 18, 2005	FHBM dated Dec. 15, 1978.
New Hampshire	Madison, Town of, Carroll County.	330220	May 19, 2005	FMBM dated Nov. 29, 1977.
Alabama	Belk, Town of, Fayette County	010083	.....do	FHBM dated Jan. 2, 1976.
North Carolina	Ansonville, Town of, Brunswick County.	370541	.....do	Never Mapped.
Do	Bolivia, Town of, Brunswick County.	370394	.....do	FHBM dated June 10, 1977.
Do	Navassa, Town of, Brunswick County.	370593	.....do	Never Mapped.

State	Location	Community No.	Effective date of eligibility	Current effective map date
Alabama	Henagar, Town of, DeKalb County.	010357	June 6, 2005	FHBM dated Mar. 12, 1976; Annexed areas on DeKalb County FHBM panel 0002A, dated Apr. 28, 1978.
Do	Pine Hill, Town of, Wilcox County.	010397	.....do	FHBM dated Nov. 17, 1978; Annexed areas on Wilcox County FHBM panel 0005A, dated May 1, 1987.
Do	Powell, Town of, DeKalb County.	010398	.....do	FHBM dated Oct. 26, 1979; Annexed areas on DeKalb County FHBM panel 0005A, dated Apr. 28, 1978.
Nebraska	Boyd County, Unincorporated Areas.	310417	June 9, 2005	Never Mapped.
Indiana	Sullivan County, Unincorporated Areas.	180410	June 10, 2005	FHBM dated Mar. 23, 1979.
Arkansas	Johnson County, Unincorporated Areas.	050441	June 28, 2005	Aug. 2, 1977.
New Eligibles: Regular Program				
Colorado	Lone Tree, City of, Douglas County.	080319	Apr. 8, 2005	Use Douglas County (CID 080049) FIRM panels 0050C and 0065C, dated Sept. 30, 1987.
Massachusetts	**Tyringham, Town of, Berkshire County.	250043	May 1, 2005	FHBM dated Nov. 29, 1974, converted to FIRM by letter May 1, 2005.
Georgia	**Tattnall County, Unincorporated Areas.	130471	.....do	FHBM dated Aug. 18, 1978, converted to FIRM by letter May 1, 2005.
Missouri	**Amazonia, City of, Andrew County.	290005	.....do	FHBM dated Aug. 16, 1974, converted to FIRM by letter May 1, 2005.
Wisconsin	Hobart, Village of, Brown County.	550626	May 3, 2005	Use Brown County (CID 550020) FIRM panels 0075B and 0125B, dated Feb. 19, 1982.
North Carolina	Fountain, Town of, Pitt County	370631	May 18, 2005	Nov. 3, 2004.
Do	Trinity, City of, Randolph County.	370195	.....do	July 16, 1981.
South Carolina	St. Stephens, Town of, Berkeley County.	450265	.....do	Oct. 16, 2003.
Florida	Lake Helen, City of, Volusia County.	120674	May 19, 2005	Apr. 15, 2005.
Tennessee	Westmoreland, Town of, Sumner County.	470415	.....do	Nov. 21, 2002.
Florida	Trenton, City of, Gilchrist County.	120354	May 27, 2005	All Zone C and X, no published FIRM.
Georgia	**Blairsville, Town of, Union County.	130179	June 1, 2005	FHBM dated June 11, 1976, converted to FIRM by letter June 1, 2005.
Do	**Grayson, City of, Gwinnett County.	130325	.....do	FHBM dated July 11, 1975, converted to FIRM by letter June 1, 2005.
Do	**Guyton, Town of, Effingham County.	130456	.....do	FHBM dated July 1, 1977, converted to FIRM by letter June 1, 2005.
Tennessee	**Adams, City of, Robertson County.	470159	.....do	FHBM dated Nov. 15, 1974, converted to FIRM by letter June 1, 2005.
Do	**Ardmore, Town of, Giles County and Lincoln County.	470293	.....do	FHBM dated Dec. 17, 1976. Converted to FIRM by Letter June 1, 2005.
Do	**Bedford County, Unincorporated Areas.	470006	.....do	FHBM dated Dec. 23, 1977, converted to FIRM by letter June 1, 2005.
Do	**Coffee County, Unincorporated Areas.	470355	.....do	FHBM dated Aug. 5, 1977, converted to FIRM by letter June 1, 2005.
Do	**Lewis County, Unincorporated Areas.	470103	.....do	FHBM dated Feb. 9, 1979, converted to FIRM by letter June 1, 2005.

State	Location	Community No.	Effective date of eligibility	Current effective map date
Do	**Perry County, Unincorporated Areas.	470144	.....do	FHBM dated Dec. 22, 1978, converted to FIRM by letter June 1, 2005.
Do	**Wayne County, Unincorporated Areas.	470199	.....do	FHBM dated Mar. 16, 1979, converted to FIRM by letter June 1, 2005.
Louisiana	**Hornbeck, Village of, Vernon Parish.	220332	.....do	FHBM dated Aug. 15, 1975, converted to FIRM by letter June 1, 2005.
Texas	Niederwald, City of, Hays County.	481670	June 10, 2005	Feb. 18, 1998.
North Carolina	Pine Level, Town of, Johnston County.	370505	June 22, 1005	NSFHA.
Do	Yadkin County, Unincorporated Areas.	370400	.....do	May 15, 1991.
Virginia	Alberta, Town of, Brunswick County.	510260	June 30, 2005	FHBM dated Feb. 25, 1977, and Brunswick County (CID 510236) FIRM panel 0075B, dated Feb. 6, 1991.
	Reinstatements			
Arkansas	St. Francis County, Unincorporated Areas.	050184	Apr. 11, 2005	Feb. 18, 2005.
Pennsylvania	Caernarvon, Township of, Lancaster County.	421763	Apr. 21, 2005	Apr. 19, 2005.
Do	Clay, Township of, Lancaster County.	421764	.....do	Do.
Do	Columbia, Borough of, Lancaster County.	420543	.....do	Do.
Do	East Drumore, Township of, Lancaster County.	421769	.....do	Do.
Do	Lancaster, Township of, Lancaster County.	420553	.....do	Do.
Do	Lititz, Borough of, Lancaster County.	420554	.....do	Do.
Do	Marietta, Borough of, Lancaster County.	420558	.....do	Do.
Do	West Lampeter, Township of, Lancaster County.	420566	.....do	Do.
Do	Conestoga, Township of, Lancaster County.	420544	Apr. 25, 2005	Do.
Do	Conoy, Township of, Lancaster County.	420545	.....do	Do.
Do	East Donegal, Township of, Lancaster County.	421768	.....do	Do.
Do	East Earl, Township of, Lancaster County.	421770	.....do	Do.
Do	East Petersburg, Borough of, Lancaster County.	420549	.....do	Do.
Do	West Cocalico, Township of, Lancaster County.	421787	.....do	Do.
Do	West Donegal, Township of, Lancaster County.	421788	.....do	Do.
Wisconsin	Maiden Rock, Village of, Pierce County.	550327	.....do	FIRM panel 0001C, dated Jan. 19, 1994, and Pierce County (CID 555571) FIRM panel 0200C, dated Sept. 2, 1994.
Pennsylvania	Manheim, Borough of, Lancaster County.	420555	May 9, 2005	Apr. 19, 2005.
Wisconsin	Balsam Lake, Village of, Polk County.	550333	.....do	July 1, 1988.
Louisiana	Catahoula Parish, Unincorporated Areas.	220047	June 9, 2005	Apr. 19, 2005.
Alabama	Beaverton, Town of, Lamar County.	010134	June 10, 2005	July 3, 1986.
Do	Detroit, Town of, Lamar County.	010135	.....do	June 1, 1987.
Pennsylvania	Eden, Township of, Lancaster County.	421772	June 24, 2005	Apr. 19, 2005.

State	Location	Community No.	Effective date of eligibility	Current effective map date
Do	Manheim, Township of, Lancaster County. None.	420556	.....do	Do.
		Withdrawals Suspensions		
Pennsylvania	Caernarvon, Borough of, Lancaster County.	421763	Apr. 29, 1975 Emerg., May 19, 1981 Reg., Apr. 20, 2005 Susp.	Apr. 19, 2005.
Do	Clay, Township of, Lancaster County.	421764	Apr. 29, 1975 Emerg., Dec. 16, 1980 Reg., Apr. 20, 2005 Susp.	Do.
Do	Colerain, Township of, Lancaster County.	421765	Sept. 17, 1975 Emerg., Jan. 16, 1981 Reg., Apr. 20, 2005 Susp.	Do.
Do	Columbia, Borough of, Lancaster County.	420543	Mar. 9, 1973 Emerg., Jan. 6, 1982 Reg., Apr. 20, 2005 Susp.	Do.
Do	Conestoga, Township of, Lancaster County.	420544	Apr. 24, 1973 Emerg., Mar. 18, 1980 Reg., Apr. 20, 2005 Susp.	Do.
Do	Conoy, Township of, Lancaster County.	420545	July 6, 1973 Emerg., June 4, 1980 Reg., Apr. 20, 2005 Susp.	Do.
Do	East Donegal, Township of, Lancaster County.	421768	Aug. 30, 1974 Emerg., Jan. 16, 1980 Reg., Apr. 20, 2005 Susp.	Do.
Do	East Drumore, Township of, Lancaster County.	421769	Aug. 27, 1975 Emerg., Apr. 15, 1981 Reg., Apr. 20, 2005 Susp.	Do.
Do	East Earl, Township of, Lancaster County.	421770	Oct. 18, 1974 Emerg., Sept. 4, 1987 Reg., Apr. 20, 2005 Susp.	Do.
Do	East Petersburg, Borough of, Lancaster County.	420549	Sept. 27, 1974 Emerg., Sept. 5, 1979 Reg., Apr. 20, 2005 Susp.	Do.
Do	Eden, Township of, Lancaster County.	421772	July 7, 1980 Emerg., Dec. 16, 1980 Reg., Apr. 20, 2005 Susp.	Do.
Do	Lancaster, Township of, Lancaster County.	420553	Mar. 9, 1973 Emerg., Dec. 18, 1979 Reg., Apr. 20, 2005 Susp.	Do.
Do	Lititz, Borough of, Lancaster County.	420554	Oct. 6, 1972 Emerg., Oct. 15, 1980 Reg., Apr. 20, 2005 Susp.	Do.
Do	Manheim, Borough of, Lancaster County.	420555	Apr. 19, 1973 Emerg., Mar. 2, 1983 Reg., Apr. 20, 2005 Susp.	Do.
Do	Manheim, Township of, Lancaster County.	420556	July 5, 1973 Emerg., Aug. 15, 1979 Reg., Apr. 20, 2005 Susp.	Do.
Do	Manor, Township of, Lancaster County.	420557	Apr. 19, 1973 Emerg., Mar. 18, 1980 Reg., Apr. 20, 2005 Susp.	Do.
Do	Marietta, Borough of, Lancaster County.	420558	July 5, 1973 Emerg., Feb. 1, 1980 Reg., Apr. 20, 2005 Susp.	Do.
Do	West Cocalico, Township of, Lancaster County.	421787	Aug. 5, 1974 Emerg., Apr. 15, 1981 Reg., Apr. 20, 2005 Susp.	Do.
Do	West Donegal, Township of, Lancaster County.	421788	June 5, 1975 Emerg., July 16, 1981 Reg., Apr. 20, 2005 Susp.	Do.
Do	West Lampeter, Township of, Lancaster County.	420566	July 9, 1973 Emerg., Jan. 2, 1981 Reg., Apr. 20, 2005 Susp.	Do.
New Hampshire	Middleton, Town of, Strafford County.	330222	October 30, Emerg., Aug. 1, 1988 Reg., May 18, 2005.	May 17, 2005.
		Probation		
Indiana	Patriot, Town of, Switzerland County.	180309	June 30, 2005, Probation Renewed.	Dec. 4, 1979

State	Location	Community No.	Effective date of eligibility	Current effective map date
Suspension Rescissions				
Region V				
Ohio	Lake County, Unincorporated Areas.	390771	Apr. 5, 2005, Suspension Notice Rescinded.	Apr. 5, 2005.
Do	Perry, Village of, Lake County	390320	....do	Do.
Region IX				
California	West Covina, City of, Los Angeles County.	060666	....do	Dec. 2, 2004.
Region III				
Pennsylvania	Adamstown, Borough of, Lancaster County.	420541	Apr. 19, 2005, Suspension Notice.	Apr. 19, 2005.
Do	Akron, Borough of, Lancaster County.	422461	....do	Do.
Do	Bart, Township of, Lancaster County.	421761	....do	Do.
Do	Brecknock, Township of, Lancaster County.	421762	....do	Do.
Do	Christiana, Borough of, Lancaster County.	420542	....do	Do.
Do	Denver, Borough of, Lancaster County.	420546	....do	Do.
Do	Drumore, Township of, Lancaster County.	421766	....do	Do.
Do	Earl, Township of, Lancaster County.	421767	....do	Do.
Do	East Cocalico, Township of, Lancaster County.	420547	....do	Do.
Do	East Hempfield, Township of, Lancaster County.	420548	....do	Do.
Do	East Lampeter, Township of, Lancaster County.	421771	....do	Do.
Do	Elizabeth, Township of, Lancaster County.	421773	....do	Do.
Do	Elizabethtown, Borough of, Lancaster County.	420550	....do	Do.
Do	Ephrata, Borough of, Lancaster County.	420551	....do	Do.
Do	Fulton, Township of, Lancaster County.	421774	....do	Do.
Do	Lancaster, City of, Lancaster County.	420552	....do	Do.
Do	Leacock, Township of, Lancaster County.	420958	....do	Do.
Do	Little Britain, Township of, Lancaster County.	421775	....do	Do.
Do	Martic, Township of, Lancaster County.	421146	....do	Do.
Do	Millersville, Borough of, Lancaster County.	420559	....do	Do.
Do	Mount Joy, Borough of, Lancaster County.	420561	....do	Do.
Do	Mount Joy, Township of, Lancaster County.	421776	....do	Do.
Do	Mountville, Borough of, Lancaster County.	420560	....do	Do.
Do	Paradise, Township of, Lancaster County.	421777	....do	Do.
Do	Penn, Township of, Lancaster County.	421778	....do	Do.
Do	Pequea, Township of, Lancaster County.	421779	....do	Do.
Do	Providence, Township of, Lancaster County.	421780	....do	Do.
Do	Quarryville, Borough of, Lancaster County.	420563	....do	Do.
Do	Rapho, Township of, Lancaster County.	421781	....do	Do.
Do	Sadsbury, Township of, Lancaster County.	421782	....do	Do.

State	Location	Community No.	Effective date of eligibility	Current effective map date
Do	Salisbury, Township of, Lancaster County.	421783	.....do	Do.
Do	Strasburg, Township of, Lancaster County.	421784	.....do	Do.
Do	Upper Leacock, Township of, Lancaster County.	421785	.....do	Do.
Do	Warwick, Township or, Lancaster County.	421786	.....do	Do.
Do	West Earl, Township of, Lancaster County.	420959	.....do	Do.
Do	West Hempfield, Township of, Lancaster County.	421789	.....do	Do.
Region V				
Minnesota	Brooklyn Park, City of, Hennepin County.	270152	.....do	Sept. 2, 2004.
Region VI				
Oklahoma	Tuttle, Town of, Grady County	400443	.....do	April 19. 2005.
Region X				
Washington	North Bend, City of, King County.	530085	.....do	Do.
Region I				
New Hampshire	Chester, Town of, Rockingham County.	330182	May 17, 2005. Suspension Notice Rescinded.	May 17, 2005.
Do	Farmington, Town of, Strafford County.	330147	.....do	Do.
Do	New Castle, Town of, Rockingharn County.	330135	.....do	Do.
Do	Nottingham, Town of, Rockingham County.	330137	.....do	Do.
Do	Rollinsford, Town of, Strafford County.	330190	.....do	Do.
Region V				
Illinois	Bellwood, Village of, Cook County.	170061	June 2, 2005. Suspension Notice Rescinded.	June 2, 2005.
Do	Broadview, Village of, Cook County.	170067	.....do	Do.
Do	Franklin Park, Village of, Cook County.	170094	.....do	Do.
Do	Hillside, Village of, Cook County.	170104	.....do	Do.
Do	La Grange Park, Village of, Cook County.	170115	.....do	Do.
Do	Maywood, Village of, Cook County.	170124	.....do	Do.
Do	Melrose Park, Village of, Cook County.	170125	.....do	Do.
Do	North Riverside, Village of, Cook County.	170135	.....do	Do.
Do	Northlake, City of, Cook County.	170134	.....do	Do.
Do	River Grove, Village of, Cook County.	170152	.....do	Do.
Do	Stone Park, Village of, Cook County.	170165	.....do	Do.
Do	Westchester, Village of, Cook County.	170170	.....do	Do.

* Do = Ditto.
** Designates communities converted from Emergency Phase of participation to the Regular Phase of participation.
Code for reading fourth and fifth columns: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA.—Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: September 8, 2005.

Michael K. Buckley,

Deputy Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 05–18556 Filed 9–16–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 041130335–5154–02; I.D. 091305E]

Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Reallocation of Pacific Sardine

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

ACTION: Temporary rule; reallocation of Pacific Sardine.

SUMMARY: NMFS announces the reallocation of the remaining Pacific sardine harvest guideline in the exclusive economic zone off the Pacific coast. On September 1, 2005, 85,132 metric tons (mt) of the 136,179–mt harvest guideline are estimated to remain unharvested. The Coastal Pelagic Species Fishery Management Plan (FMP) requires that a review of the fishery be conducted and any uncaught portion of the harvest guideline remaining unharvested in Subarea A (north of Pt. Arena, CA) and Subarea B (south of Pt. Arena, CA) be added together and reallocated, with 20 percent allocated to Subarea A and 80 percent to Subarea B; therefore, 17,026 mt is allocated to Subarea A and 68,106 mt is allocated to Subarea B. This action ensures that a sufficient amount of the Pacific sardine resource is available to all harvesters on the Pacific coast and to achieve optimum yield.

DATES: Effective September 14, 2005, through December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Tonya L. Wick, Southwest Region, NMFS, 562–980–4036.

SUPPLEMENTARY INFORMATION: On June 22, 2005, NMFS published notice of a harvest guideline of 136,179 mt for Pacific sardine in the **Federal Register** (70 FR 36053) for the fishing season January 1, 2005, through December 31, 2005. The harvest guideline was allocated as specified in the FMP, that is, one-third (45,393 mt) for Subarea A, which is north of 39° 00′ 00″ N. lat. (Pt. Arena, CA) to the Canadian border; and two-thirds (90,786 mt) for Subarea B, which is south of 39° 00′ 00″ N. lat. to the Mexican border.

On August 26, 2003, a regulatory amendment to the FMP developed by the Pacific Fishery Management Council (Council) was approved, and a final rule implementing the amendment was published in the **Federal Register** on September 5, 2003 (68 FR 52523). The amendment (1) changed the definition of Subarea A and Subarea B by moving the geographic boundary between the two areas from Pt. Piedras Blancas at 35° 40′ 00″ N. lat. to Pt. Arena at 39° 00′ 00″ N. lat.; (2) changed the date when Pacific sardine that remain unharvested are reallocated to Subarea A and Subarea B from October 1 to September 1; (3) changed the percentage of the unharvested sardine that is reallocated to Subarea A and Subarea B from 50 percent to both subareas to 20 percent to Subarea A and 80 percent to Subarea B; and (4) reallocated all unharvested sardine that remain on December 1 coast wide.

NMFS anticipates slightly higher landings in the Pacific Northwest in 2005 than landings for the same period during the 2004 fishing season. NMFS anticipates landings by September 1 in Subarea A north of Pt. Arena of 30,997 mt; therefore, 14,396 mt of the initial allocation to Subarea A of 45,393 mt will remain unharvested. NMFS anticipates lower landings in California than landings for the same period in 2004. NMFS anticipates landings of 20,050 mt by September 1 in Subarea B south of Pt. Arena; therefore, 70,736 mt of the initial allocation to Subarea B of 90,786 mt remains unharvested. Based on this information, NMFS anticipates that a total of 85,132 mt of the 136,179 mt harvest guideline will remain unharvested on September 1, 2005. Therefore, according to the requirements of the FMP, as amended, NMFS reallocates 20 percent of 85,132 mt (17,026 mt) to Subarea A, and reallocates 80 percent of 85,132 mt (68,106 mt) to Subarea B.

Any portion of the 136,179 mt harvest guideline that remains unharvested in Subarea A and Subarea B on December 1, 2005, will be available for harvest coast-wide until the 136,179–mt harvest guideline is reached and the fishery closed.

Classification

This action is authorized by the FMP in accordance with 50 CFR 660.517 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and an opportunity for public comment on this action because doing so is impracticable. It is impracticable because the information upon which the reallocation is based was not available until September 1, 2005, and affording prior notice and opportunity for public comment would delay the agency reallocating Pacific sardine and thus preclude all harvesters from accessing the Pacific sardine resource when it was available for harvest.

For the reasons mentioned above, the AA also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30 day delay in the effectiveness of this action because it relieves a restriction.

The analytical requirement of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable because prior notice and opportunity for public comment are not required for this action by 5 U.S.C. 553, or any other applicable law.

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

Dated: September 13, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–18588 Filed 9–14–05; 2:07 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 180
Monday, September 19, 2005

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22455; Directorate Identifier 2005–NM–095–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes); and Model A310–300 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes); and Model A310–300 series airplanes. This proposed AD would require inspecting the pilot's and co-pilot's seats to determine if a certain actuator having a certain part number is installed, and corrective action if necessary. This proposed AD results from a production defect found in certain actuators during overhaul of the pilot's and co-pilot's seats. We are proposing this AD to prevent uncommanded movement of the pilot's or co-pilot's seat, which could result in interference with the operation of the airplane and consequent temporary loss of airplane control.

DATES: We must receive comments on this proposed AD by October 19, 2005.

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

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

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Include the docket number "FAA–2005–22455; Directorate Identifier 2005–NM–095–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes); and Model A310–300 series airplanes. The DGAC advises that a production defect (abnormal wear of the gear at the end of the rotor shaft) was found on certain actuators during overhaul of the pilot's and co-pilot's seats. That defect could cause a deficiency in the seat control system and consequent uncommanded horizontal movement of the seats which is hazardous at high speeds during takeoff. Further investigation revealed that a batch of actuators were equipped with defective rotor shafts. These conditions, if not corrected, could result in uncommanded movement of the pilot's or co-pilot's seat, which could result in interference with the operation of the airplane and consequent temporary loss of airplane control.

Relevant Service Information

Airbus has issued Service Bulletins A300–25–6194 (for A300–600 series airplanes) and A310–25–2182 (for A310–300 series airplanes), both dated February 1, 2005. The service bulletins describe procedures for inspecting the pilot's and co-pilot's seats to determine if a certain actuator having a certain part number (P/N) is installed, and corrective action if necessary. The corrective action includes replacing any affected actuator with a new actuator. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the

service information and issued French airworthiness directive F–2005–038, dated March 2, 2005, to ensure the continued airworthiness of these airplanes in France.

The proposed AD refers to Sogerma-Services Service Bulletin TAA12–25–616, dated November 30, 2004, as an additional source of service information for accomplishing the actuator replacement.

FAA's Determination and Requirements of the Proposed AD

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

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

Differences Between the Proposed AD and Service Information

The French airworthiness directive requires inspecting the pilot's and co-pilot's seats to determine if a certain seat having a certain P/N is installed, and if a certain actuator with a certain P/N is installed on the seat, but this proposed AD does not require an inspection for the P/N of the seat. The P/Ns for the seats are identified in the applicability section of this proposed AD; therefore, an inspection for that P/N is not necessary. Therefore, this AD requires an inspection for the actuator P/Ns only.

Although the service bulletins referenced in this proposed AD specify to submit an inspection report to the manufacturer, this proposed AD does not include that requirement.

Costs of Compliance

This proposed AD would affect about 169 airplanes of U.S. registry. The proposed inspection would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $10,985, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2005–22455; Directorate Identifier 2005–NM–095–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 19, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes, A300 B4–605R and B4–622R airplanes, A300 F4–605R and F4–622R airplanes, and A300 C4–605R Variant F airplanes; and Airbus Model A310–304, –322, –324, and –325 airplanes; certificated in any category; equipped with Sogerma Socea powered seats having part number (P/N) TAAI2–13PE00–01, –13PE01–01, –13CE00–01, or 13CE01–01 installed.

Unsafe Condition

(d) This AD results from a production defect found in certain actuators during overhaul of the pilot's and co-pilot's seats. We are issuing this AD to prevent uncommanded movement of the pilot's or co-pilot's seat, which could result in interference with the operation of the airplane and consequent temporary loss of airplane control.

Compliance

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

Inspection for Actuator Part Numbers and Corrective Action

(f) Within 600 flight hours or 30 days after the effective date of this AD, whichever is first: Inspect to determine if a Messier Bugatti (Labinal) actuator with P/N 4136290004 or 4136290005 is installed on the pilot's or co-pilot's seat by doing all the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A310–25–2182 (for A310–300 series airplanes) or A300–25–6194 (for A300–600 series airplanes), both dated February 1, 2005, as applicable.

(1) If no actuator with the identified P/N is installed, no further action is required by this paragraph.

(2) If any actuator with any identified P/N is installed: Within 6 months after the effective date of this AD, replace the affected actuator with a new actuator in accordance with the Accomplishment Instructions of the applicable service bulletin.

Note 1: Airbus Service Bulletins A310–25–2182 and A300–25–6194, both dated February 1, 2005, reference Sogerma-Services Service Bulletin TAA12–25–616, dated November 30, 2004, as an additional source of service information for accomplishing the actuator replacement.

Parts Installation

(g) After the effective date of this AD, no Messier Bugatti (Labinal) actuator with P/N 4136290004 or 4136290005 may be installed on any airplane.

No Reporting Required

(h) Although the service bulletins referenced in this AD specify to submit an inspection report to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(j) French airworthiness directive F–2005–038, dated March 2, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on September 9, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18530 Filed 9–16–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22456; Directorate Identifier 2005–NM–128–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A321–100 and –200 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Model A321–100 and –200 series airplanes. This proposed AD would require replacing the crashworthiness pins on the side-stay of the main landing gear (MLG) with new pins having an increased internal notch diameter. This proposed AD results from testing on the side-stay crashworthiness pins on the MLG, which revealed that, in the case of an emergency landing, the crashworthiness pins installed will not ensure a correct MLG collapse. We are proposing this AD to prevent a punctured fuel tank, which could cause damage to the airplane or injury to passengers.

DATES: We must receive comments on this proposed AD by October 19, 2005.

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

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

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2005–22456; Directorate Identifier 2005–NM–128–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A321–100 and –200 series airplanes. The DGAC advises that, during the development qualification program of the 93T maximum takeoff weight (MTOW), complementary tests performed revealed that the main landing gear (MLG) side-stay crashworthiness pins installed with Airbus Modification 24982 are not compatible. In the case of an emergency landing, the crashworthiness pins installed will not ensure a correct MLG collapse, and a risk of fuel tank puncture that could cause damage to the airplane or injury to passengers could result.

Relevant Service Information

Airbus has issued Service Bulletin A320–32–1229, dated August 9, 2001. The service bulletin describes procedures for replacing the crashworthiness pin on the MLG side-stay with a new pin having an increased internal notch diameter. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive 2002–074(B) R1, dated March 20, 2002, to ensure the continued airworthiness of these airplanes in France.

The Airbus service bulletin refers to Messier-Dowty Service Bulletin 201–32–26, dated July 20, 2001, as an additional source of service information for replacing the crashworthiness pins.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed below.

Difference Between Proposed AD and French Airworthiness Directive

The applicability of the French airworthiness directive excludes airplanes on which Airbus Service Bulletin A320–32–1229 was accomplished in service. However, we have not excluded those airplanes in the applicability of this proposed AD; rather, this proposed AD would include a requirement to accomplish the actions specified in that service bulletin. This proposed requirement would ensure that the actions specified in the service bulletin are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this proposed AD unless an alternative method of compliance is approved.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Pin replacement	2	$65	$0	$130	1	$130

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2005–22456; Directorate Identifier 2005–NM–128–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 19, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A321–111, –112, and –131 airplanes; and Model A321–211 and –231 airplanes; certificated in any category, including airplanes modified in production by Airbus Modification 24982, but excluding airplanes modified in production by Airbus Modification 30046.

Unsafe Condition

(d) This AD results from testing on the side-stay crashworthiness pins on the main landing gear (MLG), which revealed that, in the case of an emergency landing, the crashworthiness pins installed will not ensure a correct MLG collapse. We are issuing this AD to prevent a punctured fuel tank, which could cause damage to the airplane or injury to passengers.

Compliance

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

Pin Replacement

(f) Within 27 months after the effective date of this AD, replace any crashworthiness pin having part number 201525620 with part number 201525621, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1229, dated August 9, 2001.

Note 1: Airbus Service Bulletin A320–32–1229 refers to Messier-Dowty Service Bulletin 201–32–26, dated July 20, 2001, as an additional source of service information for replacing the crashworthiness pins.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(h) French airworthiness directive 2002–074(B) R1, dated March 20, 2002, also addresses the subject of this AD.

Issued in Renton, Washington, on September 9, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18529 Filed 9–16–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22454; Directorate Identifier 2001–NM–108–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–200, ATR42–300, and ATR42–320 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Aerospatiale Model ATR–42–200, ATR 42–300, and ATR42–320 airplanes. The existing AD currently requires inspections to determine the proper installation of rivets in certain key holes and to detect cracks in the area of the key holes where rivets are missing; and correction of discrepancies. The existing AD also requires various inspections of the subject area for discrepancies, and corrective actions if necessary; and replacement of certain cargo door hinges with new hinges. For certain airplanes, the existing AD also requires replacement of friction plates, stop fittings, and bolts with new parts. This proposed AD would require additional corrective actions for certain airplanes. This proposed AD is prompted by discovery of cracks around key holes on certain fuselage frames where rivets were missing. We are proposing this AD to prevent fatigue cracks of the cargo door skin, certain frames, and entry door stop fittings and friction plates, which could result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by October 19, 2005.

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

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

For service information identified in this proposed AD, contact Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–22454; the directorate identifier for this docket is 2001–NM–108–AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2005–22454; Directorate Identifier 2001–NM–108–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

On March 9, 2000, we issued AD 2000–05–26, amendment 39–11636 (65 FR 15226, March 22, 2000), for all Aerospatiale Model ATR42–200, ATR42–300, and ATR42–320 airplanes. That AD requires inspections to determine the proper installation of rivets in certain key holes and to detect cracks in the area of the key holes where rivets are missing; and correction of discrepancies. The existing AD also requires various inspections of the subject area for discrepancies, and corrective actions if necessary; and replacement of certain cargo door hinges with new hinges. For certain airplanes, the existing AD also requires replacement of friction plates, stop fittings, and bolts with new parts. That AD was prompted by discovery of cracks around key holes on certain fuselage frames where rivets were missing. We issued that AD to prevent fatigue cracks of the cargo door skin, certain frames, and entry door stop fittings and friction plates, which could result in reduced structural integrity of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2000–05–26, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Aerospatiale Model ATR42–200, ATR42–300, and ATR–320 airplanes. The DGAC advises that installation of Aerospatiale Modification 3184, which was mandated in AD 2000–05–26, led to a bore over-sizing of the hinge fastener holes on certain airplanes. The bore over-sizing could lead to reduced

structural integrity of the cargo door attachment to the fuselage.

Relevant Service Information

Aerospatiale has issued Avions de Transport Regional Service Bulletin (SB) ATR42–52–0058, Revision 2, dated June 22, 2000. The accomplishment instructions of Revision 2 describe procedures for a detailed inspection for cracking of the area of the frames and frame pick-up fittings, and procedures for repair if cracking is detected. The accomplishment instructions of Revision 2 also describe corrective actions that include inspections for fastener type and tolerances, hole diameters, cracking, and repair; as applicable. Additionally, Revision 2 describes replacing the hinges of the cargo compartment door and fuselage with new improved hinges, and installation of new peel shims and Hi-Lok fasteners. The DGAC mandated the service information and issued French airworthiness directive 2000–337–079(B), dated July 26, 2000, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

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

This proposed AD would supersede AD 2000–05–26. This proposed AD would retain the requirements of the existing AD. This proposed AD would require additional corrective actions for certain airplanes.

Differences Between Proposed Rule and Service Bulletin

The service bulletin specifies that you may contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require you to repair those conditions using a method that we or the DGAC (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair we or the DGAC approve would be acceptable for compliance with this proposed AD.

Change to Existing AD

This proposed AD would retain all requirements of AD 2000–05–26. Since AD 2000–05–26 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2000–05–26	Corresponding requirement in this proposed AD
paragraph (a)	paragraph (f)
paragraph (b)	paragraph (g)
paragraph (c)	paragraph (h)
paragraph (d)	paragraph (i)
paragraph (e)	paragraph (j)
paragraph (f)	paragraph (k)
paragraph (g)	paragraph (l)

Costs of Compliance

This proposed AD would affect about 106 Aerospatiale Model ATR42–200, ATR42–300, and ATR42–320 airplanes of U.S. registry.

The general visual inspection of fuselage frames 25 and 27 that is required by AD 2000–05–26 and retained in this proposed AD takes about 3 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of that currently required action is $195 per airplane.

The cargo door hinge and skin replacement that is required by AD 2000–05–26 and retained in this proposed AD takes about 250 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost approximately $9,880 per airplane. Based on these figures, the estimated cost of the currently required action is $26,130 per airplane.

The general visual inspection of the key and tooling holes that is required by AD 2000–05–26 takes about 100 work hours per airplane, at an average rate of $65 per work hour. Based on these figures, the estimated cost of that currently required action is $6,500 per airplane.

The eddy current and detailed visual inspections of the forward entry door stop fitting and friction plate that are required by AD 2000–05–26 take about 2 work hours per airplane, at an average rate of $65 per work hour. Based on these figures, the estimated cost impact of this inspection required by AD 2000–05–26 is $130 per airplane.

The replacement of the forward entry door stop fitting, friction plate, and upper door corner that is required by AD 2000–05–26 takes about 50 work hours per airplane, at an average rate of $65 per work hour. The manufacturer has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts is not attributable to this AD. Based on these figures, the estimated cost of that action required by AD 2000–05–26 is $3,250 per airplane.

The new proposed actions would take about 250 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $9,880 per airplane. Based on these figures, the estimated cost of the new actions specified in this proposed AD is $26,130 per airplane.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations

for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–11636 (65 FR 15226, March 22, 2000) and adding the following new airworthiness directive (AD):

Aerospatiale: Docket No. FAA–2005–22454; Directorate Identifier 2001–NM–108–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by October 19, 2005.

Affected ADs

(b) This AD supersedes AD 2000–05–26, amendment 39–11636 (65 FR 15226, March 22, 2000).

Applicability

(c) This AD applies to all Aerospatiale Model ATR42–200, ATR42–300, and ATR–320 airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by discovery of cracks around key holes on certain fuselage frames where rivets were missing. We are issuing this AD to prevent fatigue cracks of the cargo door skin, certain frames, and entry door stop fittings and friction plates, which could result in reduced structural integrity of the airplane.

Compliance

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

Restatement of the Requirements of AD 2000–05–26

Frame 25 and 27 Inspection

(f) For airplanes having serial numbers 005 through 016 inclusive, 018 through 030 inclusive, 032 through 036 inclusive, 038, 040, 042, 043, 048 through 062 inclusive, 064 through 090 inclusive, 092 through 094 inclusive, and 096 through 228 inclusive: Prior to the accumulation of 36,000 total flight cycles, or within 180 days after April 26, 2000, (the effective date of AD 2000–05–26, amendment 39–11636) whichever occurs later, conduct a general visual inspection of fuselage frames 25 and 27 to verify the proper installation of a rivet in each of the key holes, in accordance with Avions de Transport Regional (ATR) Service Bulletin ATR42–53–0070, Revision 2, dated March 22, 1993, or Revision 3, dated February 19, 1999.

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

Note 2: Inspection of fuselage frames 25 and 27 accomplished prior to the effective date of this AD in accordance with ATR Service Bulletin ATR42–53–0070, dated June 10, 1991, or Revision 1, dated June 12, 1992, is considered acceptable for compliance with the requirements of paragraph (f) of this AD.

(1) If a rivet is installed in each of the key holes, no further action is required by this paragraph.

(2) If a rivet is not installed in each of the key holes, prior to further flight, perform an eddy current inspection of each open key hole to detect cracks, in accordance with the service bulletin.

(i) If no crack is found during the eddy current inspection, prior to further flight, install a rivet in the open key hole in accordance with the service bulletin. After such installation, no further action is required by this paragraph for that key hole.

(ii) If any crack is found during the eddy current inspection, prior to further flight, repair the crack in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Inspection and Modification of Cargo Door Structure

(g) For airplanes equipped with a cargo compartment door on which Aerospatiale Modification 3191 has not been accomplished: Prior to the accumulation of 27,000 total flight cycles, or within 180 days after April 26, 2000, whichever occurs later, except as provided by paragraph (h) of this AD, replace the hinges on the cargo compartment door and fuselage (including inspections for fastener type and tolerances, hole diameters, or cracking, and repair; as applicable) with new improved hinges, in accordance with paragraph 2 of the Accomplishment Instructions of ATR Service Bulletin ATR42–52–0058, Revision 1, dated March 1, 1995, or ATR42–52–0058, Revision 2, dated June 22, 2000.

(h) Where the instructions in ATR Service Bulletin ATR42–52–0058, Revision 1, dated March 1, 1995, or ATR42–52–0058, Revision 2, dated June 22, 2000, specify that ATR is to be contacted for a repair, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

Frame Inspection

(i) For airplanes having serial numbers 003 through 208 inclusive: Prior to the accumulation of 36,000 total flight cycles, or within 180 days after April 26, 2000, whichever occurs later, conduct a general visual inspection of the identified fuselage frames for proper installation of a rivet in each of the tooling and key holes, in accordance with ATR Service Bulletin ATR42–53–0076, Revision 2, dated October 15, 1996, or Revision 3, dated February 19, 1999.

(1) If a rivet is installed in each of the tooling or key holes, no further action is required by this paragraph.

(2) If a rivet is not installed in each of the tooling and key holes, prior to further flight, perform a detailed inspection of each open tooling or key hole to detect cracks, in accordance with the service bulletin.

Note 3: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally

supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

(i) If no crack is found during the detailed inspection required by paragraph (i)(2) of this AD, prior to further flight, install a rivet in the open hole in accordance with the service bulletin.

(ii) If any crack is found during the inspection required by paragraph (i)(2) of this AD, prior to further flight, repair the crack in accordance with a method approved by the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

Inspection and/or Replacement of Entry Door Structure

(j) For Model ATR42–300 series airplanes having serial numbers listed in ATR Service Bulletin ATR42–52–0052, Revision 1, dated March 2, 1993: Except as provided by paragraph (f) of this AD, prior to the accumulation of 10,000 total flight cycles, or within 90 days after April 26, 2000, whichever occurs later, accomplish the requirements of paragraphs (j)(1) and (j)(2) of this AD.

(1) Perform an eddy current inspection of the forward entry door stop holes to detect cracking, in accordance with the service bulletin. If any cracking is detected, prior to further flight, replace any cracked forward entry door stop fitting with a new fitting, in accordance with the service bulletin.

(2) Perform a detailed inspection of the forward entry door friction plates for wear, in accordance with the service bulletin. If wear is found on any friction plate, and the wear has a depth equal to or greater than 0.8mm (0.0315 in.), prior to further flight, replace the friction plate with a new or serviceable part in accordance with the service bulletin.

(k) For Model ATR42–300 series airplanes listed in ATR Service Bulletin ATR42–52–0052, Revision 1, dated March 2, 1993, accomplishment of the requirements of paragraph (l) of this AD at the time specified in paragraph (j) of this AD constitutes terminating action for the requirements of paragraph (j) of this AD.

(l) For Model ATR42–300 series airplanes listed in ATR Service Bulletin ATR42–52–0059, dated February 16, 1995: Prior to the accumulation of 18,000 total flight cycles, or within 180 days after April 26, 2000, whichever occurs later, accomplish the requirements of paragraphs (l)(1), (l)(2), and (l)(3) of this AD in accordance with the service bulletin.

(1) Replace the forward entry door friction plates with improved friction plates.

(2) Replace the upper corners of the forward entry door surround structure with improved door surround corners.

(3) Replace the forward entry door stop fittings and bolts with improved fittings and bolts.

New Requirements of This AD

Replacing Hinges on the Cargo Compartment Door and Fuselage

(m) For airplanes identified as having main serial numbers (MSNs) 317, 319, 321, 323, 325, 327, 329 through 335 inclusive, 360, and 368 that are equipped with a cargo compartment door on which Aerospatiale Modification 3191 has not been accomplished: Prior to the accumulation of 27,000 total flight hours, or within 180 days after the effective date of this AD, whichever occurs later, replace the hinges on the cargo compartment door and fuselage (including inspections for fastener type and tolerances, hole diameters, or cracking, and repair; as applicable) with new improved hinges, in accordance with the Accomplishment Instructions of Avions de Transport Regional (ATR) Service Bulletin ATR42–52–0058, Revision 2, dated June 22, 2000.

(n) Where the instructions in ATR Service Bulletin ATR42–52–0058, Revision 2, dated June 22, 2000, specify that ATR is to be contacted for a repair, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA; or the DGAC (or its delegated agent).

Alternative Methods of Compliance (AMOCs)

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

Related Information

(p) French airworthiness directive 2000–337–079(B), dated July 26, 2000, also addresses the subject of this AD.

Issued in Renton, Washington, on September 9, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18528 Filed 9–16–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106030–98]

RIN 1545–AW50

Source of Income From Certain Space and Ocean Activities; Source of Communications Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking; notice of proposed rulemaking; and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 863(d) governing the source of income from certain space and ocean activities. It also contains proposed regulations under section 863(a), (d), and (e) governing the source of income from certain communications activities. This document also contains proposed regulations under section 863(a) and (b), amending the regulations in § 1.863–3 to conform those regulations to these proposed regulations. This document affects persons who derive income from activities conducted in space, or on or under water not within the jurisdiction of a foreign country, possession of the United States, or the United States (in international water). This document also affects persons who derive income from transmission of communications. In addition, this document provides notice of a public hearing on these proposed regulations and withdraws the notice of proposed rulemaking (66 FR 3903) published in the **Federal Register** on January 17, 2001.

DATES: Written or electronic comments must be received by November 23, 2005. Outlines of topics to be discussed at the public hearing scheduled for December 15, 2005, at 10 a.m., must be received by November 23, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–106030–98), 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–106030–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via either the IRS Internet site at *http://www.irs.gov/regs* or the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–106030–98). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Edward R. Barret, (202) 622–3880; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Cynthia Grigsby, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1718.

The collection of information in these proposed regulations is in §§ 1.863–8(g) and 1.863–9(g). This information is required by the IRS to monitor

compliance with the Federal tax rules for determining the source of income from space or ocean activities, or from transmission of communications.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Congress enacted section 863(d) and (e) as part of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2085) (the 1986 Act). Section 863(d) governs the source of income derived from certain space and ocean activities. Section 863(e) governs the source of income derived from international communications activity.

On January 17, 2001, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–106030–98) in the **Federal Register** (66 FR 3903) under section 863(a), (b), (d), and (e) (the 2001 proposed regulations). The 2001 proposed regulations provide two sets of rules, one in § 1.863–8 for determining the source of income from space and ocean activities (space and ocean income), the other in § 1.863–9 for determining the source of income from communications activity (communications income).

The IRS received numerous written comments on the 2001 proposed regulations and held a public hearing on May 23, 2001. Since that time, the aerospace, telecommunications, and related industries have experienced substantial technological evolution and significant business change and consolidation. In addition, the American Jobs Creation Act of 2004, Public Law 108–357, (AJCA) enacted a number of materially relevant statutory changes that affect the treatment of space and ocean income for purposes of the foreign tax credit and subpart F. In light of the extensive written comments, industry evolution, and AJCA changes, the Treasury Department and the IRS believe it is appropriate to repropose these regulations to provide a further opportunity for comment. Accordingly, this document withdraws the 2001 proposed regulations and provides new proposed regulations, which are referred to herein as the reproposed regulations.

Explanation of Provisions

A. Space and Ocean Activity Under Section 863(d)

1. Space and Ocean Income

Section 863(d)(2)(A)(i) defines space activity to include any activity conducted in space. Section 863(d)(2)(A)(ii) defines ocean activity to include any activity conducted on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States. Section 863(d)(2)(B) excludes three specific types of activities from the definition of space or ocean activity. Section 863(d)(1) generally provides that, except as provided in regulations, any income derived from a space or ocean activity (space and ocean income) is U.S. source income if derived by a U.S. person and foreign source income if derived by a foreign person.

Pursuant to the statute's grant of regulatory authority, the reproposed regulations provide that a U.S. person's space and ocean income will be sourced outside the United States to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in a foreign country or countries. This approach to allocation of space and ocean income between U.S. and foreign sources is pursuant to broad regulatory authority in section 863(d). The reproposed regulations also contain certain exceptions to the general foreign source rule for space and ocean income of foreign persons.

2. Space and Ocean Income of U.S.-Owned Foreign Corporation

Section 1.863–8(b)(2) of the 2001 proposed regulations provides that if U.S. persons own 50 percent or more of a foreign corporation by vote or value (directly, indirectly, or constructively) and such corporation is not a controlled foreign corporation within the meaning of section 957 (CFC), all space and ocean income derived by the corporation (hereinafter a U.S.-owned foreign corporation) is U.S. source income.

Several commentators requested that § 1.863–8(b)(2) of the 2001 proposed regulations be withdrawn. Commentators stated that the rule expanded the scope of U.S. taxing jurisdiction beyond the apparent intent of Congress by subjecting income not covered by subpart F to immediate U.S. taxation. Several commentators also stated that under the rule space and ocean income could in some cases be subject to multiple levels of taxation. In this regard, some commentators noted that the space and ocean income of a U.S.-owned foreign corporation could be subject to potential double taxation at the corporate level (by the United States and by the U.S.-owned foreign corporation's country of residence or the countries where such corporation does business) because § 1.863–8(b)(2) of the 2001 proposed regulations makes such space and ocean income U.S. source. When the U.S.-owned foreign corporation's space and ocean income is distributed as a dividend, that income could be subject to an additional level of tax in the hands of its shareholders. Consequently, some commentators suggested that, if the rule were retained, the space and ocean income of U.S.-owned foreign corporations should be considered U.S. source solely for purposes of the U.S. shareholder's foreign tax credit limitation under section 904(a). Some commentators noted that although section 245 may partially ameliorate this situation by providing a dividends received deduction (DRD) to shareholders of foreign corporations in certain circumstances, the DRD would be limited to 80 percent of qualifying dividends.

Some commentators also noted potential withholding tax issues with the source rules for U.S.-owned foreign corporations. In such cases, U.S. source fixed or determinable annual or periodic income (FDAP) of a U.S.-owned foreign corporation would (in the absence of an applicable treaty) likely be subject to the 30-percent gross income tax imposed by section 881, which is typically collected through withholding by the payors of such income. Commentators stated that enforcement and administration of the 30-percent tax and withholding requirements could present multiple challenges (and potential multiple withholding tax obligations) for payments between foreign persons.

Several commentators addressed the stock ownership test applicable to U.S.-owned foreign corporations. They stated that determining whether a foreign corporation is 50-percent U.S.-owned, especially without regard to the size of an owner's holding, presents potential difficulties (for example, when the foreign corporation is widely-held). Some commentators stated that the indirect and constructive ownership rules are complex and would make it difficult for payors of space and ocean income to determine withholding tax obligations. Some commentators suggested that if the rule were retained, the determination whether a foreign corporation is 50-percent U.S.-owned

should be similar to the determination of CFC status, that is, only U.S. persons who own or are considered to own 10 percent or more of the total combined voting power of all classes of stock entitled to vote should be counted. Some commentators stated that the rule should not apply to publicly-traded foreign corporations.

In light of the potential complexity in determining whether a foreign corporation is a U.S.-owned foreign corporation and the belief of the Treasury Department and the IRS that space and ocean income earned by foreign corporations should be sourced in accord with the rules for foreign persons, with the limited exception for certain CFCs discussed below, the reproposed regulations do not include a special source rule for space and ocean income earned by a U.S.-owned foreign corporation. Instead, the space and ocean income of foreign corporations (other than CFCs) is sourced under the applicable provisions of reproposed § 1.863–8(b)(2)(i) or (iii). Under these provisions, space and ocean income of a foreign person is generally foreign source income. Space and ocean income of a foreign person (other than a CFC) that is engaged in trade or business within the United States is U.S. source income to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed within the United States.

3. Space and Ocean Income of CFCs

In enacting section 863(d), Congress ultimately did not adopt a provision included in early versions of the legislation that would have treated a CFC as a U.S. person for purposes of determining the source of a CFC's space and ocean income. The legislative history to the 1986 Act indicates that Congress at that time viewed the provision as unnecessary because "[t]he application of the separate foreign tax credit limitation for shipping income to any space or ocean income derived by a [CFC] provides adequate assurance, in the conferee's view, that high foreign taxes on unrelated income will not inappropriately offset U.S. taxes on this generally low-taxed income." H.R. Conf. Rep. No. 99–841, 99th Cong., 2d Sess., Vol. II, at II–600 (Sept. 18, 1986); see also Staff of Joint Comm. on Taxation, *General Explanation of the Tax Reform Act of 1986,* JCS–10–87, at 934 (May 4, 1987). Consequently, the 2001 proposed regulations also did not contain such a rule and only treated a U.S.-owned foreign corporation as a U.S. person for purposes of determining the source of space and ocean income.

In 2004, AJCA enacted a number of significant statutory changes to subpart F and the foreign tax credit regimes as applicable to space and ocean income. These statutory changes have been taken into account in issuing the reproposed regulations.

Section 415 of AJCA eliminated foreign base company shipping income from the definition of foreign base company income. This change is effective for taxable years of foreign corporations beginning after December 31, 2004, and for taxable years with or within which such taxable years of foreign corporations end. Prior to AJCA, foreign base company shipping income was defined by section 954(f) to include any income derived from a space or ocean activity as defined in section 863(d)(2).

In addition, section 404 of AJCA reduced the number of foreign tax credit limitation categories from nine to two (i.e., passive category income and general category income) in order to address Congressional concerns regarding the complexity of the foreign tax credit calculation. See H.R. Rep. No 108–548, 108th Cong., 2d Sess., at 190 (June 16, 2004). This change is effective for taxable years beginning after December 31, 2006. Prior to AJCA, section 904(d) treated shipping income, defined as income "which would be foreign base company shipping income (as defined in section 954(f))," as a separate category of income for foreign tax credit limitation purposes. For taxable years beginning after December 31, 2006, space and ocean income will generally fall into the general limitation category. See H.R. Conf. Rep. No. 108–755, 108th Cong., 2d Sess., at 383 (Oct. 7, 2004).

The Treasury Department and the IRS believe that the changes made by AJCA with respect to the foreign tax credit reflect a decision to reduce the complexity in the foreign tax credit calculation caused by having nine foreign tax credit categories of income as well as a willingness to allow additional cross-crediting in order to minimize such complexity. However, the Treasury Department and the IRS also believe that for taxable years beginning after December 31, 2006, Congress's concern expressed in the 1986 Act that high foreign taxes on unrelated income may inappropriately offset U.S. taxes on space and ocean income, which is generally subject to low foreign taxes, is no longer addressed by the foreign tax credit rules because space and ocean income likely will be general limitation category income. In addition, Congress provided a broad grant of regulatory authority to the Treasury Department and the IRS in section 863(d) to issue guidance with respect to the source of space and ocean income.

In light of AJCA, the reproposed regulations provide that if a foreign corporation is a CFC, its space and ocean income, like that of a U.S. person, is income from sources within the United States. However, a CFC's space and ocean income is sourced outside the United States to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in a foreign country or countries. This allocation approach is pursuant to broad regulatory authority under section 863(d).

As noted above, several commentators stated that under the rule for U.S.-owned foreign corporations in the 2001 proposed regulations, space and ocean income could in some cases be subject to multiple levels of taxation. The Treasury Department and the IRS believe that the reproposed regulations mitigate such a possibility for CFCs because the reproposed regulations provide for foreign sourcing when a CFC's space and ocean income is attributable to functions performed, resources employed, or risks assumed in a foreign country or countries. The rule for CFCs in the reproposed regulations is thus a rule of limited application that, consistent with the legislative history of the 1986 Act, provides U.S. source treatment only with respect to space and ocean income attributable to activities in space or international water that are not likely to be subject to tax in any foreign country. The rule for CFCs will permit a United States shareholder to establish as foreign source the amount of income attributable to the CFC's operations in a foreign country or countries.

Several commentators submitted comments on potential withholding tax issues posed by the 2001 proposed regulations. The Treasury Department and the IRS recognize that certain provisions of the reproposed regulations (such as the source rule for the space and ocean income of CFCs in reproposed § 1.863–8(b)(2)(ii)) may raise similar withholding tax issues. The Treasury Department and the IRS accordingly seek comments on these issues, in particular with regard to the following: (1) The extent to which Form W–8ECI, "Certificate of Foreign Person's Claim for Exemption From Withholding on Income Effectively Connected With the Conduct of a Trade or Business in the United States", may practically address these issues; (2) the nature of

situations in which withholding tax issues will arise (for example, how particular businesses involving space, ocean, or communications activities are conducted, whether payors of income potentially subject to withholding under the reproposed regulations are typically related or unrelated parties, etc.); and (3) suggestions to address these issues in the cases in which they arise.

4. Space and Ocean Income of a Foreign Person Engaged in a Trade or Business Within the United States

Section 1.863–3(b)(3) of the 2001 proposed regulations provides that if a foreign person is engaged in a trade or business within the United States, the foreign person's income derived from a space or ocean activity is presumed to be U.S. source income. The rule reflects the general view of the Treasury Department and the IRS that Congress intended that a foreign person engaged in a substantial business within the United States be subject to U.S. tax on related space or ocean income. However, the Treasury Department and the IRS recognize that the presumption may be over-inclusive in certain cases. Therefore, the 2001 proposed regulations provide that if the foreign person can allocate gross space or ocean income between income from sources within the United States, space, or international water, and sources without the United States, space, and international water, to the satisfaction of the Commissioner, based on all the facts and circumstances, income allocated to sources without the United States, space, and international water will be treated as foreign source income.

Several commentators stated that the presumption is overbroad, given that it applies to all space and ocean income regardless of any nexus with the foreign corporation's U.S. trade or business. Several commentators suggested that if the presumption were retained, objective standards consistent with existing rules for effectively connected income should be included to ensure that the space and ocean income has a meaningful connection with the foreign corporation's U.S. trade or business. In the absence of objective standards, commentators stated that taxpayers should be permitted to apply a reasonable allocation method on a consistent basis to all of their space and ocean income. In addition, as with § 1.863–8(b)(2) of the 2001 proposed regulations, several commentators stated that under § 1.863–8(b)(3) of the 2001 proposed regulations space and ocean income could in some cases be subject to multiple levels of taxation.

In response to these comments, the reproposed regulations provide that if a foreign person, other than a CFC, is engaged in a trade or business within the United States, its space or ocean income is from sources within the United States to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed within the United States.

The Treasury Department and the IRS believe that the revision in reproposed § 1.863–8(b)(2)(iii) providing that space or ocean income will be U.S. source income to the extent the space or ocean income is attributable to functions performed, resources employed, or risks assumed in the United States should mitigate commentators' concerns about potential multiple levels of taxation.

Examples 12 and *13* in § 1.863–8(f) of the 2001 proposed regulations illustrate the application of § 1.863–8(b)(3) of those regulations to foreign persons that conduct certain activities in the United States. One commentator noted that these examples appear to state that engaging in certain activities would constitute the conduct of a trade or business in the United States. In response to this comment, *Examples 12* and *13* have been clarified in the reproposed regulations to state that they assume, on the facts of the example, that the activities constitute the conduct of a trade or business within the United States within the meaning of section 864(b). The Treasury Department and the IRS intend that the determination whether a foreign person is engaged in a trade or business in the United States continue to be made under general section 864(b) principles.

5. Source Rules for Sales of Property in Space or International Water

The 2001 proposed regulations provide generally that taxpayers must apply the rules of section 863(d) and the 2001 proposed regulations to determine the source of income from sales of property purchased or produced by the taxpayer, either when production occurs in whole or in part in space or international water, or when the sale occurs in space or international water. Under the 2001 proposed regulations, income from sales of inventory property (within the meaning of section 1221(a)(1)) on international water is sourced under § 1.863–3(c)(2). Section 1.863–3(c)(2), as amended by the 2001 proposed regulations, provides that the place of sale will be presumed to be the United States when property is produced in the United States and the property is sold to a U.S. resident for use in space or international water; in such cases, the property will be treated as sold for use, consumption, or disposition in the United States.

Section 1.863–8(d)(1)(i) of the 2001 proposed regulations defines space activity to include the sale of property in space. Section 1.863–8(d)(1)(ii) of the 2001 proposed regulations defines ocean activity to include the sale of property in international water, but not the sale of inventory property on international water. Under § 1.863–8(d)(2)(iii) of the 2001 proposed regulations, a sale occurs in space or international water if the property is located in space or international water at the time the rights, title, and interest of the seller in the property are transferred to the purchaser, or if the property is sold for use in space or international water.

For sales in space or international water of property produced by the taxpayer, § 1.863–8(b)(4)(ii)(A) of the 2001 proposed regulations generally provides that the source of income attributable to sales activity is determined under § 1.863–8(b)(1), (2), or (3) of the 2001 proposed regulations. If, however, the taxpayer sells such property outside space and international water, the source of income attributable to sales activity is determined under § 1.863–3(c)(2).

Commentators stated that the inclusion of sales of inventory property in space or international water in the definitions of space and ocean activity is inconsistent with the legislative history of the 1986 Act, which indicates that the Senate Committee on Finance did not intend sales of inventory property on the high seas to be considered space or ocean activity. See S. Rep. No. 99–313, at 359.

In response to comments, the reproposed regulations provide that sales of inventory property in space or international water will be considered space or ocean activity only if the inventory property is sold for use, consumption, or disposition in space or international water. In such cases, the source of income will be determined under the source rules provided for space and ocean income by the reproposed regulations. The source of income from sales in space or international water of inventory property when the inventory property is sold for use, consumption, or disposition outside space and international water will be determined under §§ 1.861–7(c) and 1.863–3(c)(2). The Treasury Department and the IRS believe that sales of property in space or international water—with the exception of sales of inventory property in space

or international water for use, consumption, or disposition outside space or international water—should be considered space or ocean activity, and that the source of income from such sales should be determined under section 863(d). The Treasury Department and the IRS believe that this result is consistent with both the statute and the legislative history. The statute provides that space or ocean activity includes any activity in space or international water. However, the Senate Report states that the Senate Committee on Finance did not intend to override the general source rule in § 1.861–7(c) for sales of property on the high seas. See S. Rep. No. 99–313, at 359. Thus, sales of inventory property in transit between the United States and a foreign country will continue to be sourced under sections 861 through 865, and not section 863(d).

The reproposed regulations do not contain the presumption in § 1.863–3(c)(2) of the 2001 proposed regulations regarding sales of property produced by the taxpayer in the United States to U.S. residents for use in space or international water. Under the reproposed regulations, if such sales occur in space or international water, the source of income attributable to sales activity will be determined under reproposed § 1.863–8(b)(3)(ii)(D).

6. Special Rule for Determining the Source of Income From Services

Section 1.863–8(b)(5) of the 2001 proposed regulations provides that income derived from the performance of services in space or international water is sourced under § 1.863–8(b)(1), (2), or (3) of the 2001 proposed regulations, as applicable. Section 1.863–8(d)(2)(ii)(A) of the 2001 proposed regulations contains a general rule providing that the performance of a service is a space or ocean activity in its entirety when a part of the service, even if *de minimis*, is performed in space or international water.

The Treasury Department and the IRS recognized that this rule could be over-inclusive in certain cases. Therefore, § 1.863–8(d)(2)(ii)(A) of the 2001 proposed regulations provides a facilitation exception, under which a service will not be treated as either space or ocean activity if the taxpayer's only activity in space or international water is to facilitate the taxpayer's own communications as part of the provision or delivery of a service provided by the taxpayer, and the service would not otherwise be a space or ocean activity. Section 1.863–8(b)(5) of the 2001 proposed regulations also provides that if the taxpayer can allocate, to the satisfaction of the Commissioner, gross income from the services transaction between performance occurring outside space and international water, and performance occurring in space or international water, the source of income allocated to performance occurring outside space and international water will be determined under sections 861, 862, 863, and 865.

Several commentators commented unfavorably on a rule that characterizes an entire services transaction as space or ocean activity when only *de minimis* performance occurs in space or international water. Several commentators noted that even though § 1.863–8(b)(5) of the 2001 proposed regulations permits a taxpayer to source services income to sources outside space or international water, the entire transaction continues to be characterized as space or ocean activity, and all income derived from the services transaction is thus included in the separate subpart F and foreign tax credit limitation category for shipping income. Some commentators stated that under the 2001 proposed regulations significant consequences result from characterization as a services transaction, even though the characterization rules are themselves unclear. Some commentators also stated that the facilitation exception to space or ocean activity characterization is confusing, and that the example intended to illustrate the application of the facilitation exception (*Example 4* in § 1.863–8(f) of the 2001 proposed regulations) is itself unclear.

As noted above, subsequent to the publication of the 2001 proposed regulations, AJCA amended the subpart F rules relating to space and ocean income by eliminating shipping income as a category of subpart F income and reduced the number of foreign tax credit limitation categories from nine to two (with space and ocean income generally falling into the general limitation category) for taxable years beginning after December 31, 2006. The Treasury Department and the IRS believe that these statutory changes should allay commentators' concerns regarding the characterization of a services transaction as space or ocean activity. In addition, as discussed below, the reproposed regulations provide that if the taxpayer can demonstrate the value of the service attributable to performance in space or international water and the value of the service attributable to performance outside space and international water, then the service will be treated as a space or ocean activity only to the extent of the activity performed in space or international water. The value of the service is attributable to performance occurring in space or international water to the extent the performance of services, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in space or international water.

Based on the comments, the reproposed regulations eliminate the facilitation exception. Under reproposed § 1.863–8(d)(2)(ii), to the extent, based on all the facts and circumstances, the value of the service attributable to functions performed, resources employed, or risks assumed in space or international water is *de minimis*, such service is not treated as space or ocean activity. The adoption of the *de minimis* rule is intended to address taxpayer concerns about potential confusion in qualifying for the facilitation exception. *Example 4* of reproposed § 1.863–8(f) has been revised accordingly.

The rule for determining the source of income from performance of services that occur in part in space or international water and in part outside space and international water has been adapted to conform to the changes made to reproposed § 1.863–8(d)(2)(ii). To the extent a service is characterized as space or ocean activity under reproposed § 1.863–8(d)(2)(ii), the source of gross income derived from such transaction is determined under reproposed § 1.863–8(b)(1) or (2), as applicable, as provided by reproposed § 1.863–8(b)(4). Accordingly, to the extent the value of the service, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed outside space and international water, the service will not constitute space or ocean activity, and, to that extent, the source of income from the service will be determined under section 861, 862, or 863, as applicable.

7. Definition of Space and Ocean Activity

a. Foreign Communications Activity as Space or Ocean Activity

Section 1.863–8(b)(6) of the 2001 proposed regulations provides that space and ocean activity include communications activity (but not international communications activity) occurring in space or international water. Foreign communications activity is thus characterized under the 2001 proposed regulations as space or ocean activity when, for example, part of the transmission is via satellite or via underwater cable located in international water.

Commentators requested that the regulations characterize income from foreign-to-foreign communications as international communications income, which is specifically excluded from the definition of space and ocean activity by section 863(d)(2)(B) and § 1.863–8(d)(3) of the 2001 proposed regulations, but retain the 100 percent foreign source rule otherwise provided for foreign communications income by § 1.863–9(b)(4) of the 2001 proposed regulations. International communications income is defined by section 863(e)(2) as income derived from the transmission of communications between the United States and a foreign country (or possession of the United States) and is discussed in greater detail below.

Commentators noted that this rule puts telecommunications companies using satellite or underwater cable methods of transmission at a competitive disadvantage vis-á-vis competitors in foreign marketplaces that use solely land-based facilities. For example, if a CFC were paid to transmit a telephone call between two foreign countries and used a land line connecting the two countries to transmit the call, the CFC's income from the transmission would be included in the general limitation category for foreign tax credit purposes. If the communication were transmitted using fiber optic cable located in international water or a satellite, the CFC's income from the transmission would be foreign source space or ocean income included in the separate subpart F and foreign tax credit limitation category for shipping income.

The reproposed regulations do not characterize income from foreign-to-foreign communications as international communications income as suggested by commentators. Section 863(d)(2)(A) broadly defines space and ocean activity as *any activity* conducted in space or international water. The statutory exception to space and ocean activity in section 863(d)(2)(B) removes only activities giving rise to international communications income from the scope of space and ocean activity. In addition, if foreign-to-foreign communications income were characterized as international communications income, U.S. persons with such income would be subject to the statutory source rule in section 863(e)(1)(A), which provides for the split-sourcing of a U.S. person's international communications income. The Treasury Department and the IRS thus consider the language of the statute to preclude the approach suggested by commentators with respect to the characterization and sourcing of income from foreign-to-foreign communications. The legislative history of the 1986 Act also indicates that Congress intended income from foreign-to-foreign communications to be foreign source income. See S. Rep. No. 99–313, at 359, "Finally, if the communication is between two foreign locations, the committee intends income attributable thereto to be foreign source.". This would not be the result, however, if foreign-to-foreign communications income were included in the definition of international communications income and thus subject to the statute's 50/50 source rule for U.S. persons.

In addition, as noted above, AJCA made significant changes to subpart F and the foreign tax credit regime as applicable to space and ocean income. The Treasury Department and the IRS believe that these statutory changes should allay commentators' concerns regarding the characterization of foreign-to-foreign communications as space or ocean activity.

The Treasury Department and the IRS believe that the modifications in the reproposed regulations with respect to the characterization of services involving space or ocean activities address some of the commentators' concerns regarding the characterization of foreign-to-foreign communications activities involving services performed both in space or international water and in foreign countries. Reproposed § 1.863–8(d)(2)(ii) provides that a transaction characterized as the performance of a service will be treated as a space or ocean activity only to the extent the value of the service, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in space or international water.

b. Definition of Space

Section 1.863–8(d)(1)(i) of the 2001 proposed regulations defines space as any area not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States, and not in international water. Under the 2001 proposed regulations, space comprises the entire area outside the jurisdiction of any country or U.S. possession, extending from just above the surface of international water (and Antarctica) through, and beyond, the earth's atmosphere. Space thus includes international airspace.

Several commentators stated that the definition of space should be limited to the area beyond the earth's atmosphere. One commentator proposed a definition of space that conforms to a definition used for non-tax purposes (for example, beyond the maximum altitude at which powered flight by aircraft equipped with air-breathing engines is possible). Another commentator stated that the definition of space could be read to include cyberspace, the electronic medium in which online communication takes place, and suggested that cyberspace be specifically excluded from the definition of space. One commentator noted language in the legislative history stating that space activities had not been very prevalent at the time of the 1986 Act (see, for example, S. Rep. No. 99–313, at 358) and argued that Congress did not intend to include international airspace in space.

No changes were made to the reproposed regulations in response to these comments. The Treasury Department and the IRS believe a broad definition of space that includes international airspace is consistent with legislative intent to assert primary tax jurisdiction over income earned by U.S. residents that is not within any foreign country's taxing jurisdiction. See, *e.g.*, S. Rep. No. 99–313, at 357. The Treasury Department and the IRS also believe that providing guidance with respect to the place of performance of activities involving online communications is beyond the scope of the present regulations, and that taxpayers should rely on generally applicable principles to determine where functions are performed, resources are employed, or risks are assumed in a specific online transaction.

c. Transportation Income

Certain activities occurring in space or international water are not considered either space or ocean activity. Section 1.863–8(d)(3)(i) of the 2001 proposed regulations, consistent with section 863(d), provides that space or ocean activity does not include any activity that gives rise to transportation income as defined in section 863(c).

One commentator stated that a portion of a bareboat charter—the return of an empty vessel that has unloaded its cargo (backhaul)—may potentially be considered ocean activity under the 2001 proposed regulations. Another commentator stated that income from container leasing by a party other than the ship operator could constitute space or ocean income, and could be subject to withholding tax. One commentator also suggested that the regulations should state that they do not apply to the income of foreign corporations derived from the international operation of ships, or to container leasing.

The reproposed regulations do not adopt changes to reflect these

comments. The reproposed regulations reflect the broad statutory definition of ocean activity in section 863(d)(2) as "any activity conducted on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States." The Treasury Department and the IRS do not consider it appropriate to construe the definition of section 863(c) transportation income in the context of these regulations. The Treasury Department and the IRS will consider addressing the definition of section 863(c) transportation income in separate guidance.

8. Treatment of Partnerships

Section 1.863–8(e) of the 2001 proposed regulations generally provides that section 863(d) and the regulations thereunder will be applied to domestic partnerships at the partnership level and to foreign partnerships at the partner level. Commentators suggested that the source rules of § 1.863–8 of the 2001 proposed regulations be applied to all partnerships either at the entity level or at the partner level.

The Treasury Department and the IRS believe that section 863(d) should be applied to domestic and foreign partnerships in the same manner. Accordingly, the reproposed regulations do not provide a different rule for foreign partnerships and domestic partnerships. Section 1.863–8(e) of the reproposed regulations provides that section 863(d) and the regulations thereunder will be applied to domestic partnerships at the partner level. In order to conform the treatment of domestic and foreign partnerships, no change was made with respect to the rule in the 2001 proposed regulations that section 863(d) and the regulations thereunder will be applied to foreign partnerships at the partner level.

9. Allocations

When a taxpayer must allocate gross income to the satisfaction of the Commissioner, based on all the facts and circumstances, under the provisions of the 2001 proposed regulations, the Treasury Department and the IRS believe such allocations generally should be based on section 482 principles.

Several commentators stated that allocation of gross income based on section 482 principles will be burdensome and expensive and will create uncertainty. Commentators also noted that the 2001 proposed regulations provide no guidance on allocating income other than a facts and circumstances approach.

The Treasury Department and the IRS consider the allocation of gross income based on the general guidance of section 482 to be an approach that is well-suited to application in the wide variety of factual contexts within the scope of the reproposed regulations. The Treasury Department and the IRS solicit comments on alternative methods of allocation for particular industries and criteria that could be used to evaluate the reasonableness of such methods.

10. Reporting and Documentation Requirements

In order to satisfy the Commissioner with respect to a taxpayer's allocation of gross income under § 1.863–8(b)(3), (b)(4)(ii)(C), or (b)(5) of the 2001 proposed regulations, the taxpayer must make the allocation on a timely filed original return (including extensions). An amended return does not qualify for this purpose, and section 9100 relief will not be available. In all cases, a taxpayer must also maintain contemporaneous documentation regarding the allocation of gross income, allocation and apportionment of expenses, losses, and other deductions, the methodologies used, and the circumstances justifying use of those methodologies. The taxpayer must produce such documentation within 30 days upon request.

Commentators stated that neither the statute nor the legislative history provides a basis for the reporting, recordkeeping, and contemporaneous documentation requirements in the 2001 proposed regulations. Commentators also noted that the Code and regulations do not contain similar requirements with respect to certain other expense allocation provisions.

The reproposed regulations generally retain the recordkeeping and documentation requirements. The Treasury Department and the IRS believe that it is appropriate to require taxpayers to keep proper records, and additionally note the potentially considerable difficulties the IRS would face in performing the allocations required by the reproposed regulations without appropriate taxpayer records.

The Treasury Department and the IRS recognize, however, that taxpayers may not have all the information necessary to make allocations at the time a return is originally filed. The reproposed regulations therefore provide that a taxpayer may make changes to allocations made on the taxpayer's original return with respect to any taxable year for which the statute of limitations has not closed, subject to certain conditions. Nonetheless, changes to such allocations that are not made until an audit of the taxable year to which the allocations relate has commenced, or a taxpayer's failure timely to provide documentation and other information supporting the allocations, create administrative difficulties for the IRS. Accordingly, reproposed § 1.863–8(g)(4) sets forth the actions required of taxpayers and the procedures the IRS will follow in the case of taxpayers that change their allocations.

The reproposed regulations also require taxpayers, upon request, to provide access to the software programs and other systems used by the taxpayer to make allocations under these regulations. For this purpose, software has the meaning provided in section 7612(d). The Treasury Department and the IRS believe that the IRS could face significant administrative and other difficulties in the examination of allocations made under these regulations without access to such software.

11. Examples

Certain examples in § 1.863–8(f) of the 2001 proposed regulations contain statements regarding the characterization of certain activities (as, for example, the lease of equipment or the performance of services). One commentator suggested that the examples clarify that the character of the transactions at issue is only assumed for purposes of the specific example. In response to this comment, the examples in reproposed § 1.863–8(f) have been revised to make clear that the characterization of certain transactions is assumed based on the facts of the specific example. The Treasury Department and the IRS did not consider it necessary to modify certain other examples (for example, *Example 1* of reproposed § 1.863–8(f)) in which the character of the transaction at issue should be clear under the facts presented.

In addition, *Examples 2, 3, 4,* and *7* of reproposed § 1.863–8(f), have been revised to reflect substantive changes made to reproposed § 1.863–8(b)(4) and (d)(2)(ii) with respect to services that involve activities performed in space or international water.

B. Communications Activity Under Section 863(a), (d), and (e)

1. International Communications Income

International communications income is defined by section 863(e)(2) as income derived from the transmission of communications between the United States and a foreign country (or

possession of the United States). Section 863(e)(1)(A) provides that in the case of any U.S. person, 50 percent of any international communications income will be sourced in the United States and 50 percent of such income will be sourced outside the United States. Section 863(e)(1)(B)(i) provides that any international communications income of a foreign person will be foreign source income except as provided in regulations or in section 863(e)(1)(B)(ii). Section 1.863–9(b)(2)(ii)(A) of the 2001 proposed regulations states the general rule that international communications income of a foreign person is foreign source income. However, the 2001 proposed regulations contain certain exceptions to the general rule.

2. International Communications Income of 50-Percent or More U.S.-Owned Foreign Corporations

The first exception, in § 1.863–9(b)(2)(ii)(B) of the 2001 proposed regulations, provides that if U.S. persons own 50 percent or more of a foreign corporation by vote or value (directly, indirectly, or constructively), including a CFC within the meaning of section 957, international communications income derived by that corporation is entirely U.S. source income.

As with the similar rule provided for the space and ocean income of U.S.-owned foreign corporations in § 1.863–8(b)(2) of the 2001 proposed regulations, several commentators requested that the rule be withdrawn because it expands the scope of U.S. taxing jurisdiction beyond the apparent intent of Congress. Commentators stated that the rule is punitive in nature because it is less favorable than the 50/50 source rule applied to international communications income earned directly by U.S. persons. As with § 1.863–8(b)(2) and (3) of the 2001 proposed regulations, commentators also stated that under the rule the international communications income of certain foreign corporations may be subject to multiple levels of taxation.

Commentators noted that in certain circumstances international communications income could be subject to the 30-percent gross income tax imposed by section 881, which is typically collected through withholding by the payors of such income. Commentators stated that although most tax treaties should prevent the imposition of the 30-percent tax (international communications income would likely be characterized as business profits under most treaties and would accordingly be exempt from U.S. taxation unless attributable to a permanent establishment in the United States), the rule in the 2001 proposed regulations would result in disparate treatment for corporations from treaty countries vis-à-vis corporations from non-treaty countries. The requirement to withhold the 30-percent tax could also create numerous administrative and enforcement difficulties. In addition, given the extent of resale of capacity between telecommunications providers, commentators noted that payments relating to the same transmission could be subject to multiple withholding. Finally, as with the similar rule provided for the space and ocean income of U.S.-owned foreign corporations in § 1.863–8(b)(2) of the 2001 proposed regulations, commentators raised the issue of potential difficulties in determining whether a foreign corporation is 50-percent or more U.S.-owned.

As noted above, several commentators addressed the stock ownership test applicable to U.S.-owned foreign corporations. They stated that determining whether a foreign corporation is 50-percent U.S. owned, especially without regard to the size of an owner's holding, presents potential difficulties (for example, when the foreign corporation is widely-held).

In light of the potential complexity in determining whether a foreign corporation is a U.S.-owned foreign corporation and the belief of the Treasury Department and the IRS that international communications income earned by foreign corporations should be sourced in accord with the rules for foreign persons, with the limited exception for CFCs discussed below, the reproposed regulations do not include a special source rule for international communications income earned by a 50 percent or more U.S.-owned foreign corporation. Instead, the international communications income of foreign corporations (other than CFCs) is sourced under the applicable provisions of reproposed § 1.863–9(b)(2)(i), (iii), and (iv).

3. International Communications Income of CFCs

In light of the comments with respect to CFCs described above, the reproposed regulations provide that in the case of a CFC, 50 percent of any international communications income will be sourced in the United States and 50 percent of such income will be sourced outside the United States. The 100-percent U.S. source rule is eliminated. Consequently, the source rule for international communications income in the hands of a CFC is the same rule that applies to U.S. persons. In both cases, the source rules take into account that international communications activities must have both a U.S. and a foreign connection (i.e., one endpoint in the United States and the other in a foreign country or possession of the United States). The Treasury Department and the IRS believe that the revision of the source rule for CFCs deriving international communications income should mitigate commentators' concerns about potential multiple levels of taxation because 50 percent of this income is foreign source.

The Treasury Department and the IRS recognize that this and other provisions of reproposed § 1.863–9 may raise withholding tax issues similar to those discussed above in connection with the source rule for the space and ocean income of CFCs (in reproposed § 1.863–8(b)(2)(ii)). As noted above, the Treasury Department and the IRS seek comments on these issues and practical suggestions to address them in the specific factual contexts in which they may arise.

4. International Communications Income Derived by a Foreign Person With an Office or Fixed Place of Business in the United States

Section 863(e)(1)(B)(ii) and § 1.863–9(b)(2)(ii)(C) of the 2001 proposed regulations provide that international communications income derived by a foreign person that is attributable to an office or other fixed place of business in the United States is from sources within the United States. Section 864 and the regulations thereunder provide guidance in determining "income * * * attributable to an office or other fixed place of business" in specific contexts. However, the Treasury Department and the IRS believe that, for purposes of section 863(e), international communications income should be attributed to an office or fixed place on business based on functions performed, resources employed, and risks assumed. Therefore, pursuant to the regulatory authority in section 863(e)(1)(B)(i), the reproposed regulations provide that, for purposes of this section, income is attributable to an office or other fixed place of business in the United States to the extent of functions performed, resources employed, or risks assumed by the office or other fixed place of business.

5. International Communications Income of a Foreign Person Engaged in a Trade or Business Within the United States

The second exception to § 1.863–9(b)(2)(ii)(A) of the 2001 proposed regulations is contained in § 1.863–

9(b)(2)(ii)(D), which provides that if a foreign person (other than a 50 percent or more U.S.-owned foreign corporation described in § 1.863–9(b)(2)(ii)(B) of the 2001 proposed regulations) is engaged in a trade or business within the United States, the foreign person's international communications income is presumed to be U.S. source income. However, if the foreign person can allocate its international communications income between sources within the United States, space, and international water and sources outside the United States, space, and international water to the satisfaction of the Commissioner, based on all the facts and circumstances, which may include functions performed, resources employed, or risks assumed, then the income allocated to sources outside the United States, space, and international water will be foreign source income.

Several commentators stated that the presumption is overbroad because it applies to all international communications income regardless of any nexus with the foreign corporation's U.S. trade or business. These commentators claimed that the presumption is inconsistent with U.S. tax policy and international norms that require a connection between the income and the foreign person's activities in the United States before U.S. taxing jurisdiction is exercised.

In response to comments, the reproposed regulations provide that if a foreign person, other than a CFC, is engaged in a trade or business within the United States, gross income derived by that person from international communications activity is from sources within the United States to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed within the United States. This rule is similar to the rule in the reproposed regulations under section 863(d) for foreign persons engaged in a trade or business within the United States. There is no longer a presumption of U.S. source income.

The Treasury Department and the IRS believe that the provision in the reproposed regulations that such a foreign person's international communications income is U.S. source only to the extent attributable to functions performed, resources employed, or risks assumed in the United States addresses taxpayers' concerns regarding a nexus between the foreign person's international communications income and its business activities in the United States.

Several commentators objected to the rule that international communications income could be foreign source income only to the extent that the foreign person could allocate international communications income to activity occurring in a foreign country. Because the reproposed regulations provide for U.S. sourcing only to the extent that the foreign person's international communications income is attributable to functions performed, resources employed, or risks assumed in the United States, this concern should be mitigated.

Several commentators stated that section 863(e) makes international communications income that is attributable to a U.S. office U.S. source income, and that the regulations should not adopt a broader U.S. trade or business rule. Section 863(e)(1)(B)(ii) provides that if a foreign person has a fixed place of business in the United States, international communications income attributable to such fixed place of business is U.S. source income. The Treasury Department and the IRS have not made changes to the reproposed regulations in response to these comments. Section 863(e)(1)(B)(i) by its terms gives the Secretary broad authority to source international communications income of a foreign person as U.S. source income. The Treasury Department and the IRS believe that it is appropriate to exercise that authority in this case. The trade or business rule reflects the concern of the Treasury Department and the IRS that a foreign person could avoid a U.S. fixed place of business under section 863(e)(1)(B)(ii), yet engage in significant communications activity in the United States. The Treasury Department and the IRS believe that Congress intended that a foreign person engaged in substantial business in the United States be subject to U.S. tax on that communications activity.

6. Income Derived From Communications Activity—The Paid-To-Do Rule

Income derived from communications activity is defined in § 1.863–9(d)(2) of the 2001 proposed regulations as income derived from the transmission of communications, including income derived from the provision of capacity to transmit communications. There is no requirement that the recipient of communications income perform the transmission function itself. This rule reflects the understanding of the Treasury Department and the IRS that providers of communications services often use capacity owned or operated by others. However, income is derived from communications activity only if the taxpayer is paid to transmit, and bears the risk of transmitting, the communications.

Section 1.863–9(d)(3) of the 2001 proposed regulations provides rules for characterizing income derived from a communications activity for purposes of sourcing the income derived from such activity. The character of income derived from communications activity is determined by establishing the two points between which the taxpayer is paid to transmit, and bears the risk of transmitting, the communication (the paid-to-do rule). Under the paid-to-do rule, the path the communication takes between the two points is not relevant in determining the character of the transmission. If a taxpayer is paid to take a communication from one point to another point, income derived from the transmission is characterized based on the transmission between those two points, even if the taxpayer contracts out part of the transmission to another party. This rule reflects the recognition by the Treasury Department and the IRS, as noted above, that providers of communications services often use capacity owned or operated by others.

When the taxpayer cannot establish the two points between which the taxpayer is paid to transmit the communication, § 1.863–9(b)(6) of the 2001 proposed regulations provides a default source rule, under which all income from the communications activity, whether derived by a U.S. person or a foreign person, is deemed to be from sources within the United States. Thus, for example, when a provider of communications services provides both local and international long distance services in one-price bundles for a set amount each month and tracing each transmission is not possible or practical, the income derived from the communications activity is U.S. source income. The Treasury Department and the IRS understand that many taxpayers in the communications industry may consider it impractical or impossible to prove the endpoints of the communications they transmit. The Treasury Department and the IRS accordingly solicited comments as to proposals for those situations when taxpayers cannot establish the points between which the taxpayer is paid to transmit the communication.

One commentator stated that the phrase "bears the risk of transmitting," contained in § 1.863–9(d)(2) and (d)(3)(i) of the 2001 proposed regulations, is ambiguous and does not meaningfully improve the determination of when income is derived from communications activity. This commentator noted that the nature of the risk a taxpayer must bear to be treated as deriving

communications income was unclear, and that the determination of risk would pose administrative difficulties given the complexity of business models and structures. No change was made to the reproposed regulations in response to this comment. The Treasury Department and the IRS believe that, in determining whether a taxpayer derives communications income, risk is more important than the mere fact of payment. The Treasury Department and the IRS thus believe that a taxpayer should not be considered to derive communications income unless the taxpayer bears the economic risk of nonpayment with respect to the transmission of communications or the provision of capacity to transmit communications.

Commentators stated that the paid-to-do rule is overbroad because it asserts primary U.S. taxing jurisdiction over certain communications income regardless of any nexus between the income and the United States. Commentators also noted that when certain taxpayers cannot establish the two points between which they are paid to transmit a communication, the income from such communications activity may be subject to potential double taxation at the corporate level (for example, a foreign corporation could be subject to tax on such communications income in both the United States and in the foreign corporation's country of residence or incorporation or countries where it does business).

Commentators stated that the paid-to-do rule places undue burdens on taxpayers who want to obtain the benefit of foreign source income characterization. Commentators noted that, in many cases, it may be impractical or technologically impossible to track the origination and termination points of an individual transmission, and that development of the required technology, software, and other systems would require significant capital investments. Maintenance of the records needed to substantiate proper income sourcing could also be onerous for those taxpayers who perform extremely large numbers of transmissions. Commentators thus requested that the regulations provide assurance that reasonable methods of proof, consistent with industry practice and consistently applied, would be accepted in establishing the points of origin and/or destination of a communication.

Commentators submitted suggested modifications to the paid-to-do rule. One commentator suggested that the paid-to-do rule be modified to characterize all income from a communication based on the two endpoints between which the transmission is made. Under this commentator's suggested rule, whether a particular taxpayer itself carried out all, or only a portion, of the transmission would be irrelevant, and the characterization of the communication would be the same for all taxpayers involved in the transmission. One commentator suggested that the paid-to-do rule be applied on a single entity basis for United States corporations that join in the filing of a consolidated U.S. income tax return.

Commentators also suggested reasonable method approaches to determine the endpoints between which a taxpayer is paid to transmit communications (for example, based on technical characteristics of the communication or contractual terms, or on a per transaction, per customer, or aggregate basis). One commentator suggested factors that could be taken into account in determining whether a particular method is reasonable, including the reliability of the method chosen, the degree to which the method is in line with generally accepted industry practices and norms, and the extent to which the method takes into account all the information available to the taxpayer.

Commentators suggested that the U.S. source default rule for income from communications for which the endpoints of transmission cannot be identified should only apply to foreign taxpayers that directly own or operate communications facilities, or otherwise directly hold rights to communications capacity, in the United States; when a foreign taxpayer does not own or otherwise have rights to telecommunications capacity in the United States, income from such communications would thus be foreign source. Other commentators suggested that income from communications for which the endpoints of transmission cannot be identified be treated in the same manner as international communications income, with a 100-percent U.S. source exception provided for telecommunications service providers who are paid to transmit communications that are substantially all between multiple points located within the United States.

The Treasury Department and the IRS continue to believe that communications activity is most appropriately characterized based on the two points between which the taxpayer is paid to transmit, and bears the risk of transmitting, the communication. The Treasury Department and the IRS consider the endpoint-based source rule in the reproposed regulations to be an approach that best matches the source of communications income to the location where functions are performed, resources are employed, or risks are assumed in a taxpayer's communications transaction. Moreover, although commentators noted potential difficulties in identifying the endpoints of a communication, the industry-specific comments received in response to the 2001 proposed regulations generally focused on recordkeeping burdens. Taxpayers have much better access to the relevant information regarding the facts and circumstances of their communications transactions than the IRS. The Treasury Department and the IRS accordingly solicit comments on the challenges to identifying the endpoints of communications in specific industries or situations, as well as suggestions for rules that are responsive to these particular challenges. The Treasury Department and the IRS also again solicit comments on methods to identify the endpoints of a communication that may be reasonable for particular industries, as well as criteria that may be appropriate to evaluate the reasonableness of such methods.

7. Treatment of a Content Provider's Communications Activity

Section 1.863–9(d)(1)(ii) of the 2001 proposed regulations provides that, to the extent a taxpayer's transaction consists in part of non-*de minimis* communications activities and in part of non-*de minimis* non-communications activities, such parts of the transaction must be treated as separate transactions. Section 1.863–9(d)(1)(ii) of the 2001 proposed regulations then provides that gross income derived from the activities must be allocated to each separate transaction, to the satisfaction of the Commissioner, based on all the facts and circumstances, which may include functions performed, resources employed, or risks assumed in the respective transactions.

One commentator suggested that the regulations be clarified to provide that a *content* company (for example, the creator of a television or radio program) that does not possess or operate communications equipment or itself perform any communications function is not engaged in communications activities. This commentator did not believe that communication activities should be attributed to a content provider and stated that delivery of a content provider's programming by a

third party should not change the character of the content provider's income to communications income.

No changes were made to the reproposed regulations in response to this comment. The Treasury Department and the IRS believe that the transmission of any communications, including content, is appropriately considered a communications activity. The Treasury Department and the IRS also believe that when a content provider is paid to transmit, and bears the risk of transmitting, content to a customer, the content provider should be considered to derive communications income. Under reproposed § 1.863–9(h)(1)(ii), as under the 2001 proposed regulations, the content provider will derive communications income only to the extent of the gross income allocated to the separate transaction involving the communications activity. The Treasury Department and the IRS believe that it is appropriate for a content provider to derive communications income when communications activities make more than a de minimis contribution to the value of the content provider's overall transaction with its customer.

8. Treatment of Partnerships

Section 1.863–9(e)(1) of the 2001 proposed regulations generally provides that section 863(e) and the regulations thereunder will be applied to domestic partnerships at the partnership level. Section 1.863–9(e)(1) of the 2001 proposed regulations also provides that section 863(e) and the regulations thereunder will be applied at the partner level to foreign partnerships. Section 1.863–9(e)(2) of the 2001 proposed regulations similarly provides that section 863(e) and the regulations thereunder will be applied at the partner level to domestic partnerships in which 50 percent or more of the partnership interests are owned by foreign persons.

One commentator stated that § 1.863–9(e)(2) of the 2001 proposed regulations conflicts with sections 863(e)(1)(A) (which provides that the international communications income of any United States person shall be 50-percent U.S. source and 50-percent foreign source) and 7701(a)(3) (which defines United States person to include a domestic partnership). According to this commentator, the rule potentially discriminates against foreign partners in a domestic partnership owned 50 percent or more by foreign partners vis-á-vis the U.S. partners in such a partnership. For example, the international communications income of a foreign partner could be 100-percent U.S. source under § 1.863–9(b)(2)(ii)(B) or (C) of the 2001 proposed regulations, whereas the international communications income of a U.S. partner would be 50-percent U.S. source and 50-percent foreign source, creating the potential for double taxation of the foreign partner. Another commentator stated that § 1.863–9(e)(1) of the 2001 proposed regulations could result in the double taxation of the U.S. partners of foreign partnerships. This commentator noted that the international communications income of a foreign partnership could be subject to tax in the country in which the foreign partnership is organized. Under § 1.863–9(e) of the 2001 proposed regulations, a U.S. partner's share of such international communications income would be subject to the 50/50 source rule in § 1.863–9(b)(2)(i) of the 2001 proposed regulations. As a result, the U.S. partner may be unable to credit its proportionate share of tax paid in the foreign country. Commentators suggested that the source rules of § 1.863–9 of the 2001 proposed regulations be applied to all partnerships at the entity level.

As is the case for reproposed § 1.863–8(e) with respect to section 863(d), the Treasury Department and the IRS believe that section 863(e) should be applied to domestic and foreign partnerships in the same manner. Accordingly, the reproposed regulations do not provide a different rule for foreign partnerships and domestic partnerships. Section 1.863–9(i) of the reproposed regulations provides that the regulations will be applied at the partner level for all partnerships.

9. Allocations

When a taxpayer must allocate gross income to the satisfaction of the Commissioner, based on all the facts and circumstances, under § 1.863–9(b)(2)(ii)(D) or (d)(1)(ii) of the 2001 proposed regulations, the Treasury Department and the IRS believe that such allocations should be based generally on section 482 principles. As with § 1.863–8 of the 2001 proposed regulations, commentators stated that allocation of income based on section 482 principles would be burdensome and expensive and would create uncertainty.

The Treasury Department and the IRS consider the allocation of gross income based on the general guidance of section 482 to be an approach that is well-suited to application in the wide variety of factual contexts within the scope of the reproposed regulations. The Treasury Department and the IRS solicit comments on alternative methods of allocation for particular industries and criteria that could be used to evaluate the reasonableness of such methods.

10. Issues With Uplink Functions

Examples 5, 10, and *12* of § 1.863–9(f) of the 2001 proposed regulations involve communications activities that include the performance of satellite uplink and downlink functions. One commentator stated that these examples do not provide clear guidance as to whether the satellite operator must itself perform the uplink function in order for its income to qualify as international communications income, and could be read to treat a satellite operator that contracts with another party to transmit signals as not engaged in international communications activity because the uplink function is performed by that other party.

No changes were made to the reproposed regulations in response to this comment. Reproposed § 1.863–9(h)(2) provides that income may be considered derived from a communications activity even if the taxpayer does not perform the transmission function, but, in all cases, a taxpayer derives communications income only if the taxpayer is paid to transmit, and bears the risk of transmitting, the communications. The Treasury Department and the IRS believe that whether a satellite operator should be considered to derive international telecommunications income from a transaction is appropriately determined by applying reproposed § 1.863–9(h)(2), as well as the other substantive provisions of the reproposed regulations, to the specific facts of the taxpayer's transaction.

11. Characterization of Income

One commentator stated that the regulations should be clarified to provide that they do not purport to establish general rules for the characterization of income and that the characterization of income items for purposes of the application of section 863(d) and (e) is to be made under general principles of tax law. This commentator stated that some examples in the 2001 proposed regulations could suggest conflicting characterizations of income from what appear to be the same activities. In response to this comment, the examples in the reproposed regulations have been clarified to state that the characterization of the transactions at issue is assumed for purposes of the specific example. In addition, certain examples have been reconciled to the extent they could suggest different characterizations of the same activities.

12. Reporting and Documentation Requirements

In order to satisfy the Commissioner with respect to a taxpayer's allocation of gross income under § 1.863–9(b)(2)(ii)(D) or (d)(1)(ii) of the 2001 proposed regulations, the taxpayer must make the allocation on a timely filed original return (including extensions). An amended return does not qualify for this purpose, and section 9100 relief will not be available. In all cases, a taxpayer must also maintain contemporaneous documentation regarding the allocation of gross income, allocation and apportionment of expenses, losses and other deductions, the methodologies used, and the circumstances justifying use of those methodologies. The taxpayer must produce such documentation within 30 days upon request.

As with the similar requirements under § 1.863–8 of the 2001 proposed regulations, commentators stated that there is no basis in the statute or the legislative history for the reporting, recordkeeping, and contemporaneous documentation requirements in the 2001 proposed regulations. Commentators also noted that the Code and regulations do not contain similar requirements with respect to other expense allocation provisions.

The reproposed regulations generally retain the recordkeeping and documentation requirements. The Treasury Department and the IRS believe that it is appropriate to require taxpayers to keep proper records, and additionally note the potentially considerable difficulties the IRS would face in performing the allocations required by the reproposed regulations without appropriate taxpayer records.

The Treasury Department and the IRS recognize, however, that taxpayers may not have all the information necessary to make allocations at the time a return is originally filed. The reproposed regulations therefore provide that a taxpayer may make changes to allocations made on the taxpayer's original return with respect to any taxable year for which the statute of limitations has not closed, subject to certain conditions. Nonetheless, changes to such allocations that are not made until an audit of the taxable year to which the allocations relate has commenced, or a taxpayer's failure timely to provide documentation and other information supporting the allocations, create administrative difficulties for the IRS. Accordingly, reproposed § 1.863–9(k)(4) sets forth the actions required of taxpayers and the procedures the IRS will follow in the case of taxpayers changing their allocations.

The reproposed regulations also require taxpayers, upon request, to provide access to the software programs and other systems used by the taxpayer to make allocations under these regulations. For this purpose, *software* has the meaning provided in section 7612(d). The Treasury Department and the IRS believe that the IRS could face significant administrative and other difficulties in the examination of income allocations made under these regulations without access to such software.

Proposed Effective Date

These regulations are proposed to apply for taxable years beginning on or after the date of publication of final regulations in the **Federal Register.**

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 pursuant to that Order is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the rules provided in these regulations principally affect large multinational corporations that pay foreign taxes on income derived from substantial foreign operations and that use these and any other applicable source rules in determining their foreign tax credit. Accordingly, a Regulatory Flexibility Act assessment is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and 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 Treasury Department and the IRS specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 15, 2005, at 10 a.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information on having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by November 23, 2005. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Edward R. Barret of the Office of the Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Previous Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–106030–98) that was published in the **Federal Register** on January 17, 2001 (66 FR 3903), is withdrawn as of September 19, 2005.

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 is amended by adding entries in numerical order to read, in part, as follows:

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

Section 1.863–8 also issued under 26 U.S.C. 863(a), (b) and (d). * * *

Section 1.863–9 also issued under 26 U.S.C. 863(a), (d) and (e). * * *

Par. 2. Section 1.863–3 is amended by:

1. Adding a sentence after the first sentence in paragraph (a)(1).

2. Adding a sentence at the end of paragraph (c)(1)(i)(A).

3. Adding a sentence after the first sentence in paragraph (c)(2).

The additions read as follows:

§ 1.863–3 Allocation and apportionment of income from certain sales of inventory.

(a) * * * (1) * * * To determine the source of income from sales of property produced by the taxpayer, when the property is either produced in whole or in part in space or on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States (in international water), or is sold in space or international water, the rules of § 1.863–8 apply, and the rules of this section do not apply except to the extent provided in § 1.863–8.

* * *

* * * * *

(c) * * * (1) * * * (i) * * * (A) * * * For rules regarding the source of income when production takes place, in whole or in part, in space or international water, the rules of § 1.863–8 apply, and the rules of this section do not apply except to the extent provided in § 1.863–8.

* * * * *

(2) * * * Notwithstanding any other provision, for rules regarding the source of income when a sale takes place in space or international water, the rules of § 1.863–8 apply, and the rules of this section do not apply except to the extent provided in § 1.863–8. * * *

* * * * *

Par. 3. Sections 1.863–8 and 1.863–9 are added to read as follows:

§ 1.863–8 Source of income from space and ocean activity under section 863(d).

(a) *In general.* Income of a United States or a foreign person derived from space and ocean activity (space and ocean income) is sourced under the rules of this section, notwithstanding any other provision, including sections 861, 862, 863, and 865. A taxpayer will not be considered to derive income from space or ocean activity, as defined in paragraph (d) of this section, if such activity is performed by another person, subject to the rules for the treatment of consolidated groups in § 1.1502–13.

(b) *Source of gross income from space and ocean activity*—(1) *Space and ocean income derived by a U.S. person.* Space and ocean income derived by a U.S. person is income from sources within the United States. However, space and ocean income derived by a U.S. person is income from sources without the United States to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in a foreign country or countries.

(2) *Space and ocean income derived by a foreign person*—(i) *In general.* Space and ocean income derived by a person other than a U.S. person is income from sources without the United States, except as otherwise provided in this paragraph (b)(2).

(ii) *Space and ocean income derived by a controlled foreign corporation.* Space and ocean income derived by a controlled foreign corporation within the meaning of section 957 (CFC) is income from sources within the United States. However, space and ocean income derived by a CFC is income from sources without the United States to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in a foreign country or countries.

(iii) *Space and ocean income derived by foreign persons engaged in a trade or business within the United States.* Space and ocean income derived by a foreign person (other than a CFC) engaged in a trade or business within the United States is income from sources within the United States to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed within the United States.

(3) *Source rules for income from certain sales of property*—(i) *Sales of purchased property.* When a taxpayer sells purchased property in space or international water, the source of gross income from the sale generally will be determined under paragraph (b)(1) or (2) of this section, as applicable. However, if such property is inventory property within the meaning of section 1221(a)(1) (inventory property) and is not sold for use, consumption, or disposition in space or international water, the source of income from the sale will be determined under § 1.861–7(c).

(ii) *Sales of property produced by the taxpayer*—(A) *General.* If the taxpayer both produces property and sells such property, the taxpayer must allocate gross income from such sales between production activity and sales activity under the 50/50 method. Under the 50/50 method, one-half of the taxpayer's gross income will be considered income allocable to production activity, and the source of that income will be determined under paragraph (b)(3)(ii)(B) or (C) of this section. The remaining one-half of such gross income will be considered income allocable to sales activity, and the source of that income will be determined under paragraph (b)(3)(ii)(D) of this section.

(B) *Production only in space or international water, or only outside space and international water.* When production occurs only in space or international water, income allocable to production activity is sourced under paragraph (b)(1) or (2) of this section, as applicable. When production occurs only outside space and international water, income allocable to production activity is sourced under § 1.863–3(c)(1).

(C) *Production both in space or international water and outside space and international water.* When property is produced both in space or international water and outside space and international water, gross income allocable to production activity must be allocated to production occurring in space or international water and production occurring outside space and international water. Such gross income is allocated to production activity occurring in space or international water to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in space or international water. The balance of such gross income is allocated to production activity occurring outside space and international water. The source of gross income allocable to production activity in space or international water is determined under paragraph (b)(1) or (2) of this section, as applicable. The source of gross income allocated to production activity occurring outside space and international water is determined under § 1.863–3(c)(1).

(D) *Source of income allocable to sales activity.* When property produced by the taxpayer is sold outside space and international water, the source of gross income allocable to sales activity will be determined under §§ 1.861–7(c) and 1.863–3(c)(2). When property produced by the taxpayer is sold in space or international water, the source of gross income allocable to sales activity generally will be determined under paragraph (b)(1) or (2) of this section, as applicable. However, if such property is inventory property within the meaning of section 1221(a)(1) and is sold in space or international water for use, consumption, or disposition outside space, international water, or

the United States, the source of gross income allocable to sales activity will be determined under §§ 1.861–7(c) and 1.863–3(c)(2).

(4) *Special rule for determining the source of gross income from services.* To the extent a transaction characterized as the performance of a service constitutes a space or ocean activity, as determined under paragraph (d)(2)(ii) of this section, the source of gross income derived from such transaction is determined under paragraph (b)(1) or (2) of this section.

(5) *Special rule for determining source of income from communications activity (other than income from international communications activity).* Space and ocean activity, as defined in paragraph (d) of this section, includes activity that occurs in space or international water that is characterized as a communications activity as defined in § 1.863–9(h)(1) (other than international communications activity). The source of space and ocean income that is also communications income as defined in § 1.863–9(h)(2) (but not space/ocean communications income as defined in § 1.863–9(h)(3)(v)) is determined under the rules of § 1.863–9(c), (d), and (f), as applicable, rather than under paragraph (b) of this section. The source of space and ocean income that is also space/ocean communications income as defined in § 1.863–9(h)(3)(v) is determined under the rules of paragraph (b) of this section. See § 1.863–9(e).

(c) *Taxable income.* When a taxpayer allocates gross income under paragraph (b)(1), (b)(2), (b)(3)(ii)(C), or (b)(4) of this section, the taxpayer must allocate expenses, losses, and other deductions as prescribed in §§ 1.861–8 through 1.861–14T to the class or classes of gross income that include the income so allocated in each case. A taxpayer must then apply the rules of §§ 1.861–8 through 1.861–14T to apportion properly amounts of expenses, losses, and other deductions so allocated to such gross income between gross income from sources within the United States and gross income from sources without the United States.

(d) *Space and ocean activity*—(1) *Definition*—(i) *Space activity.* In general, space activity is any activity conducted in space. For purposes of this section, space means any area not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States, and not in international water. For purposes of determining space activity, the Commissioner may separate parts of a single transaction into separate transactions or combine separate transactions as part of a single transaction. Paragraph (d)(3) of this section lists specific exceptions to the general definition of space activity. Activities that constitute space activity include but are not limited to—

(A) Performance and provision of services in space, as defined in paragraph (d)(2)(ii) of this section;

(B) Leasing of equipment located in space, including spacecraft (for example, satellites) or transponders located in space;

(C) Licensing of technology or other intangibles for use in space;

(D) Production, processing, or creation of property in space, as defined in paragraph (d)(2)(i) of this section;

(E) Activity occurring in space that is characterized as communications activity (other than international communications activity) under § 1.863–9(h)(1);

(F) Underwriting income from the insurance of risks on activities that produce space income; and

(G) Sales of property in space (see § 1.861–7(c)), but not sales of inventory property for use, consumption, or disposition outside space or international water.

(ii) *Ocean activity.* In general, ocean activity is any activity conducted on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States (collectively, in international water). For purposes of determining ocean activity, the Commissioner may separate parts of a single transaction into separate transactions or combine separate transactions as part of a single transaction. Paragraph (d)(3) of this section lists specific exceptions to the general definition of ocean activity. Activities that constitute ocean activity include but are not limited to—

(A) Performance and provision of services in international water, as defined in paragraph (d)(2)(ii) of this section;

(B) Leasing of equipment located in international water, including underwater cables;

(C) Licensing of technology or other intangibles for use in international water;

(D) Production, processing, or creation of property in international water, as defined in paragraph (d)(2)(i) of this section;

(E) Activity occurring in international water that is characterized as communications activity (other than international communications activity) under § 1.863–9(h)(1);

(F) Underwriting income from the insurance of risks on activities that produce ocean income;

(G) Sales of property in international water (see § 1.861–7(c)), but not sales of inventory property for use, consumption, or disposition outside space or international water;

(H) Any activity performed in Antarctica;

(I) The leasing of a vessel that does not transport cargo or persons for hire between ports-of-call (for example, the leasing of a vessel to engage in research activities in international water); and

(J) The leasing of drilling rigs, extraction of minerals, and performance and provision of services related thereto, except as provided in paragraph (d)(3)(ii) of this section.

(2) *Determining a space or ocean activity*—(i) *Production of property in space or international water.* For purposes of this section, production activity means an activity that creates, fabricates, manufactures, extracts, processes, cures, or ages property within the meaning of section 864(a) and § 1.864–1.

(ii) *Special rule for performance of services*—(A) *General.* Except as provided in paragraph (d)(2)(ii)(B) of this section, if a transaction is characterized as the performance of a service, then such service will be treated as a space or ocean activity in its entirety when any part of the service is performed in space or international water. Services are performed in space or international water if functions are performed, resources are employed, or risks are assumed in space or international water, regardless of whether performed by personnel, equipment, or otherwise.

(B) *Exception to the general rule.* If the taxpayer can demonstrate the value of the service attributable to performance occurring in space or international water, and the value of the service attributable to performance occurring outside space and international water, then such service will be treated as space or ocean activity only to the extent of the activity performed in space or international water. The value of the service is attributable to performance occurring in space or international water to the extent the performance of the service, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in space or international water. In addition, if the taxpayer can demonstrate, based on all the facts and circumstances, that the value of the service attributable to performance in space or international water is de minimis, such service will not be treated as space or ocean activity.

(3) *Exceptions to space or ocean activity.* Space or ocean activity does not include the following types of activities:

(i) Any activity giving rise to transportation income as defined in section 863(c).

(ii) Any activity with respect to mines, oil and gas wells, or other natural deposits, to the extent the mines, wells, or natural deposits are located within the jurisdiction (as recognized by the United States) of any country, including the United States and its possessions.

(iii) Any activity giving rise to international communications income as defined in § 1.863–9(h)(3)(ii).

(e) *Treatment of partnerships.* This section is applied at the partner level.

(f) *Examples.* The following examples illustrate the rules of this section:

Example 1. Space activity—activity occurring on land and in space—(i) *Facts.* S, a U.S. person, owns satellites in orbit. S leases one of its satellites to A. S, as lessor, will not operate the satellite. Part of S's performance as lessor in this transaction occurs on land. Assume that the combination of S's activities is characterized as the lease of equipment.

(ii) *Analysis.* Because the leased equipment is located in space, the transaction is defined as space activity under paragraph (d)(1)(i) of this section. Income derived from the lease will be sourced in its entirety under paragraph (b)(1) of this section. Under paragraph (b)(1) of this section, S's space income is sourced outside the United States to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in a foreign country or countries.

Example 2. Space activity—(i) *Facts.* X is an Internet service provider. X offers a service that permits a customer (C) to connect to the Internet via a telephone call, initiated by the modem of C's personal computer, to a control center. X transmits information requested by C to C's personal computer, in part using satellite capacity leased by X from S. X charges its customers a flat monthly fee. Assume that neither X nor S derive international communications income within the meaning of § 1.863–9(h)(3)(ii). In addition, assume that X is able to demonstrate, pursuant to paragraph (d)(2)(ii)(B) of this section, the extent to which the value of the service is attributable to functions performed, resources employed, and risks assumed in space.

(ii) *Analysis.* Under paragraph (d)(2)(ii) of this section, the service performed by X constitutes space activity to the extent the value of the service is attributable to functions performed, resources employed, and risks assumed in space. To the extent the service performed by X constitutes space activity, the source of X's income from the service transaction is determined under paragraph (b) of this section. To the extent the service performed by X does not constitute space or ocean activity, the source of X's income from the service is determined under sections 861, 862, and 863, as applicable. To the extent that X derives space and ocean income that is also communications income within the meaning of § 1.863–9(h)(2), the source of X's income is determined under paragraph (b) of this section and § 1.863–9(c), (d), and (f), as applicable, as provided in paragraph (b)(5) of this section. S derives space and ocean income that is also communications income within the meaning of § 1.863–9(h)(2), and the source of S's income is therefore determined under paragraph (b) of this section and § 1.863–9(c), (d), and (f), as applicable, as provided in paragraph (b)(5) of this section.

Example 3. Services as space activity—de minimis value attributable to performance occurring in space—(i) *Facts.* R owns a retail outlet in the United States. R engages S to provide a security system for R's premises. S operates its security system by transmitting images from R's premises directly to a satellite, and from the satellite to a group of S employees located in Country B, who monitor the premises by viewing the transmitted images. O provides S with transponder capacity on O's satellite, which S uses to transmit those images. Assume that S's transaction with R is characterized as the performance of a service. Assume that O's provision of transponder capacity is also viewed as the provision of a service and that the value of O's service transaction attributable to performance in space is not de minimis. In addition, assume that S is able to demonstrate, pursuant to paragraph (d)(2)(ii) of this section, that a de minimis portion of the value of S's service transaction with R is attributable to performance in space. Assume also that S is able to demonstrate, pursuant to § 1.863–9(h)(1), that the value of the transaction with R attributable to communications activities is de minimis.

(ii) *Analysis.* S derives income from providing monitoring services. Because S demonstrates that the value of S's service transaction attributable to performance in space is de minimis, S is not treated as engaged in a space activity, and none of S's income from the service transaction is space income. In addition, because S demonstrates that the value of the transaction with R attributable to communications activities is de minimis, S is not required under § 1.863–9(h)(1)(ii) to treat the transaction as separate communications and non-communications transactions, and none of S's gross income from the transaction is treated as communications income within the meaning of § 1.863–9(h)(2). Because O's provision of transponder capacity is viewed as the provision of a service and the value of O's service transaction attributable to performance in space is not de minimis, O's activity will be considered space activity, pursuant to paragraph (d)(2)(ii) of this section, to the extent the value of the services transaction is attributable to performance in space (unless O's activity in space is international communications activity). To the extent that O derives communications income, the source of such income is determined under paragraph (b) of this section and § 1.863–9(b), (c), (d), and (f), as applicable, as provided in paragraph (b)(5) of this section. R does not derive any income from space activity.

Example 4. Space activity—(i) *Facts.* L, a domestic corporation, offers programming and certain other services to customers located both in the United States and in foreign countries. Assume that L's provision of programming and other services in this Example 4 is characterized as the provision of a service, and that no part of the service transaction occurs in space or international water. Assume that the delivery of the programming constitutes a separate transaction also characterized as the performance of a service. L uses satellite capacity acquired from S to deliver the programming service directly to customers' television sets, so that part of the value of the delivery transaction derives from functions performed and resources employed in space. Assume that these contributions to the value of the delivery transaction occurring in space are not considered de minimis under paragraph (d)(2)(ii)(B) of this section. Customer C pays L to provide and deliver programming to C's residence in the United States. Assume S's provision of satellite capacity in this Example 4 is viewed as the provision of a service, and also that S does not derive international communications income within the meaning of § 1.863–9(h)(3)(ii).

(ii) *Analysis.* S's activity will be considered space activity. To the extent that S derives space and ocean income that is also communications income under § 1.863–9(h)(2), the source of S's income is determined under paragraph (b) of this section and § 1.863–9(c), (d), and (f), as applicable, as provided in paragraph (b)(5) of this section. On these facts, L's activities are treated as two separate service transactions: the provision of programming (and other services), and the delivery of programming. L's income derived from provision of programming and other services is not income derived from space activity. L's delivery of programming and other services is considered space activity, pursuant to paragraph (d)(2)(ii) of this section, to the extent the value of the delivery transaction is attributable to performance in space. To the extent that the delivery of programming is treated as a space activity, the source of L's income derived from the delivery transaction is determined under paragraph (b)(1) of this section, as provided in paragraph (b)(4) of this section. To the extent that L derives space and ocean income that is also communications income within the meaning of § 1.863–9(h)(2), the source of such income is determined under paragraph (b) of this section and § 1.863–9(b), (c), (d), (e), and (f), as applicable, as provided in paragraph (b)(5) of this section.

Example 5. Space activity—treatment of land activity—(i) *Facts.* S, a U.S. person, offers remote imaging products and services to its customers. In year 1, S uses its satellite's remote sensors to gather data on certain geographical terrain. In year 3, C, a construction development company, contracts with S to obtain a satellite image of

an area for site development work. S pulls data from its archives and transfers to C the images gathered in year 1, in a transaction that is characterized as a sale of the data. S's rights, title, and interest in the data pass to C in the United States. Before transferring the images to C, S uses computer software in its land-based office to enhance the images so that the images can be used.

(ii) *Analysis.* The collection of data and creation of images in space is characterized as the creation of property in space. Because S both produces and sells the data, S must allocate gross income from the sale of the data between production activity and sales activity under the 50/50 method of paragraph (b)(3)(ii)(A). The source of S's income allocable to production activity is determined under paragraph (b)(3)(ii)(C) of this section because production activities occur both in space and on land. The source of S's income attributable to sales activity is determined under paragraph (b)(3)(ii)(D) of this section (by reference to § 1.863–3(c)(2)) as U.S. source income because S's rights, title, and interest in the data pass to C in the United States.

Example 6. Use of intangible property in space—(i) *Facts.* X acquires a license to use a particular satellite slot or orbit, which X sublicenses to C. C pays X a royalty.

(ii) *Analysis.* Because the royalty is paid for the right to use intangible property in space, the source of the royalty paid by C to X is determined under paragraph (b) of this section.

Example 7. Performance of services—(i) *Facts.* E, a domestic corporation, operates satellites with sensing equipment that can determine how much heat and light particular plants emit and reflect. Based on the data, E will provide F, a U.S. farmer, a report analyzing the data, which F will use in growing crops. E analyzes the data from offices located in the United States. Assume that E's combined activities are characterized as the performance of services.

(ii) *Analysis.* E's activities will be considered space activities, pursuant to paragraph (d)(2)(ii) of this section, to the extent the value of E's service transaction is attributable to performance in space. To the extent E's service transaction constitutes a space activity, the source of E's income derived from the service transaction will be determined under paragraph (b)(4) of this section, by reference to paragraph (b)(1) of this section. To the extent that E's service transaction does not constitute a space or ocean activity, the source of E's income derived from the service transaction is determined under sections 861, 862, and 863, as applicable.

Example 8. Separate transactions—(i) *Facts.* The same facts as Example 7, except that E provides the raw data to F in a transaction characterized as a sale of a copyrighted article. In addition, E provides an analysis in the form of a report to F. The price F pays E for the raw data is separately stated.

(ii) *Analysis.* To the extent that the provision of raw data and the analysis of the data are each treated as separate transactions, the source of income from the production and sale of data is determined under paragraph (b)(3)(ii) of this section. The provision of services would be analyzed in the same manner as in *Example 7.*

Example 9. Sale of property in international water—(i) *Facts.* T purchased and owns transatlantic cable that lies in international water. T sells the cable to B, with T's rights, title, and interest in the cable passing to B in international water. Assume that the transatlantic cable is not inventory property within the meaning of section 1221(a)(1).

(ii) *Analysis.* Because T's rights, title, and interest in the property pass to B in international water, the sale takes place in international water under § 1.861–7(c), and the sale transaction is ocean activity under paragraph (d)(1)(ii) of this section. The source of T's sales income is determined under paragraph (b)(3)(i) of this section, by reference to paragraph (b)(1) or (2) of this section.

Example 10. Sale of property in space—(i) *Facts.* S, a U.S. person, manufactures a satellite in the United States and sells it to a customer who is not a U.S. person. S's rights, title, and interest in the satellite pass to the customer in space.

(ii) *Analysis.* Because S's rights, title, and interest in the satellite pass to the customer in space, the sale takes place in space under § 1.861–7(c), and the sale transaction is space activity under paragraph (d)(1)(i) of this section. The source of income derived from the sale of the satellite in space is determined under paragraph (b)(3)(ii) of this section, with the source of income allocable to production activity determined under paragraphs (b)(3)(ii)(A) and (B) of this section, and the source of income allocable to sales activity determined under paragraphs (b)(3)(ii)(A) and (D) of this section. Under paragraph (b)(1) of this section, S's space income is sourced outside the United States to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in a foreign country or countries.

Example 11. Sale of property in space—(i) *Facts.* S has a right to operate from a particular position (satellite slot or orbit) in space. S sells the right to operate from that position to P. Assume that the sale of the satellite slot is characterized as a sale of property and that S's rights, title, and interest in the satellite slot pass to P in space.

(ii) *Analysis.* The sale of the satellite slot takes place in space under § 1.861–7(c) because S's rights, title, and interest in the satellite slot pass to P in space. The sale of the satellite slot is space activity under paragraph (d)(1)(i) of this section, and income or gain from the sale is sourced under paragraph (b)(3)(i) of this section, by reference to paragraph (b)(1) or (2) of this section.

Example 12. Source of income of a foreign person—(i) *Facts.* FP, a foreign corporation that is not a CFC, derives income from the operation of satellites. FP operates ground stations in the United States and in foreign country FC. Assume that FP is considered engaged in a trade or business within the United States based on FP's operation of the ground station in the United States.

(ii) *Analysis.* Under paragraph (b)(2)(iii) of this section, FP's space income is sourced in the United States to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed within the United States.

Example 13. Source of income of a foreign person—(i) *Facts.* FP, a foreign corporation that is not a CFC, operates remote sensing satellites in space to collect data and images for its customers. FP uses an independent agent, A, in the United States who provides marketing, order-taking, and other customer service functions. Assume that FP is considered engaged in a trade or business within the United States based on A's activities on FP's behalf in the United States.

(ii) *Analysis.* Under paragraph (b)(2)(iii) of this section, FP's space income is sourced in the United States to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed within the United States.

(g) *Reporting and documentation requirements*—(1) *General.* A taxpayer making an allocation of gross income under paragraph (b)(1), (b)(2), (b)(3)(ii)(C), or (b)(4) of this section must satisfy the requirements in paragraphs (g)(2), (3), and (4) of this section.

(2) *Required documentation.* In all cases, a taxpayer must prepare and maintain documentation in existence when its return is filed regarding the allocation of gross income and allocation and apportionment of expenses, losses, and other deductions, the methodologies used, and the circumstances justifying use of those methodologies. The taxpayer must make available such documentation within 30 days upon request.

(3) *Access to software.* If the taxpayer or any third party used any computer software, within the meaning of section 7612(d), to allocate gross income, or to allocate or apportion expenses, losses, and other deductions, the taxpayer must make available upon request—

(i) Any computer software executable code, within the meaning of section 7612(d), used for such purposes, including an executable copy of the version of the software used in the preparation of the taxpayer's return (including any plug-ins, supplements, etc.) and a copy of all related electronic data files. Thus, if software subsequently is upgraded or supplemented, a separate executable copy of the version used in preparing the taxpayer's return must be retained;

(ii) Any related computer software source code, within the meaning of section 7612(d), acquired or developed by the taxpayer or a related person, or primarily for internal use by the taxpayer or such person rather than for commercial distribution; and

(iii) In the case of any spreadsheet software or similar software, any formulae or links to supporting worksheets.

(4) *Use of allocation methodology.* In general, when a taxpayer allocates gross income under paragraph (b)(1), (b)(2), (b)(3)(ii)(C), or (b)(4) of this section, it does so by making the allocation on a timely filed original return (including extensions). However, a taxpayer will be permitted to make changes to such allocations made on its original return with respect to any taxable year for which the statute of limitations has not closed as follows:

(i) In the case of a taxpayer that has made a change to such allocations prior to the opening conference for the audit of the taxable year to which the allocation relates or who makes such a change within 90 days of such opening conference, if the IRS issues a written information document request asking the taxpayer to provide the documents and such other information described in paragraphs (g)(2) and (3) of this section with respect to the changed allocations and the taxpayer complies with such request within 30 days of the request, then the IRS will complete its examination, if any, with respect to the allocations for that year as part of the current examination cycle. If the taxpayer does not provide the documents and information described in paragraphs (g)(2) and (3) of this section within 30 days of the request, then the procedures described in paragraph (g)(4)(ii) of this section shall apply.

(ii) If the taxpayer changes such allocations more than 90 days after the opening conference for the audit of the taxable year to which the allocations relate or the taxpayer does not provide the documents and information with respect to the changed allocations as requested in accordance with paragraphs (g)(2) and (3) of this section, then the IRS will, in a separate cycle, determine whether an examination of the taxpayer's allocations is warranted and complete any such examination. The separate cycle will be worked as resources are available and may not have the same estimated completion date as the other issues under examination for the taxable year. The IRS may ask the taxpayer to extend the statute of limitations on assessment and collection for the taxable year to permit examination of the taxpayer's method of allocation, including an extension limited, where appropriate, to the taxpayer's method of allocation.

(h) *Effective date.* This section applies to taxable years beginning on or after the date of publication of final regulations in the **Federal Register**.

§ 1.863–9 Source of income derived from communications activity under sections 863(a), (d), and (e).

(a) *In general.* Income of a United States or a foreign person derived from each type of communications activity, as defined in paragraph (h)(3) of this section, is sourced under the rules of this section, notwithstanding any other provision including sections 861, 862, 863, and 865. Notwithstanding that a communications activity would qualify as space or ocean activity under section 863(d) and the regulations thereunder, the source of income derived from such communications activity is determined under this section, and not under section 863(d) and the regulations thereunder, except to the extent provided in § 1.863–8(b)(5).

(b) *Source of international communications income*—(1) *International communications income derived by a U.S. person.* Income derived from international communications activity (international communications income) by a U.S. person is one-half from sources within the United States and one-half from sources without the United States.

(2) *International communications income derived by foreign persons*—(i) *In general.* International communications income derived by a person other than a U.S. person is, except as otherwise provided in this paragraph (b)(2), wholly from sources without the United States.

(ii) *International communications income derived by a controlled foreign corporation.* International communications income derived by a controlled foreign corporation within the meaning of section 957 (CFC) is one-half from sources within the United States and one-half from sources without the United States.

(iii) *International communications income derived by foreign persons with a fixed place of business in the United States.* International communications income derived by a foreign person, other than a CFC, that is attributable to an office or other fixed place of business of the foreign person in the United States is from sources within the United States. The principles of section 864(c)(5) apply in determining whether a foreign person has an office or fixed place of business in the United States. See § 1.864–7. International communications income is attributable to an office or other fixed place of business to the extent of functions performed, resources employed, or risks assumed by the office or other fixed place of business.

(iv) *International communications income derived by foreign persons engaged in a trade or business within the United States.* International communications income derived by a foreign person (other than a CFC) engaged in a trade or business within the United States is income from sources within the United States to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed within the United States.

(c) *Source of U.S. communications income.* Income derived by a United States or foreign person from U.S. communications activity is from sources within the United States.

(d) *Source of foreign communications income.* Income derived by a United States or foreign person from foreign communications activity is from sources without the United States.

(e) *Source of space/ocean communications income.* Income derived by a United States or foreign person from space/ocean communications activity is determined under section 863(d) and the regulations thereunder.

(f) *Source of communications income when taxpayer cannot establish the two points between which the taxpayer is paid to transmit the communication.* Income derived by a United States or foreign person from communications activity, when the taxpayer cannot establish the two points between which the taxpayer is paid to transmit the communication as required in paragraph (h)(3)(i) of this section, is from sources within the United States.

(g) *Taxable income.* When a taxpayer allocates gross income under paragraph (b)(2)(iii), (b)(2)(iv), or (h)(1)(ii) of this section, the taxpayer must allocate expenses, losses, and other deductions as prescribed in §§ 1.861–8 through 1.861–14T to the class or classes of gross income that include the income so allocated in each case. A taxpayer must then apply the rules of §§ 1.861–8 through 1.861–14T properly to apportion amounts of expenses, losses, and other deductions so allocated to such gross income between gross income from sources within the United States and gross income from sources without the United States. For amounts of expenses, losses, and other deductions allocated to gross income derived from international communications activity, when the source of income is determined under the 50/50 method of paragraph (b)(1) or (b)(2)(ii) of this section, taxpayers

generally must apportion expenses, losses, and other deductions between sources within the United States and sources without the United States pro rata based on the relative amounts of gross income from sources within the United States and gross income from sources without the United States. However, the preceding sentence shall not apply to research and experimental expenditures qualifying under § 1.861–17, which are to be allocated and apportioned under the rules of that section.

(h) *Communications activity and income derived from communications activity*—(1) *Communications activity*—(i) *General rule.* For purposes of this part, *communications activity* consists solely of the delivery by transmission of communications or data (communications). Delivery of communications other than by transmission (for example, by delivery of physical packages and letters) is not communications activity within the meaning of this section.

Communications activity also includes the provision of capacity to transmit communications. Provision of content or any other additional service provided along with, or in connection with, a non-*de minimis* communications activity must be treated as a separate non-communications activity unless de minimis. Communications activity or non-communications activity will be treated as *de minimis* to the extent, based on the facts and circumstances, the value attributable to such activity is de minimis.

(ii) *Separate transaction.* To the extent that a taxpayer's transaction consists in part of non-*de minimis* communications activity and in part of non-*de minimis* non-communications activity, each such part of the transaction must be treated as a separate transaction. Gross income is allocated to each such communications activity transaction and non-communications activity transaction to the extent the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in each such activity.

(2) *Income derived from communications activity. Income derived from communications activity* (communications income) is income derived from the delivery by transmission of communications, including income derived from the provision of capacity to transmit communications. Income may be considered derived from a communications activity even if the taxpayer itself does not perform the transmission function, but in all cases, the taxpayer derives communications income only if the taxpayer is paid to transmit, and bears the risk of transmitting, the communications.

(3) *Determining the type of communications activity*—(i) *In general.* Whether income is derived from international communications activity, U.S. communications activity, foreign communications activity, or space/ocean communications activity is determined by identifying the two points between which the taxpayer is paid to transmit the communication. The taxpayer must establish the two points between which the taxpayer is paid to transmit, and bears the risk of transmitting, the communication. Whether the taxpayer contracts out part or all of the transmission function is not relevant.

(ii) *Income derived from international communications activity. Income derived by a taxpayer from international communications activity* (international communications income) is income derived from communications activity, as defined in paragraph (h)(2) of this section, when the taxpayer is paid to transmit between a point in the United States and a point in a foreign country (or a possession of the United States).

(iii) *Income derived from U.S. communications activity. Income derived by a taxpayer from U.S. communications activity* (U.S. communications income) is income derived from communications activity, as defined in paragraph (h)(2) of this section, when the taxpayer is paid to transmit—

(A) Between two points in the United States; or

(B) Between the United States and a point in space or international water.

(iv) *Income derived from foreign communications activity. Income derived by a taxpayer from foreign communications activity* (foreign communications income) is income derived from communications activity, as defined in paragraph (h)(2) of this section, when the taxpayer is paid to transmit—

(A) Between two points in a foreign country or countries (or a possession or possessions of the United States);

(B) Between a foreign country and a possession of the United States; or

(C) Between a foreign country (or a possession of the United States) and a point in space or international water.

(v) *Income derived from space/ocean communications activity. Income derived by a taxpayer from space/ocean communications activity* (space/ocean communications income) is income derived from communications activity, as defined in paragraph (h)(2) of this section, when the taxpayer is paid to transmit between a point in space or international water and another point in space or international water.

(i) *Treatment of partnerships.* This section is applied at the partner level.

(j) *Examples.* The following examples illustrate the rules of this section:

Example 1. Income derived from non-communications activity—remote data base access—(i) *Facts.* D provides its customers in various foreign countries with access to its data base, which contains information on certain individuals' health care insurance coverage. Customer C obtains access to D's data base by placing a call to D's telephone number. Assume that C's telephone service, used to access D's data base, is provided by a third party, and that D assumes no responsibility for the transmission of the information via telephone.

(ii) *Analysis.* D is not paid to transmit communications and does not derive income from communications activity within the meaning of paragraph (h)(2) of this section. Rather, D derives income from provision of content or provision of services to its customers. Therefore, the rules of this section do not apply to determine the source of D's income.

Example 2. Income derived from U.S. communications activity—U.S. portion of international communication—(i) *Facts.* TC, a local telephone company, receives an access fee from an international carrier for picking up a call from a local telephone customer and delivering the call to a U.S. point of presence (POP) of the international carrier. The international carrier picks up the call from its U.S. POP and delivers the call to a foreign country.

(ii) *Analysis.* TC is not paid to carry the transmission between the United States and a foreign country. TC is paid to transmit a communication between two points in the United States. TC derives U.S. communications income as defined in paragraph (h)(3)(iii) of this section, which is sourced under paragraph (c) of this section as U.S. source income.

Example 3. Income derived from international communications activity—underwater cable—(i) *Facts.* TC, a domestic corporation, owns an underwater fiber optic cable. Pursuant to contracts, TC makes available to its customers capacity to transmit communications via the cable. TC's customers then solicit telephone customers and arrange to transmit the telephone customers' calls. The cable runs in part through U.S. waters, in part through international waters, and in part through foreign country waters.

(ii) *Analysis.* TC derives international communications income as defined in paragraph (h)(3)(ii) of this section because TC is paid to make available capacity to transmit communications between the United States and a foreign country. Because TC is a U.S. person, TC's international communications income is sourced under paragraph (b)(1) of this section as one-half from sources within the United States and one-half from sources without the United States.

Example 4. Income derived from international communications activity—satellite—(i) *Facts.* S, a U.S. person, owns satellites in orbit and uplink facilities in Country X, a foreign country. B, a resident of Country X, pays S to deliver B's programming from S's uplink facility, located in Country X, to a downlink facility in the United States owned by C, a customer of B.

(ii) *Analysis.* S derives international communications income under paragraph (h)(3)(ii) of this section because S is paid to transmit the communications between a beginning point in a foreign country and an endpoint in the United States. Because S is a U.S. person, the source of S's international communications income is determined under paragraph (b)(1) of this section as one-half from sources within the United States and one-half from sources without the United States.

Example 5. The paid-to-do rule—foreign communications via domestic route—(i) *Facts.* TC is paid to transmit communications from Toronto, Canada, to Paris, France. TC transmits the communications from Toronto to New York. TC pays another communications company, IC, to transmit the communications from New York to Paris.

(ii) *Analysis.* Under the *paid-to-do* rule of paragraph (h)(3)(i) of this section, TC derives foreign communications income under paragraph (h)(3)(iv) of this section because TC is paid to transmit communications between two points in foreign countries, Toronto and Paris. Under paragraph (h)(3)(i) of this section, the character of TC's communications activity is determined without regard to the fact that TC pays IC to transmit the communications for some portion of the delivery path. IC has international communications income under paragraph (h)(3)(ii) of this section because IC is paid to transmit the communications between a point in the United States and a point in a foreign country.

Example 6. The paid-to-do rule—domestic communication via foreign route—(i) *Facts.* TC is paid to transmit a call between two points in the United States, but routes the call through Canada.

(ii) *Analysis.* Under paragraph (h)(3)(i) of this section, the character of income derived from communications activity is determined by the two points between which the taxpayer is paid to transmit, and bears the risk of transmitting, the communications, without regard to the path of the transmission between those two points. Thus, under paragraph (h)(3)(iii) of this section, TC derives income from U.S. communications activity because it is paid to transmit the communications between two U.S. points.

Example 7. Indeterminate endpoints—prepaid telephone calling cards—(i) *Facts.* S purchases capacity from TC to transmit telephone calls. S sells prepaid telephone calling cards that give customers access to TC's telephone lines for a certain number of minutes. Assume that S cannot establish the endpoints of its customers' telephone calls.

(ii) *Analysis.* S derives communications income as defined in paragraph (h)(2) of this section because S makes capacity to transmit communications available to its customers. In this case, S cannot establish the two points between which the communications are transmitted. Therefore, S's communications income is U.S. source income, as provided by paragraph (f) of this section.

Example 8. Indeterminate endpoints--Internet access—(i) *Facts.* B, a domestic corporation, is an Internet service provider. B charges its customer, C, a monthly lump sum for Internet access. C accesses the Internet via a telephone call, initiated by the modem of C's personal computer, to one of B's control centers, which serves as C's portal to the Internet. B transmits data sent by C from B's control center in France to a recipient in England, over the Internet. B does not maintain records as to the beginning and endpoints of the transmission.

(ii) *Analysis.* B derives communications income as defined in paragraph (h)(2) of this section. The source of B's communications income is determined under paragraph (f) of this section as income from sources within the United States because B cannot establish the two points between which it is paid to transmit the communications.

Example 9. De minimis non-communications activity—(i) *Facts.* The same facts as in *Example 8.* Assume in addition that B replicates frequently requested sites on B's own servers, solely to speed up response time. Assume that B's replication of frequently requested sites would be considered a *de minimis* non-communications activity under this section.

(ii) *Analysis.* On these facts, because B's replication of frequently requested sites would be considered a *de minimis* non-communications activity, B is not required to treat the replication activity as a separate non-communications activity transaction under paragraph (h)(1) of this section. B derives communications income under paragraph (h)(2) of this section. The character and source of B's communications income are determined by demonstrating the points between which B is paid to transmit the communications, under paragraph (h)(3)(i) of this section.

Example 10. Income derived from communications and non-communications activity—bundled services—(i) *Facts.* A, a domestic corporation, offers customers local and long distance phone service, video, and Internet services. Customers pay a flat monthly fee plus 10 cents a minute for all long-distance calls, including international calls.

(ii) *Analysis.* Under paragraph (h)(1)(ii) of this section, to the extent that A's transaction with its customer consists in part of non-*de minimis* communications activity and in part of non-*de minimis* non-communications activity, each such part of the transaction must be treated as a separate transaction. A's gross income from the transaction is allocated to each such communications activity transaction and non-communications activity transaction in accordance with paragraph (h)(1)(ii) of this section. To the extent A can establish that it derives international communications income as defined in paragraph (h)(3)(ii) of this section, A would determine the source of such income under paragraph (b)(1) of this section. If A cannot establish the points between which it is paid to transmit communications, as required by paragraph (h)(3)(i) of this section, A's communications income is from sources within the United States, as provided by paragraph (f) of this section.

Example 11. Income derived from communications and non-communications activity—(i) *Facts.* B, a domestic corporation, is paid by D, a cable system operator in Foreign Country, to provide television programs and to transmit the television programs to Foreign Country. Using its own satellite transponder, B transmits the television programs from the United States to downlink facilities owned by D in Foreign Country. D receives the transmission, unscrambles the signals, and distributes the broadcast to D's customers in Foreign Country. Assume that B's provision of television programs is a non-*de minimis* non-communications activity, and that B's transmission of television programs is a non-*de minimis* communications activity.

(ii) *Analysis.* Under paragraph (h)(1)(ii) of this section, B must treat its communications and non-communications activities as separate transactions. B's gross income is allocated to each such separate communications and non-communications activity transaction in accordance with paragraph (h)(1)(ii) of this section. Income derived by B from the transmission of television programs to D's Foreign Country downlink facility is international communications income as defined in paragraph (h)(3)(ii) of this section because B is paid to transmit communications from the United States to a foreign country.

Example 12. Income derived from foreign communications activity—(i) *Facts.* S provides satellite capacity to B, a broadcaster located in Australia. B beams programming from Australia to the satellite. S's satellite picks the communications up in space and beams the programming over a footprint covering Southeast Asia.

(ii) *Analysis.* S derives communications income as defined in paragraph (h)(2) of this section. S's income is characterized as foreign communications income under paragraph (h)(3)(iv) of this section because S picks up the communication in space, and beams it to a footprint entirely covering a foreign area. Under paragraph (d) of this section, S's foreign communications income is from sources without the United States. If S were beaming the programming over a satellite footprint that covered area both in the United States and outside the United States, S would be required to allocate the income derived from the different types of communications activity.

(k) *Reporting and documentation requirements*—(1) *In general.* A taxpayer making an allocation of gross income under paragraph (b)(2)(iii), (b)(2)(iv), or (h)(1)(ii) of this section must satisfy the requirements in paragraphs (k)(2) and (3) of this section.

(2) *Required documentation.* In all cases, a taxpayer must prepare and

maintain documentation in existence when its return is filed regarding the allocation of gross income, and allocation and apportionment of expenses, losses, and other deductions, the methodologies used, and the circumstances justifying use of those methodologies. The taxpayer must make available such documentation within 30 days upon request.

(3) *Access to software.* If the taxpayer or any third party used any computer software, within the meaning of section 7612(d), to allocate gross income, or to allocate or apportion expenses, losses, and other deductions, the taxpayer must make available upon request—

(i) Any computer software executable code, within the meaning of section 7612(d), used for such purposes, including an executable copy of the version of the software used in the preparation of the taxpayer's return (including any plug-ins, supplements, etc.) and a copy of all related electronic data files. Thus, if software subsequently is upgraded or supplemented, a separate executable copy of the version used in preparing the taxpayer's return must be retained;

(ii) Any related computer software source code, within the meaning of section 7612(d), acquired or developed by the taxpayer or a related person, or primarily for internal use by the taxpayer or such person rather than for commercial distribution; and

(iii) In the case of any spreadsheet software or similar software, any formulae or links to supporting worksheets.

(4) *Use of allocation methodology.* In general, when a taxpayer allocates gross income under paragraph (b)(2)(iii), (b)(2)(iv), or (h)(1)(ii) of this section, it does so by making the allocation on a timely filed original return (including extensions). However, a taxpayer will be permitted to make changes to such allocations made on its original return with respect to any taxable year for which the statute of limitations has not closed as follows:

(i) In the case of a taxpayer that has made a change to such allocations prior to the opening conference for the audit of the taxable year to which the allocation relates or who makes such a change within 90 days of such opening conference, if the IRS issues a written information document request asking the taxpayer to provide the documents and such other information described in paragraphs (k)(2) and (3) of this section with respect to the changed allocations and the taxpayer complies with such request within 30 days of the request, then the IRS will complete its examination, if any, with respect to the allocations for that year as part of the current examination cycle. If the taxpayer does not provide the documents and information described in paragraphs (k)(2) and (3) of this section within 30 days of the request, then the procedures described in paragraph (k)(4)(ii) of this section shall apply.

(ii) If the taxpayer changes such allocations more than 90 days after the opening conference for the audit of the taxable year to which the allocations relate or the taxpayer does not provide the documents and information with respect to the changed allocations as requested in accordance with paragraphs (k)(2) and (3) of this section, then the IRS will, in a separate cycle, determine whether an examination of the taxpayer's allocations is warranted and complete any such examination. The separate cycle will be worked as resources are available and may not have the same estimated completion date as the other issues under examination for the taxable year. The IRS may ask the taxpayer to extend the statute of limitations on assessment and collection for the taxable year to permit examination of the taxpayer's method of allocation, including an extension limited, where appropriate, to the taxpayer's method of allocation.

(l) *Effective date.* This section applies to taxable years beginning on or after the date of publication of final regulations in the **Federal Register**.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–18265 Filed 9–16–05; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 17, 31, 32, 35, 42, 45, 49, 51, 52, and 53

[FAR Case 2004–025]

RIN: 9000–AK30

Federal Acquisition Regulation; Government Property

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to simplify procedures, clarify language, and eliminate obsolete requirements related to the management and disposition of Government property in the possession of contractors. Various FAR parts are amended to implement a policy that fosters efficiency, flexibility, innovation, and creativity, while continuing to protect the Government's interest in the public's property. The proposed rule specifically impacts contracting officers, property administrators, and contractors responsible for the management of Government property.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before November 18, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2004–025 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm.* Click on the FAR case number to submit comments.
- E-mail: *farcase.2004–025@gsa.gov.* Include FAR case 2004–025 in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2004–025 in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082. Please cite FAR case 2004–025.

SUPPLEMENTARY INFORMATION:

A. Background

In the late 1990s, the Department of Defense (DoD) initiated a complete rewrite of FAR Part 45 and associated clauses. Beyond attempting to address long-standing property management

issues, the effort reflected the general consensus that adoption of more typically commercial business practices would not only attract more commercial firms to the marketplace but also result in significant savings of acquisition dollars. For many reasons, only one portion of that rewrite - Subpart 45.6 with its associated clauses and forms, was published as a final rule. Therefore, another rewrite of Part 45 and its associated clauses is being proposed.

The proposed language, by encouraging efficiency, flexibility, innovation, and creativity, complements the use of current processes and technologies such as Enterprise Resource Planning, relational databases, unique item identification, radio frequency tags, bar-coding, and the general trend toward commercialization of components and equipment.

The concepts of the proposed rewrite have been discussed and presented to a wide audience. Briefings were presented at public meetings, defense industry representative meetings, industry and trade associations, and to the military departments, GSA Property Management Executive Council and other interested parties.

The new language reflects a life-cycle, performance-based approach to property management and permits the adoption of more typically commercial business practices.

The proposed rule requires contracting officers, property administrators and other personnel involved in awarding or administering contracts with Government property to be aware of industry-leading practices and standards for managing Government property. Other associated impacts include—

(a) Stricter policy for contracting officers to follow when determining whether or not to provide property to contractors.

(b) Possible contracting officer revocation of the Government's assumption of risk when the property administrator determines that the contractor's property management practices are inadequate and/or present an undue risk to the Government.

(c) An outcome-based framework for the management of property in possession of contractors.

(d) Identification by contractors of the standard or practice proposed for managing Government property.

Many of the policy language changes are administrative in nature (*i.e.*, deleting obsolete terms, eliminating duplicate language, clarifying and relocating definitions to clauses, etc.). Other policy changes include revising or adding new definitions as a result of previous changes and/or lessons learned. FAR Subparts 45.1, General; 45.2, Competitive Advantage; 45.3, Providing Government Property to Contractors; 45.4, Contractor Use and Rental of Government Property; and 45.5, Management of Government Property in the Possession of Contractors, have been revised and reorganized in such a manner that it was necessary to delete language in these sections in their entirety and replace them with revised language and titles. FAR Subpart 45.6 remains unchanged, except for the revision of the term "Government property" found in FAR 45.600 to read "contractor inventory" and the movement of the definitions to the new FAR 45.101 and the revised clause at 52.245–1(a).

Definitions for "Special Test Equipment" and "Special Tooling" are revised and moved from Part 45 to Part 2 and a new definition "Voluntary Consensus Standards" is added in Part 2. The definition for "Plant Clearance Officer" in Part 2 is also revised.

Definitions for "Acquisition cost," "Real property," and "Government property" located in the clause at 52.245–9, Use and Charges, are revised and included in the new FAR 45.101.

The proposed rule includes the following new definitions in FAR 45.101 and the clause at 52.245–1:

- "Contractor Inventory"
- "Contractor's Managerial Personnel"
- "Equipment"
- "Property"
- "Provide"
- "Unique Federal Property".

The proposed rule, if adopted, would eliminate the following definitions:

- Agency Peculiar Property
- Accessory Item
- Auxiliary Item
- Custodial Records
- Facilities
- Facilities Contracts
- Government Furnished Material
- Government Production and Research Property
- Individual Item Record
- Plant equipment
- Nonprofit Organization
- Salvage
- Stock Record
- Summary Record
- Utility Distribution System
- Work-in-Process.

The FAR clauses at 52.245–1, Property Records; 52.245–2, Government Property (Fixed Price Contracts); 52.245–5, Government Property (Cost-Reimbursement, Time and Material, or Labor Hour Contracts); and 52.245–19, Government Property Furnished "As Is", were combined to form one new clause—52.245–1, Government Property. A new property clause at 52.245–2, Government Property (Installation Operations for Services), was added specifically to address contracts designed for military base-operating and installation-level contracts, particularly those awarded under the Office of Management and Budget Circular A–76 process. The Councils seek specific comment on the new clause at FAR 52.245–1 as to: (1) whether the proposed wording of paragraphs (f) and (g) are clear in their intent; and (2) whether the intent of paragraphs (f) and (g) could be achieved in some other manner.

The following clauses were deleted in their entirety because they were either obsolete or conflicted with the use of consensus standards and/or industry-leading standards and practices for property management:

- 52.245–3
- 52.245–4
- 52.245–5
- 52.245–6
- 52.245–7
- 52.245–8
- 52.245–10
- 52.245–11
- 52.245–12
- 52.245–13
- 52.245–14
- 52.245–15
- 52.245–16
- 52.245–17
- 52.245–18.

The rule deletes the current FAR text on facilities contracts and the associated clauses because the Councils believe they are outmoded and no longer necessary. The Councils found that facilities contracts, contracts established solely to account for property with subsequent contracts authorized to use that property, are rarely used. The Councils also found that facilities clauses are being used in service contracts for the operation of Government-Owned Contractor-Operated Facilities (GOCOs). In the case of GOCOs, it is believed that agencies' property management needs can better, and more appropriately, be met through tailoring the statement of work in these service contracts to the agency's specific needs and incorporating the new property clause at FAR 52.245–1. Should the facilities contract coverage be deleted in a subsequent final rule, any required administrative conforming revisions (*e.g.*, elimination of cross references to deleted facilities contract clauses) will be effected in the final rule.

The Councils seek specific comment on instances in which there is a continued need for coverage or clauses similar to those that are being deleted.

The following additional FAR changes are consistent with the intent of this proposed rule:

- Deletion of 42.302(a)(27). This paragraph refers to the Special Test Equipment clause which is being deleted.
- Revision of FAR 51.107 to delete references to facilities contracts.
- Revision of FAR 52.245–17, Special Tooling, was originally proposed under FAR Case 2002–015, Use and Rental and Special Tooling. Public comments recommended deletion of this clause rather than revision. Therefore, this case solicits comments on the deletion of the clause at 52.245–17, Special Tooling.

The cost principle at FAR 31.205–19 is revised to reflect the changes made in the proposed clause at FAR 52.245–1, to indicate that, unless the Government has determined that the contractor's property management practices are inadequate and/or present an undue risk to the Government, the cost of insurance is allowable when the contractor is liable and the insurance does not cover loss, damage, destruction, or theft which results from willful misconduct or lack of good faith on the part of the contractor's managerial personnel.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule affects the method of managing Government property and is intended to give agencies and contractors more flexibility in applying industry-leading practices and standards. As such, it is expected that the rule will have a positive effect on small business.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared. The analysis is summarized as follows:

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing revising the FAR to update FAR Parts 45 and 52. The revisions will attempt to address long-standing property management issues and will reflect a general consensus that adoption of more typically commercial business practices would not only attract more commercial firms to the marketplace but also result in significant savings of acquisition dollars. Moreover, much of the current FAR language related to property management is well over fifty years old, and contains inconsistent, often conflicting guidance that is at odds with modern materials management technology such as Enterprise Resource Planning, relational databases, unique item identification, radio frequency tags, bar-coding, and the general trend toward commercialization of components and equipment.

Title II of the Federal Property and Administrative Services Act of 1949, Public Law 81–152, as amended, requires, in part that executive agencies account for Government property, determine when such property is excess, and dispose of excess Government property promptly. The proposed rule amends the FAR to revise the policies for the management of Government-owned property used and acquired by private industry in the performance of Government contracts.

It is estimated that approximately 5000 contractors have Federal property in their possession. DoD has 2,242 contractors. Approximately 62 percent of DoD's contractors are small businesses. Given that property in the possession of contractors is overwhelmingly DoD property, it is estimated the DoD ratio of small business to total businesses having such property is a reasonable approximation for all Government contractors. Therefore, it is estimated that approximately 3,100 small businesses have Government property in their possession.

This proposed rule substantially decreases the impact of the current FAR provisions by simplifying procedures, reducing recordkeeping and eliminating requirements related to the management of Government property in the possession of contractors. The rule continues the philosophy of ordinarily requiring contractors to furnish all property necessary to perform Government contracts, but also introduces more modern and innovative concepts.

The rule is structured around a number of principles or objectives which, it is believed, will have an overall positive impact on contractors regardless of size. The rule balances regulation with principle-based standards that allow for minimal regulatory requirement and greater flexibility and efficiency to achieve best value for the Government. The rule introduces commercial standards and industry best practices into the property management process to the maximum extent possible. This facilitates moving from a prescribed regulatory process to a performance-based outcome environment. The use of sound business practices should reduce both the Government's and the contractor's ongoing administrative costs of dealing with Government property. Contractors will initiate and maintain the processes, systems, records, and methodologies necessary for effective control of the Government's property.

While it may be that small businesses are more dependent on Government—furnished property than large businesses, the underlying philosophy has not changed (*i.e.*, contractors are ordinarily required to furnish all property necessary to perform the Government contracts).

The Federal Property Management Regulation and the Federal Management Regulation published by the General Services Administration provide property management guidance to Government personnel. Some of the material overlaps or is duplicated by the FAR property management provisions. The duplication or overlap stems from the need to have contract administration issues addressed in the FAR and broadly disseminated to Government and contractor personnel.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts 1, 2, 17, 31, 32, 35, 42, 45, 49, 51, 52, and 53, in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR case 2004–025), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the proposed rule contains information collection requirements. Accordingly, the FAR Secretariat submitted a request for a revised information collection requirement concerning Government Property to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

The present FAR requirements currently approved by the Office of Management and Budget (OMB) are being revised under OMB Control Number 9000–0075.

The information collection includes the following requirements relating to FAR Part 45 and 52.245:

1. FAR 45.606–1 requires a contractor to submit inventory schedules.
2. FAR 45.606–3(a) requires a contractor to correct and resubmit inventory schedules as necessary.
3. FAR 52.245–1(f)(1)(ii) requires contractors to receive, record, identify and manage Government property.
4. FAR 52.245–1(f)(1)(iii) requires contractors to create and maintain records of all Government property accountable to the contract.
5. FAR 52.245–1(f)(1)(iv) requires contractors to periodically perform, record, and report physical inventories during contract performance.
6. FAR 52.245–1(f)(1)(vi) requires contractors to have a process to create and provide reports.
7. FAR 52.245–1(f)(1)(viii) requires contractors to promptly disclose and report Government Property in their possession that is excess to contract performance.
8. FAR 52.245–1(f)(1)(ix) requires contractors to disclose and report to the Property Administrator the need for

replacement and/or capital rehabilitation.

9. FAR 52.245–1(f)(1)(x) requires contractors to perform and report to the Property Administrator contract property closeout.

10. FAR 52.245–1(f)(2) requires contractors to establish and maintain source data, particularly in the areas of recognition of acquisitions and dispositions of material and equipment.

11. FAR 52.245–1(j)(4) requires contractors to submit inventory disposal schedules to the Plant Clearance Officer.

12. FAR 52.245–9(f) requires a contractor to submit a facilities use statement to the contracting officer within 90 days after the close of each rental period.

The information will be used to control and account for Government-owned property in the possession of contractors.

Annual Reporting Burden:

Public reporting burden for this collection of information is estimated to average .4598 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 15,100.

Responses per respondent: 896.71.

Total annual responses: 13,540,450.

Preparation hours per response: .46.

Total response burden hours: 6,226.350.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than November 18, 2005 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0075, Government Property, in all correspondence.

List of Subjects in 48 CFR Parts 1, 2, 17, 31, 32, 35, 42, 45, 49, 51, 52, and 53

Government procurement.

Dated: September 7, 2005.

Julia B. Wise,

Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 1, 2, 17, 31, 32, 35, 42, 45, 49, 51, 52, and 53, as set forth below:

1. The authority citation for 48 CFR parts 1, 2, 17, 31, 32, 35, 42, 45, 49, 51, 52, and 53, is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. Amend section 1.106 in the table following the introductory paragraph by removing FAR segments "52.245–3", "52.245–5", "52.245–7", "52.245–8", "52.245–10", "52.245–11", "52.245–16", "52.245–17", and "52.245–18" and the corresponding OMB Control Number "9000–0075".

PART 2—DEFINITIONS OF WORDS AND TERMS

3. Amend section 2.101 in paragraph (b) by revising the definition "Plant clearance officer", and by adding, in alphabetical order, the definitions "Special test equipment", "Special tooling", and "Voluntary Consensus Standards" to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Plant clearance officer means an authorized representative of the contracting officer assigned the responsibility of screening, redistributing, and disposing of Contractor Inventory from a Contractor's plant or work site. The term "Contractor's plant" includes, but is not limited to, Government-owned Contractor-operated plants and Federal installations as may be required under the scope of the contract.

* * * * *

Special test equipment means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment including standard or general purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. Special test equipment does not include material, special tooling, real property (except foundations and similar improvements necessary for installing special test equipment), and equipment items used for general testing purposes or property that with relatively minor expense can be made suitable for general purpose use.

Special tooling means jigs, dies, fixtures, molds, patterns, taps, gauges, all components of these items, and replacement of these items, which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. Special tooling does not include material, special test equipment, unique federal property, real property (except foundations and similar improvements necessary for installing special tooling), equipment, machine tools, or similar capital items.

* * * * *

Voluntary Consensus Standards means common and repeated use of rules, conditions, guidelines or characteristics for products, or related processes and production methods and related management systems. Voluntary Consensus Standards are developed or adopted by domestic and international voluntary consensus standard making bodies.

* * * * *

PART 17—SPECIAL CONTRACTING METHODS

4. Amend section 17.603 by revising paragraph (a)(5) to read as follows:

17.603 Limitations.

(a) * * *

(5) Functions that can more properly be accomplished in accordance with Subpart 45.3, Authorizing the Use and/or Rental of Government Property.

* * * * *

PART 31—CONTRACT COST PRINICPLES AND PROCEDURES

5. Amend section 31.205–19 by revising paragraph (e)(2)(iv) to read as follows:

31.205–19 Insurance and indemnification.

* * * * *

(e) * * *

(2) * * *

(iv) Unless the Government has determined that the contractor's property management practices are inadequate and/or present an undue risk to the Government, costs of insurance for the risk of loss, damage, destruction, or theft of Government property are allowable to the extent that the contractor is liable for such loss, damage, destruction, or theft, and such insurance does not cover loss, damage, destruction, or theft which results from willful misconduct or lack of good faith on the part of any of the contractor's managerial personnel (as described in the FAR clause at 52.245–1(h)(1)(ii)).

* * * * *

31.205–40 [Amended]

6. Amend section 31.205–40 in paragraph (a) by removing "45.101" and adding "2.101(b)" in its place.

PART 32—CONTRACT FINANCING

7. Amend section 32.503–15 by revising paragraph (b)(1) to read as follows:

32.503–15 Application of Government title terms.

* * * * *

(b) * * *

(1) The clause at 52.245–1, Government Property.

* * * * *

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

35.014 [Removed and Reserved]

8. Remove and reserve section 35.014.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.302 [Amended]

9. Amend section 42.302 by removing and reserving paragraph (a)(27).

PART 45—GOVERNMENT PROPERTY

10. Amend section 45.000 by revising the second sentence to read as follows:

45.000 Scope of part.

* * * It does not apply to property under any statutory leasing authority, (except as to non-Government use of plant equipment under 45.301(f)); to property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance-based payments; or to disposal of real property.

11. Revise Subparts 45.1 through 45.5 to read as follows:

Subpart 45.1—General

Sec.

Subpart 45.1—General

45.101 Definitions.

As used in this part—

Acquisition cost means—

(1) For contractor acquired property, the full cost determined in accordance with the system established by the Contractor in conformance with consistently applied sound accounting principles.

(2) For Government furnished property, the amount identified in the contract, or in the absence of such identification, the fair market value attributed to the item by the contractor.

Common item means material that is common to the applicable Government contract and the contractor's other work.

Contractor acquired property means property acquired, fabricated, or otherwise provided by the contractor for performing a contract and to which the Government has title.

Contractor inventory means—

(1) Any property acquired by and in the possession of a contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract;

(2) Any property that the Government is obligated or has the option to take over under any type of contract, *e.g.*, as a result either of any changes in the specifications or plans thereunder or of the termination of the contract (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

Contractor's managerial personnel means the contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the contractor's business; all or substantially all of the contractor's operation at any one plant or separate location; or a separate and complete major industrial operation.

Demilitarization means rendering a product designated for demilitarization unusable for, and not restorable to, the purpose for which it was designed or is customarily used.

Discrepancies incident to shipment means all deficiencies incident to shipment of Government property to or from a contractor's facility whereby differences exist between the property purported to have been shipped and property actually received.

Equipment means a tangible article of personal property that is complete in-and-of itself, durable, nonexpendable, and needed for the performance of a contract. Equipment generally has an expected service life of one year or more, and does not ordinarily lose its identity or become a component part of another article when put into use.

Government-furnished property means property in the possession of, or directly acquired by, the Government and subsequently furnished to the contractor for performance of a contract.

Government property means all property owned or leased by the Government. Government property includes both Government-furnished and contractor-acquired property.

Material means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end-item. Material does not include equipment, special tooling, special test equipment, or unique federal property.

Nonseverable means property that cannot be removed after erection or installation without substantial loss of value or damage to the installed property or to the premises where installed.

Precious metals means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

Property means all tangible property, both real and personal.

Property Administrator means an authorized representative of the contracting officer assigned the responsibility of administering the

contract requirements and obligations relating to Government property in the possession of a contractor.

Provide means to furnish existing Government property or to allow the contractor to acquire property on behalf of the Government under this contract.

Real property means land, land rights, buildings, structures, utility systems, steam-generation systems, and equipment attached to and made part of buildings and structures (such as heating systems). As such, land rights are considered real property. It does not include foundations and other work necessary for installing special tooling, special test equipment, or equipment.

Sensitive property means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability such as classified property, weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

Surplus property means excess personal property not required by any Federal agency as determined by the Administrator of the General Services Administration (GSA).

Unique Federal property means Government-owned personal property that is peculiar to the mission of an agency, *e.g.*, military or space property. Unique federal property excludes material, special test equipment, special tooling, real property and equipment.

45.102 Policy.

(a) Contractors are ordinarily required to furnish all property necessary to perform Government contracts.

(b) Contracting officers shall provide property to contractors only when it is clearly demonstrated—

(1) To be in the Government's best interest;

(2) That the overall benefit to the procurement significantly outweighs the increased cost of administration, including ultimate property disposal;

(3) That providing the property does not substantially increase the Government's assumption of risk; and

(4) That Government requirements cannot otherwise be met.

(c) The contractor's inability or unwillingness to supply its own resources is not sufficient reason for the furnishing or acquisition of property.

45.103 General.

(a) Agencies shall—

(1) Allow and encourage contractors to use voluntary consensus standards (see 11.101(c)) and/or industry-leading practices and standards to manage Government property in their possession.

(2) Eliminate to the maximum practical extent any competitive advantage a prospective contractor may have by using Government property and ensure maximum practical reutilization of Contractor Inventory for Government purposes (see 45.602).

(3) Require contractors to use Government property already in their possession to the maximum extent possible in performing Government contracts.

(4) Charge appropriate rentals when the property is authorized for use on other than a rent-free basis.

(5) Require contractors to justify retaining Government property not needed for contract performance and to declare property as excess when no longer needed for contract performance.

(b) Agencies will not generally require contractors to establish property management systems that are separate from a contractor's established procedures, practices, and systems used to account for and manage contractor-owned property.

45.104 Responsibility and liability for Government property.

(a) Generally, contractors are not held liable for loss, damage, destruction, or theft of Government property under the following types of contracts:

(1) Cost reimbursement contracts.

(2) Time and material contracts.

(3) Labor hour contracts.

(4) Negotiated fixed price contracts for which the price is not based upon an exception at 15.403–1.

(b) However, the contracting officer may revoke the Government's assumption of risk when the property administrator determines that the contractor's property management practices are inadequate and/or present an undue risk to the Government. A prime contractor that provides Government property to a subcontractor shall not be relieved of any responsibility to the Government that the prime contractor may have under the terms of the prime contract.

45.105 Analysis of contractors' property management system.

(a) The agency responsible for contract administration shall conduct an analysis of the contractor's property management policies, procedures, practices, and systems. This analysis shall be accomplished as frequently as conditions warrant, in accordance with agency procedures.

(b) The property administrator shall notify the contractor in writing when the contractor's property management system does not comply with contractual requirements, (*i.e.*, is inadequate, not acceptable and/or presents an undue risk to the Government), and shall request prompt correction of deficiencies and shall provide a schedule for their completion. If the contractor does not correct the deficiencies in accordance with the schedule, the contracting officer shall notify the contractor, in writing, that failure to take the required corrective action(s) may result in—

(1) Contract price adjustment;

(2) Withdrawal of the Government's assumption of risk for loss, damage, destruction, or theft; and/or

(3) Other such action as determined by the contracting officer.

(c) If the contractor fails to take the required corrective action(s) in response to the notification provided by the contracting officer in accordance with paragraph (b) of this section, the contracting officer shall notify the contractor in writing of any Government decision to apply the remedies described in paragraphs (b)(1) through (b)(3) of this section.

45.106 Transferring accountability.

Government property shall be transferred from one contract to another only when firm requirements exist under the gaining contract (see 45.102). Such transfers shall be documented by modifications to both gaining and losing contracts. Once transferred, all property shall be considered Government-furnished property to the gaining contract.

45.107 Contract clauses.

(a)(1) Except as provided in paragraph (d) of this section, the contracting officer shall insert the clause at 52.245–1, Government Property, in—

(i) All cost reimbursement, time-and-material, and labor hour type solicitations and contracts; and

(ii) Fixed-price solicitations and contracts when the Government will provide Government property.

(2) The contracting officer shall use the clause with its Alternate I in contracts other than those identified in 45.104(a).

(3) The contracting officer shall use the clause with its Alternate II when a contract for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research (see 35.014) is contemplated.

(b) The contracting officer shall insert the clause at 52.245–2, Government Property (Installation Operations for

Services), in service contracts to be performed on a Government installation when Government-furnished property will be provided for initial provisioning only and the Government is not responsible for repair or replacement.

(c) The contracting officer shall insert the clause at 52.245–9, Use and Charges, in solicitations and contracts when rental of Government property is contemplated.

(d) When the acquisition cost of the item to be repaired does not exceed the simplified acquisition threshold, purchase orders for property repair need not include a Government property clause.

Subpart 45.2—Solicitation and Evaluation Procedures

45.201 General.

(a) The contracting officer shall insert a listing of the Government property to be offered in all solicitations where Government-furnished property is anticipated (see 45.102). The listing shall include at a minimum—

(1) The name, commercial part number and description, manufacturer, bulk identifier, model number, and National Stock Number (if needed for additional item identification tracking and/or disposition);

(2) Quantity/unit of measure;

(3) Unit acquisition cost; and

(4) Unique-item identifier or equivalent (if available and necessary for individual item tracking).

(b) When Government property is offered for use in a competitive acquisition, solicitations will ordinarily require that the contractor assume all costs related to making the property available for use, such as payment of all transportation, installation or rehabilitation costs.

(c) The solicitation shall describe the evaluation procedures to be followed, including rental charges or equivalents and other costs or savings to be evaluated, and shall require all offerors to submit the following information with their offers:

(1) A list or description of all Government property that the offeror or its subcontractors propose to use on a rent-free basis. The list shall identify the accountable contract under which the property is held and the authorization for its use (from the contracting officer having cognizance of the property).

(2) The dates during which the property will be available for use (including the first, last, and all intervening months) and, for any property that will be used concurrently in performing two or more contracts, the amounts of the respective uses in sufficient detail to support prorating the rent.

(3) The amount of rent that would otherwise be charged in accordance with the clause at 52.245–9, Use and Charges.

(4) The voluntary consensus standard or industry leading practices and standards to be used in the management of Government property, or existing property management plans, methods, practices, or procedures for accounting for property.

(d) The contracting officer shall consider any potentially unfair competitive advantage that may result from the contractor possessing Government property. At a minimum, this shall be done by—

(1) Adjusting the offers by applying, for evaluation purposes only, a rental equivalent evaluation factor; or

(2) By charging the offeror rent for using the property when adjusting the offer is not practical.

(e) The contracting officer shall ensure the offeror's property management plans, methods, practices, or procedures for accounting for property are consistent with the requirements of the solicitation.

Subpart 45.3—Authorizing the Use and/or Rental of Government Property

45.301 Use and rental.

This subpart prescribes policies and procedures for contractor use and rental of Government Property.

(a) Government property shall normally be provided on a rent-free basis in performance of the contract under which it is accountable or otherwise authorized.

(b) Rental charges, to the extent authorized do not apply to the following:

(1) Government property that is located in Government-owned, contractor-operated plants operated on a cost-plus-fee basis.

(2) Government property that is left in place or installed on contractor-owned property for mobilization or future Government production purposes; however, rental charges shall apply to that portion of property or its capacity used for non-government commercial purposes or otherwise authorized for use.

(c) The contracting officer cognizant of the Government property may authorize the rent-free use of property in the possession of nonprofit organizations when used for research, development, or educational work and—

(1) The use of the property is in the national interest;

(2) The property will not be used for the direct benefit of a profit-making organization; and

(3) The Government receives some direct benefit, such as rights to use the results of the work without charge, from its use.

(d) In exchange for consideration as determined by the cognizant contracting officer(s), the contractor may use Government property under fixed-price contracts other than the contract to which it is accountable. When, after contract award, a contractor requests the use of Government property, the contracting officer shall obtain a fair rental or other adequate consideration if use is authorized.

(e) The cognizant contracting officer(s) may authorize the use of Government property on a rent-free basis on a cost-type Government contract other than the contract to which it is accountable.

(f) In exchange for consideration as determined by the cognizant contracting officer, the contractor may use Government property for commercial use. Prior approval of the Head of the Contracting Activity is required where non-Government use is expected to exceed 25 percent of the total use of Government and commercial work performed.

45.302 Contracts with foreign Governments or international organizations.

Requests by, or for the benefit of, foreign governments or international organizations to use Government property shall be processed in accordance with agency procedures.

45.303 Use of Government property on independent research and development programs.

The contracting officer may authorize a contractor to use the property on an independent research and development (IR&D) program, if—

(a) Such use will not conflict with the primary use of the property or enable the contractor to retain property that could otherwise be released;

(b) The contractor agrees not to include as a charge against any Government contract the rental value of the property used on its IR&D program; and

(c) A rental charge for the portion of the contractor's IR&D program cost allocated to commercial work is deducted from any agreed-upon Government share of the contractor's IR&D costs.

Subpart 45.4—Title to Government Property

45.401 Title to Government property.

(a) The Government retains title to all Government-furnished property until properly disposed of, as authorized by law or regulation. Property that is leased by the Government and subsequently furnished to the contractor for use shall be considered Government-furnished property under the clause at 52.245–1, Government Property.

(b) Under fixed price type contracts, the contractor retains title to all property acquired by the contractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property.

(c) Under cost-type and time-and-material contracts, the Government acquires title to all property to which the contractor is entitled to reimbursement as a direct item of cost, provided the property acquired is reasonable, allocable, and allowable (see Part 31). If the contractor is covered by Cost Accounting Standards, its disclosure statement may affect the charging, and consequently, the title vesting provisions.

Subpart 45.5—Support Government Property Administration

45.501 Support Government property administration.

(a) To ensure subcontractor compliance with Government property administration requirements, the property administrator assigned to the prime contract may request support property administration from another contract administration office, provided the contractor has agreed to allow such property administration.

(b) In instances where the prime contractor does not agree to allow the support property administrator to provide support property administration, the prime property administrator shall immediately refer the matter to the contracting officer.

(c) In instances where the prime contractor does not concur with the findings of the support Property Administrator, the prime property administrator shall immediately refer the matter to the contracting officer.

(d) The prime property administrator shall accept the findings of the delegated support property administrator and advise the prime contractor of any deficiencies within the subcontractor's property management system.

45.600 [Amended]

12. Amend section 45.600 by removing "Government property" and "or progress" and adding "contractor inventory" and ", progress, or performance-based" in their places, respectively.

45.601 [Removed and Reserved]

13. Remove and reserve section 45.601.

PART 49—TERMINIATION OF CONTRACTS

14. Amend section 49.108–3 by revising paragraph (b)(1) to read as follows:

49.108–3 Settlement procedure.

* * * * *

(b) * * *

(1) All subcontractor termination inventory be disposed of and accounted for in accordance with the procedures contained in paragraph (j) of the clause at 52.245–1, Government Property; and

* * * * *

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

51.106 [Amended]

15. Amend section 51.106 by removing from paragraph (b) "52.245–2" and adding "52.245–1" in its place, and removing ", or 52.245–5, Alternate I".

51.107 [Amended]

16. Amend section 51.107 by removing the last sentence.

51.200 [Amended]

17. Amend section 51.200 by removing "45.304" and adding "45.102" in its place.

PART 52—SOLICIATION PROVISIONS AND CONTRACT CLAUSES

18. Revise sections 52.245–1 and 52.245–2 to read as follows:

52.245–1 Government Property.

As prescribed in 45.107(a), insert the following clause:

GOVERNMENT PROPERTY (DATE)

(a) Definitions. As used in this clause—

Acquisition cost means—

(1) For Contractor acquired property, the full cost determined in accordance with the system established by the Contractor in conformance with consistently applied sound accounting principles.

(2) For Government furnished property, the amount identified in the contract, or in the absence of such identification, the fair market value attributed to the item by the Contractor.

Common item means material that is common to the applicable Government contract and the contractor's other work.

Contractor-acquired property means property acquired, fabricated, or otherwise provided by the Contractor for performing a contract, and to which the Government has title.

Contractor's managerial personnel means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business; all or substantially all of the Contractor's operation at any one plant or separate location.

Contractor inventory means—

(1) Any property acquired by and in the possession of a Contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract;

(2) Any property that the Government is obligated or has the option to take over under any type of contract, e.g., as a result either of any changes in the specifications or plans thereunder or of the termination of the contract (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

Demilitarization means rendering a product designated for demilitarization unusable for and not restorable to, the purpose for which it was designed or is customarily used.

Discrepancies incident to shipment means all deficiencies incident to shipment of Government property to or from a Contractor's facility whereby differences exist between the property purported to have been shipped and property actually received.

Equipment means a tangible article of personal property that is complete in-and-of itself, durable, nonexpendable, and needed for the performance of a contract. Equipment generally has an expected service life of one year or more, and does not ordinarily lose its identity or become a component part of another article when put into use.

Government-furnished property means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of a contract.

Government property means all property owned or leased by the Government. Government property includes both Government-furnished and contractor-acquired property.

Material means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end-item. Material does not include equipment, special tooling, special test equipment, or unique Federal property.

Nonseverable means property that cannot be removed after erection or installation without substantial loss of value or damage

to the installed property or to the premises where installed.

Precious metals means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

Property means all tangible property, both real and personal.

Property Administrator means an authorized representative of the Contracting Officer assigned the responsibility of administering the contract requirements and obligations relating to Government property in the possession of a Contractor.

Provide means to furnish existing Government property or to allow the Contractor to acquire property on behalf of the Government under this contract.

Real property means land, land rights, buildings, structures, utility systems, steam-generation systems, and equipment attached to and made part of buildings and structures (such as heating systems). As such, land rights are considered real property. It does not include foundations and other work necessary for installing special tooling, special test equipment, or equipment.

Sensitive property means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability such as classified property, weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

Surplus property means excess personal property not required by any Federal agency as determined by the Administrator of the General Services Administration (GSA).

Unique Federal Property means Government-owned personal property that is peculiar to the mission of an agency, *e.g.*, military or space property. Unique Federal property excludes material, special test equipment, special tooling, real property and equipment.

(b) *Property management.* (1) The Contractor shall have a system to manage (control, use, preserve, protect, repair and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, records, and methodologies necessary for effective control of Government property, consistent with voluntary consensus standards and/or industry-leading practices and standards for Government property management.

(2) The Contractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, disposition, or via a completed investigation, evaluation, and final determination for lost, damaged, or destroyed property. This requirement applies to all Government property under the Contractor's accountability, stewardship, possession or control, including its vendors or subcontractors (see paragraph (f)(1)(v) of this clause).

(3) The Contractor shall include the requirements of this clause in all subcontracts under which Government property is acquired or furnished for subcontract performance.

(c) *Use of Government property.* The Contractor shall use Government property, either furnished or acquired under this contract, only for performing this contract, unless otherwise provided for in this contract or approved by the Contracting Officer. The Contractor shall not modify, cannibalize, or make alterations to Government property unless this contract specifically identifies the modifications, alterations or improvements as work to be performed.

(d) *Government-furnished property.* (1) The Government shall deliver to the Contractor the Government-furnished property described in this contract. The Government shall furnish related data and information needed for the intended use of the property.

(2) The Government shall retain title to all Government-furnished property; title shall not be affected by incorporation into, or attachment to, any property not owned by the Government. Government-furnished property shall not lose its identity as Government property by its attachment to real property.

(3) The delivery and/or performance dates specified in this contract are based upon the expectation that the Government-furnished property will be suitable for contract performance and will be delivered to the Contractor by the dates stated in the contract.

(i) If the property is not delivered to the Contractor by the dates stated in the contract, the Contracting Officer shall, upon the Contractor's timely written request, consider an equitable adjustment to the contract.

(ii) In the event property is received by the Contractor in a condition not suitable for its intended use, the Contracting Officer shall, upon the Contractor's timely written request, advise the Contractor on a course of action to remedy the problem. Such action may include repairing, replacing, modifying, returning, or otherwise disposing of the property at the Government's expense. Upon completion of the required action(s) the Contracting Officer shall consider an equitable adjustment to the contract (see also paragraph (f)(1)(ii)(A) of this clause).

(iii) The Government may, at its option, furnish property in an "as is" condition. In such cases, the Government makes no warranty with respect to the serviceability and/or suitability of the property for contract performance. Any repairs, replacement, and/or refurbishment shall be at the Contractor's expense.

(4)(i) The Contracting Officer may by written notice, at any time—

(A) Increase or decrease the amount of Government-furnished property under this contract;

(B) Substitute other Government-furnished property for the property previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this contract; or

(C) Withdraw authority to use property.

(ii) Upon completion of any action(s) under paragraph (d)(4)(i) of this clause, and the Contractor's timely written request, the Contracting Officer shall consider an equitable adjustment to the contract.

(e) *Title to Contractor-acquired property.* Title to all property purchased by the Contractor, for which the Contractor is entitled to be reimbursed as a direct item of cost, under this contract, shall pass to and vest in the Government upon—

(1) A vendor's or supplier's initial delivery of such property to the Contractor;

(2) Issuance of the property for use in contract performance, including the installation of parts through normal maintenance;

(3) Commencement of processing of the property for use in contract performance; or

(4) Reimbursement by the Government for the cost of the property, whichever occurs first.

(f) *Contractor plans and systems.* (1) Contractors shall develop property management plans and systems, at the contract, program, site or entity level to enable the following outcomes:

(i) *Acquisition of property.* The Contractor shall document that all property was acquired consistent with its engineering, production planning, material control operations, and/or cost accounting disclosure statement.

(ii) *Receipt of Government property.* The Contractor shall receive Government property (document the receipt), record (the information necessary to meet the record requirements of paragraphs (f)(1)(iii)(A)(1), (2), (3), (4) and (5) of this clause), identify (as Government-owned), and manage any discrepancies incident to shipment.

(A) *Government-furnished property.* The Contractor shall furnish a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.

(B) *Contractor-acquired property.* The Contractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of Contractor-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.

(iii) *Records of Government property.* The Contractor shall create and maintain records of all Government property accountable to the contract, including Government-furnished and Contractor-acquired property.

(A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following data:

(*1*) The name, commercial part number and description, manufacturer, bulk identifier, model number, and National Stock Number (if needed for additional item identification tracking and/or disposition).

(*2*) Quantity received (or fabricated), issued, and balance-on-hand.

(*3*) Unit acquisition cost.

(*4*) Unique-item identifier or equivalent (if available and necessary for individual item tracking).

(*5*) Unit of measure.

(*6*) Accountable contract number or equivalent code designation.

(*7*) Location.

(*8*) Disposition.

(9) Posting reference and date of transaction.

(10) Date placed in service.

(B) When approved by the Property Administrator, the Contractor may maintain, in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.

(iv) *Physical inventory.* The Contractor shall periodically perform, record, and report physical inventories during contract performance. A final physical inventory shall be performed upon contract completion or termination. The Property Administrator may waive this final inventory requirement, depending on the circumstances, *e.g.*, overall reliability of the Contractor's system or the property is to be transferred to a follow-on contract.

(v) *Subcontractor control.* (A) The Contractor shall award subcontracts that clearly identify assets to be provided and shall ensure appropriate flow down of contract requirements, including any cost savings achieved as a result of its prime contract relationship with the Government.

(B) The Contractor shall assure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the subcontractor's property management system.

(vi) *Reports.* The Contractor shall have a process to create and provide reports including: reports of discrepancies; loss, damage and destruction; physical inventory results; audits and self-assessments; corrective actions; and other reports as directed by the Contracting Officer.

(A) Loss, damage, destruction, and theft. Unless otherwise directed by the Property Administrator, the Contractor shall investigate and promptly furnish to the Property Administrator, a written narrative of all incidents of loss, damage, destruction, or theft, as soon as the facts become known or when requested by the Government. Such reports shall, at a minimum, contain the following information:

(1) Date of incident (if known).

(2) The name, commercial description, manufacturer, model number, and National Stock Number (if applicable).

(3) Quantity.

(4) Unique Item Identifier (if available).

(5) Accountable Contract number.

(6) A statement indicating current or future need.

(7) Acquisition cost, or if applicable, estimated scrap proceeds, estimated repair or replacement costs.

(8) All known interests in commingled property of which the Government property is a part.

(9) Cause and corrective action taken or to be taken to prevent recurrence.

(10) A statement that the Government will receive any reimbursement covering the loss, damage, destruction, or theft, in the event the Contractor was or will be reimbursed or compensated.

(11) Copies of all supporting documentation.

(B) The Contractor shall take all reasonable actions necessary to protect the Government property from further loss, damage, destruction, or theft. The Contractor shall separate the damaged and undamaged Government property, place all the affected Government property in the best possible order, and take such other action as the Property Administrator directs.

(C) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss, damage, destruction, or theft of Government property.

(D) Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.

(vii) *Relief of stewardship responsibility.* Unless the contract provides otherwise, the Contractor shall be relieved of stewardship responsibility for Government property when such property is—

(A) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract as determined by the Property Administrator, including reasonable inventory adjustments;

(B) Delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor; or

(C) Disposed of in accordance with paragraphs (j) and (k) of this clause.

(viii) *Utilizing Government property.* The Contractor shall utilize, consume, and store Government property only as authorized under this contract. The Contractor shall promptly disclose and report Government property in its possession that is excess to contract performance.

(ix) *Maintenance.* The Contractor shall properly maintain Government property. The Contractor's maintenance program shall enable the identification, disclosure, and performance of normal preventative maintenance and repair. The Contractor shall disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

(x) *Property closeout.* The Contractor shall promptly perform and report to the Property Administrator contract property closeout, to include reporting, investigating and securing closure of all loss, damage, destruction, or theft cases; physically inventorying all property upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.

(2) The Contractor shall establish and maintain Government accounting source data, as may be required by this contract, particularly in the areas of recognition of acquisitions and dispositions of material and equipment.

(3) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness, and shall perform periodic internal reviews and audits. The findings and/or results of such reviews and audits shall be made available to the Property Administrator.

(g) *Systems analysis.* (1) The Government shall have access to the Contractor's premises, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor's property management systems, procedures, records, and supporting documentation.

(2) Records of Government property shall be readily available to authorized Government personnel and shall be safeguarded from tampering or destruction.

(3) Should it be determined by the Government that the Contractor's property management practices are inadequate or not acceptable for the effective management and/or control of Government property under this contract; and/or present an undue risk to the Government, the Contractor shall immediately take all necessary corrective actions as directed by the Property Administrator.

(h) *Contractor Liability for Government Property.* (1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss, damage, destruction, or theft to the Government property furnished or acquired under this contract, except when any one of the following applies:

(i) The risk is covered by insurance or the Contractor is otherwise reimbursed (to the extent of such insurance or reimbursement).

(ii) The loss, damage, destruction, or theft is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel. Contractor's managerial personnel, in this clause, means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business; all or substantially all of the Contractor's operation at any one plant or separate location; or a separate and complete major industrial operation.

(iii) The Contracting Officer has, in writing, withdrawn the Government's assumption of risk for loss, damage, destruction, or theft, due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence that the loss, damage, destruction, or theft of Government property occurred while the Contractor had adequate property management practices or the loss, damage, destruction, or theft of Government property did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.

(2) The allowability of insurance costs shall be determined in accordance with 31.205–19 of the Federal Acquisition Regulation.

(i) *Equitable adjustment.* Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. The right to an equitable adjustment shall be the Contractor's exclusive remedy and the Government shall not be liable to suit for breach of contract for the following—

(1) Any delay in delivery of Government-furnished property.

(2) Delivery of Government-furnished property in a condition not suitable for its intended use.

(3) An increase, decrease, or substitution of Government-furnished property.

(4) Failure to repair or replace Government property for which the Government is responsible.

(j) *Contractor inventory disposal.* Except as otherwise provided for in this contract, the Contractor shall not dispose of Contractor inventory until authorized to do so by the Plant Clearance Officer.

(1) *Scrap to which the Government has obtained title under paragraph (e) of this clause.*—(i) *Contractor with an approved scrap procedure.* (A) The Contractor may dispose of scrap resulting from production or testing under this contract without Government approval. However, if the scrap requires demilitarization or is sensitive property, the Contractor shall submit the scrap on an inventory disposal schedule.

(B) For scrap from other than production or testing the Contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures), except that inventory disposal schedules shall be submitted for scrap aircraft or aircraft parts and scrap that—

(*1*) Requires demilitarization;

(*2*) Is a classified item;

(*3*) Is generated from classified items;

(*4*) Contains hazardous materials or hazardous wastes;

(*5*) Contains precious metals; or

(*6*) Is dangerous to the public health, safety, or welfare.

(ii) *Contractor without an approved scrap procedure.* The Contractor shall submit an inventory disposal schedule for all scrap.

(2) *Predisposal requirements.* Once the Contractor determines that Contractor-acquired property is no longer needed for contract performance, the Contractor in the following order of priority—

(i) May purchase the property at the acquisition cost;

(ii) Shall make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices); and

(iii) Shall list, on Standard Form 1428, Inventory Disposal Schedule, property that was not purchased under paragraph (j)(2)(i) of this clause, could not be returned to a supplier, or could not be used in the performance of other Government contracts.

(3) *Inventory disposal schedules.* (i) The Contractor shall use Standard Form 1428, Inventory Disposal Schedule, to identify—

(A) Government-furnished Property that is no longer required for performance of this contract, provided the terms of another Government contract do not require the Government to furnish that property for performance of this contract;

(B) Contractor acquired property, to which the Government has obtained title under paragraph (e) of this clause, which is no longer required for performance of that contract; and

(C) Termination inventory.

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government.

(iii) Unless the Plant Clearance Officer has agreed otherwise, or the contract requires electronic submission of inventory disposal schedules, the Contractor shall prepare separate inventory disposal schedules for—

(A) Special test equipment with commercial components;

(B) Special test equipment without commercial components;

(C) Printing equipment;

(D) Information technology (*e.g.*, computers, computer components, peripheral equipment, and related equipment);

(E) Precious metals;

(F) Nonnuclear hazardous materials or hazardous wastes; or

(G) Nuclear materials or nuclear wastes.

(iv) The Contractor shall describe the property in sufficient detail to permit an understanding of its intended use. Property with the same description, condition code, and reporting location may be grouped in a single line item.

(4) *Submission requirements.* The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than—

(i) 30 days following the Contractor's determination that a Government property item is no longer required for performance of this contract;

(ii) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(iii) 120 days, or such longer period as may be approved by the Termination Contracting Officer following contract termination in whole or in part.

(5) *Corrections.* The Plant Clearance Officer may—

(i) Reject a schedule for cause (*e.g.*, contains errors, determined to be inaccurate); and

(ii) Require the Contractor to correct an inventory disposal schedule.

(6) *Postsubmission adjustments.* The Contractor shall notify the Plant Clearance Officer at least 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. Upon approval of the Plant Clearance Officer, or upon expiration of the notice period, the Contractor may make the necessary adjustments to the inventory schedule.

(7) *Storage.* (i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government's failure to furnish disposal instructions within 120 days following acceptance of an inventory disposal schedule may entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121st day.

(ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove Government property from the premises where the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage facility shall be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability for such property under this contract.

(8) *Disposition instructions.* (i) If the Government does not furnish disposition instructions to the Contractor within 45 days following acceptance of a scrap list, the Contractor may dispose of the listed scrap in accordance with the Contractor's approved scrap procedures.

(ii) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Contractor inventory as directed by the Plant Clearance Officer. If not returned to the Government, the Contractor shall remove and destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.

(iii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. In such cases, the Contractor may be entitled to an equitable adjustment under paragraph (i) of this clause.

(9) *Disposal proceeds.* The Contractor shall credit the net proceeds from the disposal of Contractor inventory to the price or cost of work or as the Contracting Officer directs.

(10) *Subcontractor inventory disposal schedules.* The Contractor shall require its Subcontractors to submit inventory disposal schedules to the Contractor in accordance with the requirements of paragraph (j)(4) of this clause.

(k) *Abandonment of Government property.* (1) The Government shall not abandon sensitive Government property or termination inventory without the Contractor's written consent.

(2) The Government, upon notice to the Contractor, may abandon any nonsensitive Government property in place, at which time all obligations of the Government regarding such property shall cease.

(3) The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government—furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.

(l) *Communication.* All communications under this clause shall be in writing.

(m) *Overseas Contracts.* If this contract is to be performed outside of the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

(End of clause)

Alternate I (Date). As prescribed in 45.107(a)(2), substitute the following for paragraph (h)(1) of the basic clause:

(h)(1) The Contractor assumes the risk of, and shall be responsible for, any loss, damage, destruction, or theft of Government property upon its delivery to the Contractor as Government-furnished property. However, the Contractor is not responsible for reasonable wear and tear to Government

property or for Government property properly consumed in performing this contract.

Alternate II (Date). As prescribed in 45.107(a)(3), substitute the following for paragraph (e) of the basic clause:

(e) Title to property (and other tangible personal property) purchased with funds available for research and having an acquisition cost of less than $5,000 shall vest in the Contractor upon acquisition or as soon thereafter as feasible; provided that the Contractor obtained the Contracting Officer's approval before each acquisition. Title to property purchased with funds available for research and having an acquisition cost of $5,000 or more shall vest as set forth in this contract. If title to property vests in the Contractor under this paragraph, the Contractor agrees that no charge will be made to the Government for any depreciation, amortization, or use under any existing or future Government contract or subcontract thereunder. The Contractor shall furnish the Contracting Officer a list of all property to which title is vested in the Contractor under this paragraph within 10 days following the end of the calendar quarter during which it was received. Vesting title under this paragraph is subject to civil rights legislation, 42 U.S.C. 2000d. Before title is vested and by signing this contract, the Contractor accepts and agrees that—

"No person in the United States or its outlying areas shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contemplated financial assistance (title to property)."

52.245–2 Government Property (Installation Operations for Services).

As prescribed in 45.107(b), insert the following clause:

Government Property (Installation Operations for Services) (Date)

(a) This Government Property is furnished to the Contractor in an "as-is, where is" condition. The Government makes no warranty regarding the suitability for use of the Government property specified in this contract. The Contractor shall be afforded the opportunity to inspect the Government property as specified in the solicitation.

(b) The Government bears no responsibility for repair or replacement of any lost, damaged or destroyed Government property. If any or all of the Government property is lost, damaged or destroyed or becomes no longer usable, the Contractor shall be responsible for replacement of the property at Contractor expense. The Contractor shall have title to all replacement property and shall continue to be responsible for contract performance.

(c) Unless the Contracting Officer determines otherwise, the Government abandons all rights and title to unserviceable (*i.e.*, scrap) property resulting from contract performance. Upon notification to the Contracting Officer, the Contractor shall remove such property from the Government premises and dispose of it at Contractor expense.

(d) Except as provided in this clause, Government property furnished under this contract shall be governed by the Government Property clause of this contract.

(End of clause)

52.245–3 through 52.245–8 [Removed and Reserved]

19. Remove and reserve sections 52.245–3 through52.245–8.

20. Amend section 52.245–9 by—

a. Removing from the introductory paragraph "45.106(h)" and adding "45.107(c)" in its place;

b. Revising the date of the clause; and

c. Revising in paragraph (a) the definitions "Acquisition cost", "Government property", and "Real property".

The revised text reads as follows:

52.245–9 Use and Charges.

* * * * *

USE AND CHARGES (DATE)

(a) * * *

Acquisition cost means—

(1) For Contractor acquired property, the full cost determined in accordance with the system established by the Contractor in conformance with consistently applied sound accounting principles.

(2) For Government-furnished property, the amount identified in the contract, or in the absence of such identification, the fair market value attributed to the item by the Contractor.

Government property means all property owned or leased by the Government. Government property includes both Government-furnished and Contractor-acquired property.

Real property means land, land rights, buildings, structures, utility systems, steam-generation systems, and equipment attached to and made part of buildings and structures (such as heating systems). As such, land rights are considered real property. It does not include foundations and other work necessary for installing special tooling, special test equipment, or equipment.

* * * * *

52.245–10 through 52.245–19 [Removed and Reserved]

21. Remove and reserve sections 52.245–10 through 52.245–19.

PART 53—FORMS

53.245 [Amended]

22. Amend section 52.245 in paragraph (e) by removing "52.245–2(i), 52.245–5(i)" and adding "52.245–1" in its place.

[FR Doc. 05–18516 Filed 9–16–05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. 2005–22068]

Anthropomorphic Test Devices; Denial of Petition for Consideration Regarding Amending the Side Impact Dummy (SID); Specifications

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking submitted by Ford Motor Company (Ford) on December 19, 2003, that asked the National Highway Traffic Safety Administration (NHTSA) to amend the Side Impact Dummy (SID) specifications in 49 CFR Part 572, Subpart F, for use in Federal Motor Vehicle Safety Standard (FMVSS) No. 214, "Side Impact Occupant Protection," and the Side Impact New Car Assessment Program (Side NCAP).

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. Sean Doyle, NHTSA Office of Crashworthiness Standards. Telephone: (202) 366–1740. Facsimile: (202) 366–7002.

For legal issues: Ms. Dee Fujita, NHTSA Office of the Chief Counsel. Telephone: (202) 366–2992. Facsimile: (202) 366–3820.

Both officials can be reached by mail at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

On October 30, 1990, NHTSA published a final rule (**Federal Register** Vol. 55, No. 210, Docket Number 88–06; Notice 8) to amend FMVSS No. 214, at the time titled, "Side Door Strength." Prior to this final rule, a vehicle's side impact performance was determined solely by a static assessment of the ability of a door to resist forces imparted by a piston pressing a rigid steel cylinder against the door's outer surface. However, with the implementation of this final rule, effective September 1, 1993, vehicles were additionally required to undergo full-scale dynamic crash tests to assess occupant protection. Because of its acceptable reliability and durability during research testing conducted in support of the final rule, the agency chose the SID to measure the potential for injuries to an occupant's thorax and pelvis in a side impact crash (**Federal Register** Vol

55, No. 210, Docket Number 88–07; Notice 3). To provide an assessment of the dummy's measured readings, NHTSA developed an injury metric called the Thoracic Trauma Index (TTI).[1]

FMVSS No. 214, renamed, "Side Impact Protection," with the implementation of dynamic testing in 1990, was later amended on April 2, 1998 (**Federal Register** Vol. 63, No. 63, Docket Number NHTSA–98–3668). During sled tests conducted by the agency to evaluate the effect of adding spacer inserts to the SID lumbar spine, it was observed that, "the position of the damper piston in the SID ribcage prior to the [side impact] test had an appreciable effect on the thorax accelerations recorded by the SID." NHTSA further found that, "the return spring on the damper did not always return the damper to its fully extended position." Because, in such instances, the piston was not fully extended in the dummy's ribcage prior to impact, the agency observed internal collision of the damper piston at the onset of impact in some dummies. Subsequent testing showed that internal collision within the damper body would not occur if the damper piston were in the fully extended position prior to a side impact test. Therefore, FMVSS No. 214 was amended on April 2, 1998, to include specific dummy positioning procedures to solve this problem.

Summary of the Petition

In a letter dated December 19, 2003, Ford petitioned NHTSA to amend specifications for the SID in 49 CFR Part 572, Subpart F. Ford alleged that the damper in the SID dummy's thorax could induce erroneous, mechanical noise or ringing in the recorded data traces during side impact crash tests such as those conducted pursuant to FMVSS No. 214, "Side Impact Protection," or Side NCAP. Consequently, Ford modified the SID's thorax to include a SID ribcage deflection potentiometer, which allowed the company to assess the displacement of the damper piston (compression/extension) in the SID's thorax during side impact tests. Ford claims "this mechanical "noise" or "ringing" is due to metal-to-metal contact between the SID ribcage damper piston and the damper body." The noise is present when the ribcage "fully expand[s] allowing the damper piston to fully extend and bottom out on the damper body." In particular, Ford asserts this condition is present in certain vehicles tested both with and without side air bags.

Ford presented unfiltered data for three vehicles equipped with side air bags that the company asserted were affected by internal collision of the damper piston against the damper body. For two of these side airbag equipped vehicles, Ford indicated, "the SID thorax is initially loaded by the air bag positioning between the dummy and the vehicle door, then the thorax loading is relaxed due to the nature of the vehicle deformation and air bag kinematics, thereby allowing the damper piston to fully extend." As the crash event proceeds, Ford noted, "the loading is re-applied to the thorax." According to Ford, during this "loading/unloading/re-loading" progression, "the ribcage is initially compressed but then rapidly expands back to zero measured deflection indicating full extension of the damper piston." It is at this time, approximately 50–60 milliseconds (ms) from the initiation of the crash event, that Ford alleges erroneous spikes are present in the unfiltered thoracic data curves. In the third vehicle, Ford stated that the internal collision occurred "late in the crash event when the dummy is in rebound" and "therefore does not influence * * * dummy performance." Contrary to that which occurred for the other two vehicles, in this vehicle, the dummy's ribcage was continuously compressed until the loading subsided at the end of the crash event.

Ford also presented unfiltered data from one vehicle that was tested without side air bags. In such a vehicle, the company contends, "the phenomenon can occur when the door structure of the vehicle initially loads the SID thorax as the FMVSS–214/LINCAP [Side NCAP] barrier intrudes, then the loading is relaxed due to the kinematics of the vehicle's deformation thereby allowing the internal "collision" of the piston and damper body." This resulted in a sharp spike at 50 ms in the raw data traces. Ford further stated that the dummy's thorax is then reloaded "when the SID rotates outboard and contacts the door structure a second time during the crash event."

Ford maintained that if "the ribcage damper piston can fully extend during the dummy loading event, * * * the internal "collision" phenomenon can significantly affect the measured rib and spine accelerations by introducing data spikes " even with the FVMSS–214 specified FIR [Finite Impulse Response] -filtering process." Ford also stated, "the resulting data spikes in the SID responses can register a magnitude and duration such that the resulting Thoracic Trauma Index calculation can be unrealistically high, with the potential to result in a value exceeding FVMSS No. 214 limits and/or to reduce a vehicle's LINCAP rating by one or more stars."

In an attempt to mitigate the spikes, Ford asked Denton ATD, Inc. to develop modifications for the SID ribcage damper, which included the addition of both an internal 1–2 mm thick nylon washer and a 7 mm external steel spacer to the piston shaft. Ford claimed that the internal nylon washer "creates a more 'compliant' bottoming out surface on the piston shaft, thereby reducing the likelihood of mechanical 'ringing' due to metal-to-metal contact between the shaft and damper body." Ford also stated that the external spacer would "provide more piston stroke length, thereby reducing the likelihood of bottoming out the piston against the damper body." Ford believes that the above modifications "do not alter the SID response characteristics associated with FMVSS–214 compliance or LINCAP performance (except for reducing or eliminating the ringing from metal-to-metal contact), and will comply with all regulatory SID dummy response calibration requirements." Therefore, Ford petitioned NHTSA to amend the SID specifications to incorporate the aforementioned modifications to the damper and accordingly, modify all SIDs used by contracting laboratories.

In addition to the modifications discussed previously, Ford also requested that NHTSA add a ribcage deflection potentiometer to the SID specifications and the corresponding mounting bracket design that they currently use. Ford claims that this assembly "aids in the diagnosis and verification of the metal-to-metal contact condition." Ford stated that the mounting bracket design presently used in their internal testing "was developed by NHTSA during the evolution of the bracket design associated with the [1986] NPRM" (**Federal Register** Vol. 53, No. 17, Docket Number 88–06; Notice 1). However, Ford stated that unlike the mounting bracket design that was proposed in 1986, this "modified design" precludes potential metal-to-metal contact.

Analysis of Petition

NHTSA acknowledges that the unfiltered peak acceleration traces for the upper rib, lower rib, and lower spine presented by Ford in the petition appear to show evidence of "mechanical

[1] TTI is calculated by averaging the maximum filtered acceleration of the ribs (either the upper rib or the lower rib) and lower spine. The filter applied is a Finite Impulse Response (FIR) filter, which has a Passband frequency of 100 Hz, a Stopband frequency of 189 Hz, a Stopband gain of -50 db, and a Passband ripple of 0.0225 db.

noise," and the most prominent spikes in these curves tend to occur around 45–60 ms after the initiation of the crash event. However, as Ford noted in the petition, the agency recognizes that internal collision of the piston against the damper body is possible, and that such contact could produce a ringing signal in the resulting data traces (**Federal Register** Vol. 63, No. 63, Docket Number NHTSA–98–3668). For that reason, in 1998, the agency amended the SID positioning procedure to fully extend the piston within the damper body prior to the side impact test to preclude the piston from bottoming out against the damper body at the onset of impact. However, Ford did not provide evidence to indicate that the SID positioning procedures outlined in the 1998 final rule were in fact followed for the tests discussed in this petition. Therefore, the agency cannot be certain that the "mechanical noise" documented by Ford is not a result of improper pretest SID positioning. Similarly, Ford did not provide data showing the effects on TTI with application of the FIR filter. Nevertheless, to ensure that the performance of the SID had not changed since its incorporation as a regulatory tool, NHTSA reviewed its own side impact test data.

In analyzing Side NCAP test data spanning model years (MY) 1997–2004 and indicant [2] FMVSS No. 214 test data spanning MY 2000–2004, NHTSA found only a few instances in which the upper rib, lower rib, or lower spine unfiltered data traces for the driver or rear passenger SID in vehicles tested show data spikes at approximately the same timeframe (~ 50 ms) indicated in the Ford petition.[3] However, NHTSA's analysis also showed that "noise" effects are considerably reduced, if not nullified, by application of the FIR filter. Therefore, the agency could not establish that the dummies' base acceleration response levels were elevated sufficiently to affect the TTI. Consequently, there is no evidence to suggest that the star ratings for Side NCAP vehicles were reduced because of mechanical noise. A similar review of thoracic data traces for the driver and rear passenger dummies in vehicles subjected to FMVSS No. 214 compliance tests from MY 1998–2003 uncovered a very limited number of vehicles in which a ringing signal was apparent between approximately 50–60 ms in the raw data traces. These spikes were significantly reduced once the FIR filter was applied. Hence, NHTSA has concluded that similar to the Side NCAP tests, the recorded TTIs for the dummies in the compliance tests were not affected to the extent that a vehicle would have exceeded the injury criteria imposed by FMVSS No. 214.

Ford additionally requested that the agency incorporate the ribcage deflection potentiometer and corresponding mounting bracket used in Ford's in-house tests to aid in the diagnosis and verification of metal-to-metal contact occurrence. Based on our analysis, NHTSA does not believe that these recommended changes are either needed or would serve the needs of safety. Therefore, the agency is choosing not to incorporate the ribcage deflection potentiometer and corresponding mounting bracket, or the internal washer and external spacer.

[2] Indicant FMVSS No. 214 tests are conducted by the Office of Vehicle Safety Compliance, but are performed at the Side NCAP test speed of 38.5 mph instead of 33.5 mph, as specified in the FMVSS No. 214 standard.

[3] Spikes occurring considerably later than typical peak acceleration magnitudes seen in side impacts (from approximately 150 milliseconds to approximately 200 milliseconds) were present in the agency's data as well. However, the agency has found that FIR filtering makes such spikes negligible compared to the peak acceleration at impact. Side NCAP vehicle test data is located in Docket No. 1998–3835.

Conclusion

NHTSA did not find compelling evidence in the limited unfiltered data provided by Ford to suggest that the claimed erroneous acceleration data spikes are a cause of compliance problems or result in reduced Side NCAP star ratings. Furthermore, a review of the agency's own side impact test data did not reveal any instances in which data spikes affected TTI to the extent that a vehicle did not meet the FMVSS No. 214 compliance limits or was unjustly given a lower star rating. Consequently, NHTSA feels that the currently specified SID is sufficiently suitable for FMVSS No. 214 and Side NCAP objective testing and deems that the requested modifications are not needed. NHTSA is therefore denying the Ford petition for rulemaking.

Authority: 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: September 13, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–18593 Filed 9–16–05; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 70, No. 180
Monday, September 19, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 13, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Cooperative State Research, Education, and Extension Service

Title: Children, Youth, and Families at Risk (CYFAR) Year End Report.

OMB Control Number: 0524–0043.

Summary of Collection: The Children, Youth, and Families at Risk (CYFAR) funding program supports community-based programs serving children, youth, and families in at risk environments. CYFAR funds are intended to support the development of high quality, effective programs based on research and to document the impact of these programs on intended audiences which are children, youth, and families in at-risk environments. The CYFAR Year End Report collects demographic and impact data from each community site, which is used by the Cooperative State Research, Education, and Extension Service (CSREES). Funding for the CYFAR is authorized under section 3(d) of the Smith-Lever Act (7 U.S.C. 341 *et seq.*), as amended and other relevant authorizing legislation, which provides jurisdictional basis for the establishment and operation of extension educational work for the benefit of youth and families in communities.

Need and Use of the Information: The purpose of the CYFAR Year End Report is to collect the demographic and impact data from each community site in order to evaluate the impact of the programs on intended audiences. The CYFAR data is also used to respond to requests for impact information from Congress, the White House, and other Federal agencies. Data from the CYFAR annual reports is used to refine and improve program focus and effectiveness. Without the information CSREES would not be able to verify if CYFAR programs are reaching at risk, low-income audiences.

Description of Respondents: State, local or tribal government.

Number of Respondents: 50.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 16,100.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–18490 Filed 9–16–05; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV05–996–3]

Peanut Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; Request for nominations to fill a vacancy.

SUMMARY: The Farm Security and Rural Investment Act of 2002 requires the Secretary of Agriculture to establish a Peanut Standards Board (Board) for the purpose of advising the Secretary on quality and handling standards for domestically produced and imported peanuts. The initial Board was appointed by the Secretary and announced on December 5, 2002. USDA seeks nominations for individuals to be considered for selection to the Board to fill a vacant Board position for the remainder of a term of office ending June 30, 2006. The Board consists of 18 members representing producers and industry representatives.

DATES: Written nominations must be received on or before October 31, 2005.

ADDRESSES: Nominations should be sent to Dawana J. Clark, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; Telephone: (301) 734–5247; Fax: (301) 734–5275; E-mail: *Dawana.Clark@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 1308 of the Farm Security and Rural Investment Act of 2002 (Farm Bill) requires the Secretary of Agriculture to establish a Peanut Standards Board (Board) for the purpose of advising the Secretary regarding the establishment of quality and handling standards for all domestic and imported peanuts marketed in the United States. The Farm Bill requires the Secretary to consult with the Board before the Secretary establishes or changes quality and handling standards for peanuts.

The Farm Bill provides that the Board consist of 18 members, with three producers and three industry representatives from the States specified in each of the following producing regions: (a) Southeast (Alabama, Georgia, and Florida); (b) Southwest (Texas, Oklahoma, and New Mexico);

and (c) Virginia/Carolina (Virginia and North Carolina).

For the initial appointments, the Farm Bill required the Secretary to stagger the terms of the members so that: (a) One producer member and peanut industry member from each peanut producing region serves a one-year term; (b) one producer member and peanut industry member from each peanut producing region serves a two-year term; and (c) one producer member and peanut industry member from each peanut producing region serves a three-year term. The term "peanut industry representatives" includes, but is not limited to, representatives of shellers, manufacturers, buying points, marketing associations and marketing cooperatives. The Farm Bill exempted the appointment of the Board from the requirements of the Federal Advisory Committee Act. The initial Board was appointed by the Secretary and announced on December 5, 2002.

USDA invites those individuals, organizations, and groups affiliated with the categories listed above to nominate individuals for membership on the Board. Nominees sought by this action would fill a vacant producer member position from the Southeast peanut producing region for the remainder of a 3-year term of office that ends June 30, 2006.

Nominees should complete a Peanut Standards Board Background Information form and submit it to Mrs. Clark. Copies of this form may be obtained at the Internet site: *http://www.ams.usda.gov/fv/peanut-farmbill.htm,* or from Mrs. Clark. USDA seeks a diverse group of members representing the peanut industry. Equal opportunity practices will be followed in all appointments to the Board in accordance with USDA policies. To ensure that the recommendations of the Board have taken into account the needs of the diverse groups within the peanut industry, membership shall include, to the extent practicable, individuals with demonstrated abilities to represent minorities, women, persons with disabilities, and limited resource agriculture producers.

Authority: 7 U.S.C. 7958.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–18583 Filed 9–16–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Commodity Credit Corporation

Request for Extension and Revision of a Currently Approved Information Collection; Debt Settlement Policies and Procedures

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Farm Service Agency (FSA) and the Commodity Credit Corporation (CCC) to request renewal of the information collection currently approved and used in support of the FSA and CCC Debt Settlement Policies and Procedures program. Provisions in the Federal Agriculture Improvement and Reform Act of 1996 and in the Debt Collection Improvement Act of 1996 have resulted in a decrease in burden hours for information collection under the FSA and CCC Debt Settlement Policies and Procedures program.

DATES: Comments on this notice must be received on or before November 18, 2005 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Thomas F. Harris II, Claims Program Specialist, Financial Management Division, Farm Service Agency, USDA, STOP 0581, Washington, DC 20250–0581; telephone (703) 305–1439.

SUPPLEMENTARY INFORMATION:

Title: Debt Settlement Policies and Procedures.

OMB Control Number: 0560–0146.

Expiration Date of Approval: March 31, 2006.

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

Abstract: The information collected under the Office of Management and Budget (OMB) Number 0560–0146, as identified above, is needed to enable FSA and CCC to effectively administer the regulations at 7 CFR 792 (FSA) and 7 CFR 1403 (CCC) relating to debt settlement policies and procedures and to the identification of and settlement of outstanding claims. Collection of outstanding debts owed to FSA or to CCC can be effected by installment payments if a debtor furnishes satisfactory evidence of inability to pay a claim in full, and if the debtor specifically requests for an installment agreement. Part of the requirement is that the debtors furnish this request in writing and with a financial statement or other information that would disclose a debtor's assets and liabilities. This information is required in order to evaluate any proposed plan. Such documentation requests furnished by the debtor are also used in the other collection tools employed by both FSA and CCC in managing debt settlement policies and procedures. If an installment agreement is approved, then a Promissory Note (CCC–279), or an approved alternative promissory note format, must be executed between the debtor and the FSA/CCC representative(s). During the past 2 years, over $10,687,000 in debt collection was facilitated by the use of this requested information and the establishment of 160 Promissory Notes between Debtors and FSA and CCC. Of that amount, $4,392,516 has been collected by 08/01/2005, leaving approximately $6,294,629 outstanding. Total active Note amount for all years is presently $15,922,583.75, with a total outstanding amount of $8,638,168.19.

The Debt Collection Improvement Act of 1996 requires the head of an agency to take all appropriate steps to collect delinquent debts before discharging such debts. These steps require the employment of these information collection forms and formats which have been successfully used for the past several years and which have become familiar tools for both the agency employees and for the producer. Thus, forms and formats already exist and are in use. The need to develop and introduce new forms and formats into the marketplace would add additional burdens and costs to both the producer and to the agency in the handling of the claim settlement and collection processes and would create additional burdens not called for under the Debt Collection Improvement Act of 1996.

Estimate of burden: Public reporting burden for this information collection is estimated to average 60 minutes per response.

Respondents: Producers participating in FSA and CCC programs.

Estimated number of Annual Respondents: 100.

Estimated number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 100 hours.

Topics for comment include but are not limited to the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and

assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Thomas F. Harris II, Claims Program Specialist, Financial Management Division, Farm Service Agency, USDA, STOP 0581, 1400 Independence Ave., SW., Washington, DC 20250–0581; telephone (703) 305–1439. Copies of the information collection may be obtained from Thomas F. Harris II at the above address.

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.

Signed at Washington, DC, on September 7, 2005.

James R. Little,

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

[FR Doc. 05–18493 Filed 9–16–05; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 05–029N]

National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting; request for comments.

SUMMARY: This notice announces that the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) will hold public meetings of the full Committee and subcommittees on September 26–29, 2005. The Committee will discuss: (1) Consumer guidelines for the safe cooking of poultry products, (2) analytical utility of *Campylobacter* methodologies, and (3) determination of cooking parameters for safe seafood for consumers.

DATES: The full Committee will hold an open meeting on Wednesday, September 28, 2005, from 8:30 a.m. to 12 p.m. The Subcommittee on Consumer Guidelines for the Safe Cooking of Poultry Products, will hold open meetings on Monday, September 26, 2005, from 1 p.m. to 5 p.m. and on Tuesday, September 27, 2005, from 8:30 a.m. to 5 p.m. The Subcommittee on Determination of Cooking Parameters for Safe Seafood for Consumers will hold open meetings on Wednesday, September 28, 2005 from 1 p.m. to 5 p.m., and on Thursday, September 29, 2005, from 8:30 a.m.–5 p.m.

ADDRESSES: The meetings will be held at the Omni Colonnade Hotel, 180 Aragon Avenue, Coral Gables, FL 33134; telephone number 305–441–2600. All documents related to full Committee meetings will be available for public inspection in the Food Safety and Inspection Service (FSIS) Docket Room, 300 12th Street, SW., Room 102, Cotton Annex, Washington, DC 20250, between 8:30 a.m. and 4:30 p.m., Monday through Friday, as soon as they become available. The NACMCF documents will also be available on the Internet at *http://www.fsis.usda.gov/regulations/2005_Notices_Index/.*

FSIS will finalize an agenda on or before the meeting dates and post it on the FSIS Internet Web page *http://www.fsis.usda.gov/News/Meetings_&_Events/.*

Also, the official transcripts of the September 2005 full Committee meeting, when they become available, will be kept in the FSIS Docket Room at the above address and will also be posted on *http://www.fsis.usda.gov/About/NACMCF_Meetings/.*

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, United States Department of Agriculture (USDA), 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 05–029N.

All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, 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/2005_Notices_Index/.*

See the disclaimer section below regarding modifications that may be necessary due to the presentation of the comments.

The mailing address for the contact person below, Karen Thomas, is: Food Safety and Inspection Service, USDA, Office of Public Health Science, Aerospace Center, Room 333, 1400 Independence Avenue, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Persons interested in making a presentation, submitting technical papers, or providing comments should contact Karen Thomas, phone (202) 690–6620, Fax (202) 690–6334, e-mail address: *karen.thomas@fsis.usda.gov,* or at the mailing address above. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Thomas, by September 19, 2005.

SUPPLEMENTARY INFORMATION:

Background

The NACMCF was established in 1988, in response to a recommendation of the National Academy of Sciences for an interagency approach to microbiological criteria for foods, and in response to a recommendation of the U.S. House of Representatives Committee on Appropriations, as expressed in the Rural Development, Agriculture, and Related Agencies Appropriation Bill for fiscal year 1988. The Charter for the NACMCF is available for viewing on the FSIS Internet web page at *http://www.fsis.usda.gov/About/NACMCF_Charter/.*

The NACMCF provides scientific advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services on public health issues relative to the safety and wholesomeness of the U.S. food supply, including development of microbiological criteria and review and evaluation of epidemiological and risk assessment data and methodologies for assessing microbiological hazards in foods. The Committee also provides advice to the Centers for Disease Control and Prevention and the Departments of Commerce and Defense.

Dr. Richard Raymond, Under Secretary for Food Safety, USDA, is the Committee Chairperson; Dr. Robert E. Brackett, Director of the Food and Drug Administration's Center for Food Safety and Applied Nutrition (CFSAN), is the Vice-Chairperson; and Gerri Ransom, FSIS, is the Executive Secretariat.

At the meetings the week of September 26–29, 2005 the Committee will discuss:

- Consumer guidelines for the safe cooking of poultry products,

- analytical utility of *Campylobacter* methodologies, and
- determination of cooking parameters for safe seafood for consumers.

Documents Reviewed by NACMCF

FSIS intends to make available to the public all materials that are reviewed and considered by NACMCF regarding its deliberations. Generally, these materials will be made available as soon as possible after the full Committee meeting. Further, FSIS intends to make these materials available in both electronic formats on the FSIS web page, as well as in hard copy format in the FSIS Docket Room. Often, an attempt is made to make the materials available at the start of the full Committee meeting when sufficient time is allowed in advance to do so.

Disclaimer: For electronic copies, all NACMCF documents and comments are electronic conversions from a variety of source formats into HTML that may have resulted in character translation or format errors. Readers are cautioned not to rely on this HTML document. Minor changes to materials in electronic format may be necessary in order to meet the electronic and information technology accessibility standards contained in Section 508 of the Rehabilitation Act in which graphs, charts, and tables must be accompanied by a text descriptor in order for the vision-impaired to be made aware of the content. FSIS will add these text descriptors along with a qualifier that the text is a simplified interpretation of the graph, chart, or table. Portable Document Format (PDF) and/or paper documents of the official text, figures, and tables can be obtained from the FSIS Docket Room.

Copyrighted documents will not be posted on the FSIS Web site, but will be available for inspection in the FSIS Docket Room.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public, and in particular minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2005_Notices_Index/*.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS web page. Through Listserv and the web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an electronic mail subscription service which 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 across 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 at Washington, DC on September 13, 2005.

Barbara J. Masters,

Administrator.

[FR Doc. 05–18491 Filed 9–16–05; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to assign monitors on 2005 projects and hold a short public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 200 (Pub. L. 106–393). The meeting is open to the public.

DATES: The meeting will be held on September 27, 2005, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Daniel G. Ritter, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *dritter@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Daniel G. Ritter, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: September 12, 2005.

David T. Bull,

Forest Supervisor.

[FR Doc. 05–18533 Filed 9–16–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to the Natural Resources Conservation Service's National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture, New York State Office.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices, Section IV of the New York State Field Office Technical Guide (FOTG) for review and comment.

SUMMARY: It is the intention of NRCS to issue one revised conservation practice standard in its National Handbook of Conservation Practices. This standard is: Wastewater Treatment Strip (NY635).

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Paul W. Webb, State Resource Conservationist, Natural Resources Conservation Service (NRCS), 441 S. Salina Street, Fifth Floor, Suite 354, Syracuse, New York 13202–2450.

A copy of this standard is available from the above individual.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agricultural Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period, a determination will be made to the NRCS regarding disposition of those comments and final determination of change will be made.

Dated: September 1, 2005.

Paul W. Webb,

State Resource Conservationist, Natural Resources Conservation Service, Syracuse, NY.

[FR Doc. 05–18549 Filed 9–16–05; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Illinois Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a conference call of the Illinois Advisory Committee will convene at 11 a.m. and adjourn at 12 p.m., Wednesday, September 28, 2005. The purpose of the conference call is to approve the agenda for the briefing, "Health Disparities in Minority Communities in Chicago."

This conference call is available to the public through the following call-in number: 1–800–473–8694, contact name: James Scales. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights at (312) 353–8311, (TDD 312–353–8362), by *4 p.m.* on *Tuesday, September 27, 2005.*

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 7, 2005.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 05–18134 Filed 9–16–05; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the North Carolina Advisory Committee to the United States Commission on Civil Rights will convene at 2 p.m. (EDT) and adjourn at 3:30 p.m. (EDT) on Thursday, September 29, 2005. The purpose of the conference call is: (1) To discuss the Committee's study on Title I funding distribution by local school districts to individual schools and (2) to discuss a project on the desegregation status of school districts once subject to court jurisdiction.

This conference call is available to the public through the following call-in number: (800) 473–8692, the conference chair name is Peter Minarik. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Peter Minarik, Southern Regional Office, U.S. Commission on Civil Rights at (404) 562–7000 by Tuesday, September 27, 2005.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 14, 2005.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 05–18585 Filed 9–16–05; 8:45 am]

BILLING CODE 6335–01–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: User Satisfaction Surveys.

Agency Form Number: ITA–4107P, et al.

OMB Number: 0625–0217.

Type of Request: Revisions, Regular Submission.

Burden: 3,096.

Number of Respondents: 18,324.

Avg. Hours Per Response: 5–30 minutes.

Needs and Uses: ITA provides a multitude of export promotion programs to help U.S. businesses. These programs include information products, services, and trade events. To accomplish its mission effectively, ITA needs ongoing feedback on its programs. This information collection item allows ITA to solicit clients' opinions about the use of ITA products, services, and trade events. The information is used for program improvement, strategic planning, allocation of resources, and performance measures. The surveys are part of ITA's effort to implement objectives of the National Performance Review (NPR) and Government Performance and Results Act (GPRA). Responses to the surveys will meet the needs of ITA performance measures based on NPR and GPRA guidelines. These performance measures will serve as a basis for justifying and allocating human resources.

Survey responses will acquaint ITA managers with firms' perceptions and assessments of export-assistance products and services. Also, the survey will enable ITA to track the performance overseas posts. This information is critical for improving the programs. Survey responses are used to assess client satisfaction, assess priorities, and identify areas where service levels and benefits differ from client expectations. Clients benefit because the information is used to improve services provided to the public. Without this information, ITA is unable to systematically determine client perceptions about the quality and benefit of its export-promotion programs.

Affected Public: Businesses or other for profit, not-for-profit institutions.

Frequency: On occasion.

Respondents Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Diana Hynek, Department 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, 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: September 13, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–18500 Filed 9–16–05; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews

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

SUMMARY: On March 10, 2005, the Department of Commerce (the "Department") published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on heavy forged hand tools, finished or unfinished, with or without handles ("HFHTs"), from the People's Republic of China ("PRC"). *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Preliminary Results of Administrative Reviews and Preliminary Partial Rescission of Antidumping Duty Administrative Reviews*, 70 FR 11934 (March 10, 2005) ("*Preliminary Results*"). We gave interested parties an opportunity to comment on the *Preliminary Results* and conducted verification of two Respondents. Based upon our analysis of the comments and information received, we made changes to the dumping margin calculations for the final results. We find that certain manufacturers/exporters sold subject merchandise at less than normal value during the POR.

EFFECTIVE DATE: September 19, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Walker or Julia Hancock, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0413 or (202) 482–1394, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The *Preliminary Results* in this administrative review were published on March 10, 2005. Since the *Preliminary Results*, the following events have occurred:

On March 18, 2005, the Department sent pre–verification questionnaires to TMC and Huarong. On March 22, 2004, the Department served the verification schedules for TMC and Huarong on all interested parties. On March 28, 2005, TMC and Huarong submitted their responses to the Department's March 18, 2005 pre–verification questionnaires.

On April, 4, 2005, TMC submitted a request for an extension of time to prepare for verification. On April 5, 2005, TMC withdrew its request for an extension of time to prepare for verification. On April 5, 2005, the Department sent a second pre–verification questionnaire to TMC. On April 8, 2005, TMC submitted its response to the Department's second pre–verification questionnaire. The Department conducted verification of the data submitted by Huarong and TMC on April 11–15, 2005 and April 18–20, 2005, respectively.

On April 18, 2005, the Department received Huarong's verification Exhibits. On April 22, 2005, the Department received TMC's verification Exhibits. On April 27, 2005, Shandong Jinma Industrial Group Company, Ltd. ("Jinma") requested that the reviews be rescinded with respect to Jinma. On May 17, 2005, the verification report for Huarong was completed. On May 23, 2005, the verification report for TMC was completed.

On June 7, 2005, the Department preliminarily rescinded the review with respect to Jinma and requested that parties comment on this rescission in their briefs. On June 13, 2005, the Petitioner[1] and Respondents submitted their case briefs. On June 20, 2005, the Petitioner and Respondents submitted their rebuttal briefs.

On June 27, 2005, the Department extended the time limit for completion of the final results of the instant administrative review. See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review, 70 FR 36928 (June 27, 2005).

[1] Ames True Temper.

Scope of the Order

The products covered by these orders are HFHTs comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks and mattocks (picks/mattocks); and (4) axes, adzes and similar hewing tools (axes/adzes).

HFHTs include heads for drilling hammers, sledges, axes, mauls, picks and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars, and tampers; and steel woodsplitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently provided for under the following Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded from these investigations are hammers and sledges with heads 1.5 kg. (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under.

The Department has issued six conclusive scope rulings regarding the merchandise covered by these orders: (1) On August 16, 1993, the Department found the "Max Multi–Purpose Axe," imported by the Forrest Tool Company, to be within the scope of the axes/adzes order; (2) on March 8, 2001, the Department found "18–inch" and "24–inch" pry bars, produced without dies, imported by Olympia Industrial, Inc. and SMC Pacific Tools, Inc., to be within the scope of the bars/wedges order; (3) on March 8, 2001, the Department found the "Pulaski" tool, produced without dies by TMC, to be within the scope of the axes/adzes order; (4) on March 8, 2001, the Department found the "skinning axe," imported by Import Traders, Inc., to be within the scope of the axes/adzes order; (5) on December 9, 2004, the Department found the "MUTT,"

imported by Olympia Industrial, Inc., under HTSUS 8205.59.5510, to be within the scope of the axes/adzes order; and (6) on May 23, 2005, the Department found 8 inch by 8 inch and 10 inch by 10 inch cast tampers, imported by Olympia Industrial, Inc. to be outside the scope of the orders.

We also note that on May 12, 2005, the Department initiated a formal scope inquiry on the "Mean Green Splitting Machine" imported by Avalanche Industries. This decision is currently due on September 23, 2005.

Rescission of Review

We preliminarily rescinded these reviews with respect to Shanghai Xinike Trading Company, Ltd. ("Olympia Shanghai"), Ningbo Tiangong Great Star Tools Company, Ltd. ("Ningbo"), Fexian Hualu Tool Company, Ltd. ("Fexian"), Jinhua Twin–Star Tools Company ("Jinhua"), Ltd. and ZhangJiagang Tianda Special Hardware Company, Ltd. ("ZhangJiagang"), which reported that they did not sell merchandise subject to any of the four HFHT antidumping orders during the POR. See Preliminary Results at 11937. As stated above, on June 7, 2005, the Department preliminarily rescinded the reviews with respect to Jinma, which requested on April 27, 2005, that the reviews be rescinded because it did not sell merchandise subject to any of the four HFHT antidumping orders during the POR. See the Department's June 7, 2005 letter to All Interested Parties.

For Olympia Shanghai, Ningbo, Fexian, Jinhua, ZhangJiagang and Jinma, the Department reviewed data from Customs and Border Protection ("Customs"), which supports the claims that these companies did not export subject merchandise during the POR. Furthermore, no party has placed evidence on the record demonstrating that these companies exported the merchandise identified above during the POR. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are rescinding these administrative reviews with respect to the companies and merchandise identified above.

In addition, we also preliminarily rescinded the review of Huarong with respect to the hammers/sledges and picks/mattocks orders, since Huarong reported that they made no shipments of subject hammers/sledges and picks/mattocks during the POR. *See Preliminary Results* at 11937.

The Department reviewed Customs data which supports the claim that Huarong did not export hammers/sledges and picks/mattocks during the POR. Furthermore, no party has placed evidence on the record demonstrating that Huarong exported the merchandise identified above during the POR. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are rescinding these administrative reviews on hammers/sledges and picks/mattocks with respect to Huarong.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this administrative review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit (CRU), room B–099 of the main Department building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at http://ia.ita.doc.gov/. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by TMC and Huarong for use in our final results. *See* the Department's verification reports on the record of this investigation in the CRU with respect to TMC and Huarong. For all verified companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the Respondents.

During verification, TMC informed the Department that its supplier of picks/mattocks had all accounting books seized by the Tianjin Tax Authority, thereby rendering the Department unable to verify any of TMC's factors of production for picks/mattocks. *See Memorandum to the File from Paul Walker, Verification of Sales for Tianjin Machinery Import & Export Corporation in the 13th Administrative Review of Heavy Forged Hand Tools from the People's Republic of China*, dated May 23, 2005.

Facts Available

In the *Preliminary Results*, we based the dumping margins for Huarong and TMC on total adverse facts available ("AFA") for their sales of merchandise subject to certain HFHTs orders pursuant to sections 776(a) and 776(b) of the Tariff Act of 1930, as amended (the "Act"). *See Preliminary Results*, 70 FR 11934 at 11938–39. We continue to apply total AFA to Huarong for bars/wedges and TMC for bars/wedges, axes/adzes and hammers/sledges because they significantly impeded our ability to (1) conduct the reviews of these orders, and (2) instruct Customs to assess the correct antidumping duties, as mandated by section 731 of the Act. Huarong and TMC participated in an "agent" sales scheme whereby one PRC company allowed another PRC company to enter subject merchandise using the first company's invoices. In addition, we have applied total AFA to TMC in the review of the picks/mattocks order due to TMC's failed FOP verification. *See* Issues and Decision Memorandum at Comment 9 (a). Lastly, we continue to find that the companies that constitute the PRC–wide entity, which did not establish entitlement to a separate rate, failed to provide requested information. For this reason, we continue to find that, in accordance with sections 776(a)(2)(A), (B), and (C) of the Act, it is appropriate to base the PRC–wide margin in these reviews on total AFA.

Section 776(b)(4) of the Act permits the Department to use, as AFA, information from the less than fair value ("LTFV") investigation or any prior review. Thus, in selecting an AFA rate, the Department's practice has been to assign Respondents who fail to cooperate with the Department's requests for information the highest margin determined for any party in the LTFV investigation or in any administrative review. *See, e.g., Stainless Steel Plate in Coils from Taiwan; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 5789 (February 7, 2002). As AFA, we are assigning to the PRC–wide entity's sales of axes/adzes, bars/wedges, hammers/sledges, and picks/mattocks the rates of 174.58, 139.31, 45.42, and 98.77 percent, respectively. The rates selected for bars/wedges was published in the most recently completed review of the HFHTs orders. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews, Final Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not To Revoke in Part*, 69 FR 55581 (September 15, 2004) ("*Final Results of the 12th Review*") as amended. The rate selected as AFA for hammers/sledges was originally from the LTFV investigation

and is currently the PRC–wide rate. *See Final Results of the 12th Review* as amended. The rate for axes/adzes was calculated in the instant review. The rate for picks/mattocks was calculated in the 5th review and corroborated in the Final Results of the 12th Review as amended.

A complete explanation of the selection, corroboration, and application of AFA can be found in the *Preliminary Results*. *See Preliminary Results*, 70 FR at 11938–41. The Department received comments and rebuttal comments with regard to certain aspects of our selection and application of AFA. *See* Issues and Decision Memorandum, at Comments 2, 3, 8 and 9. Nothing has changed since the *Preliminary Results* that would affect the Department's selection, corroboration, and application of facts available for the above–referenced companies and orders, except for the AFA rate used for picks/mattocks. Accordingly, for the final results, we continue to apply AFA as noted above.

Final Results of Review

The weighted–average dumping margins for the POR are as follows:

Manufacturer/exporter	Margin (percent)
Huarong:.	
Axes/Adzes	174.58
PRC–Wide Entity[2]:.	
Axes/Adzes	174.58
Bars/Wedges	139.31
Hammers/Sledges	45.42
Picks/Mattocks	98.77

[2] Including TMC for all four orders (hammers/sledges, bars/wedges, axes/adzes and picks/mattocks) and Huarong for the bars/wedges order.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of these administrative reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies named above will be the rates for those firms established in the final results of these administrative reviews; (2) for any previously reviewed or investigated PRC or non–PRC exporter, not covered in these reviews, with a separate rate, the cash deposit rate will be the company–specific rate established in the most recent segment of these proceedings; (3) for all other PRC exporters, the cash deposit rates will be the PRC–wide rates established in the final results of these reviews; and (4) the cash deposit rate for any non–PRC exporter of subject merchandise from the PRC who does not have its own rate will be the rate applicable to the PRC exporter that supplied the non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

The PRC–Wide Cash Deposit Rates

The current PRC–wide cash deposit rates are 174.58 percent for axes/adzes, 139.31 percent for bars/wedges, 45.42 percent for hammers/sledges, and 98.77 percent for picks/mattocks. These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

Assessment Rates

Upon completion of these administrative reviews, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), for the respondent receiving a calculated dumping margin, we calculated importer–specific per–unit duty assessment rates based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total quantity of those same sales. These importer–specific per–unit rates will be assessed uniformly on all entries of each importer that were made during the POR. In accordance with 19 CFR 351.106(c)(2), we will instruct Customs to liquidate without regard to antidumping duties any entries for which the importer–specific assessment rate is *de minimis* (*i.e.*, less than 0.5 percent *ad valorem*). In testing whether any importer–specific assessment rate is *de minimis*, we used the reported data to calculate the freight on board at the port of export ("FOB") price of U.S. sales and used this FOB price as an estimate for the entered value. For all shipments of subject merchandise for the four antidumping orders covering HFHTs from the PRC, exported by the respondents and imported by entities not identified by the respondents in their questionnaire responses, we will instruct Customs to assess antidumping duties at the cash deposit rate in effect on the date of the entry. Lastly, for the respondents receiving dumping rates based upon AFA, the Department, upon completion of these reviews, will instruct Customs to liquidate entries according to the AFA *ad valorem* rate. The Department will issue appraisement instructions directly to Customs upon the completion of the final results of these administrative reviews.

Reimbursement of Duties

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

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

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

Dated: September 6, 2005.

Joseph A Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix I – Decision Memorandum

I. General Comments:

Comment 1: Inclusion of Cast Picks within the Scope
Comment 2: Adverse Facts Available ("AFA") for "Agent" Sales
Comment 3: AFA Rate for Bars/Wedges
Comment 4: Subsidy Suspicion Policy for Surrogate Value Sources in the Bars/Wedges Order
Comment 5: Denial of Due Process Rights

Comment 6: Changed Circumstance Reviews for the 10th and 11th AD Reviews of HFHTs
Comment 7: Combination Rates & Master List Assessment Instructions

II. Company Specific Comments

Comment 8: Huarong
A. Price Adjustment
B. AFA for Movement Expense
C. AFA for Labor
D. AFA for Packing
E. Scrap Offset
F. Surrogate Value for Steel Billet
G. Surrogate Value for Brokerage &

Handling ("B&H")
H. Inclusion of Packing Weight in Movement Expenses' Calculation
I. Factors of Production for Pallets
J. Application of Packing Materials and the Byproduct Offset in the Calculation of Normal Value

Comment 9: TMC
A. AFA for Failure at Verification
B. Separate Rate
C. AFA for Suppliers
D. Discounts
E. Surrogate Value for Scrap Rail

Comment 10: Jinma

[FR Doc. 05–18587 Filed 9–16–05; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–533–063)

Certain Iron–Metal Castings from India: Notice of Amended Final Results Pursuant to Final Court Decision

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

SUMMARY: On June 16, 2005, the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department) July 9, 2004, *Final Results of Redetermination on Remand Pursuant to Kiswok Industries Pvt. Ltd. v. United States*, pursuant to Slip Op. 04–54 (CIT May 20, 2004), (*Remand Determination*), which pertains to *Certain Iron–Metal Castings from India: Final Results of Countervailing Duty Administrative Review*, 65 FR 31515 (May 18, 2000) (*Iron–Metal Castings*). *See Kiswok Industries Pvt. Ltd. and Calcutta Ferrous Ltd. v. United States*, Court No. 00–03–00127, Slip. Op. 05–73 (CIT, June 16, 2005). Because all litigation in this matter has concluded, the Department is issuing amended final results for *Iron–Metal Castings* in accordance with the CIT's decision.

EFFECTIVE DATE: July 20, 2005

FOR FURTHER INFORMATION CONTACT: Robert Copyak, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, DC 20230; telephone: (202) 482–2209.

SUPPLEMENTARY INFORMATION:

Background

On May 18, 2000, the Department published its final results of administrative review in *Iron–Metal Castings*. Calcutta Ferrous Ltd. and Kiswok Industries Pvt. Ltd. (collectively "respondents") challenged the Department's final results before the CIT. In the administrative review, Calcutta Ferrous Ltd. argued that "in calculating the benefits received by castings exporters from export loans, Commerce failed to take into account penalty interest paid at interest rates higher than the benchmark." *See* Comment 7 of the May 18, 2000, Issues and Decision Memorandum that accompanied *Iron–Metal Castings*. In *Kiswok Industries Pvt. Ltd. and Calcutta Ferrous Ltd. v. United States*, Slip Op. 04–54 (CIT May 20, 2004) (*Kiswok v. United States*), the Court concurred with Calcutta Ferrous Ltd.'s position. *Id.* at 15–18. The Court also disagreed with Commerce's position in *Iron–Metal Castings* that the overdue portion of the loan becomes a new loan with a new applicable interest rate. *Id.* at 17–18.

In light of the Court's instructions in *Kiswok v. United States*, the Department, in its redetermination, recalculated the benefit Calcutta Ferrous Ltd. realized from its preferential loans, taking into account all of the interest paid thereon. *See Remand Determination*. The Department recalculated the program rate with respect to Calcutta Ferrous' export credit loans to be 0.22 percent *ad valorem*. With this change in the program rate, the final rate for Calcutta Ferrous changed to 9.25 percent *ad valorem*. No party submitted comments regarding the Department's Remand Determination. On June 16, 2005, the CIT sustained the Department's redetermination in all respects and thus affirmed the Department's recalculations.

On July 20, 2005, the Department, consistent with the decision of the United States Court of Appeals for the Federal Circuit in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990), notified the public that the *Kiswok v. United States* decision was "not in harmony" with the Department's original results. *See Certain Iron–Metal Castings from India: Notice of Court Decision and Suspension of Liquidation*, 70 FR 41687 (July 20, 2005) (*Timken Notice*). The *Timken Notice* continued the suspension of liquidation, and further informed that if the CIT's decision was not appealed, or if appealed and the appeal was upheld, the Department would publish amended final countervailing duty results. *Id.*

Amended Final Determination

Because there is now a final and conclusive decision in the court proceeding, we are amending the final results and establishing for Calcutta Ferrous the revised countervailing duty rate of 9.25 percent, effective as of July 20, 2005, the publication date of the *Timken Notice*. Accordingly, we will instruct the CBP to assess countervailing duties at 9.25 percent *ad valorem* on all shipments of the subject merchandise from Calcutta Ferrous Ltd., entered, or withdrawn from warehouse, for consumption on or after January 1, 1997, through Decemeber 31, 1997.

This determination is published pursuant to sections 751(3)(c) and 777(i) of the Act.

Dated: September 7, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–18586 Filed 9–16–05; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application to Amend an Export Trade Certificate of Review.

SUMMARY: Export Trading Company Affairs ("ETCA") of the International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or e-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021B, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 84–16A12."

Northwest Fruit Exporters' ("NFE") original Certificate was issued on June 11, 1984 (49 FR 24581, June 14, 1984) and previously amended on May 2, 1988 (53 FR 16306, May 6, 1988); September 21, 1988 (53 FR 37628, September 27, 1988); September 20, 1989 (54 FR 39454, September 26, 1989); November 19, 1992 (57 FR 55510, November 25, 1992); August 16, 1994 (59 FR 43093, August 22, 1994); November 4, 1996 (61 FR 57850, November 8, 1996); October 22, 1997 (62 FR 55783, October 28, 1997); November 2, 1998 (63 FR 60304, November 9, 1998); October 20, 1999 (64 FR 57438, October 25, 1999); October 16, 2000 (65 FR 63567, October 24, 2000); October 5, 2001 (66 FR 52111, October 12, 2001); October 3, 2002 (67 FR 62957, October 9, 2002); September 16, 2003 (68 FR 54893, September 19, 2003); and October 14, 2004 (69 FR 61802, October 21, 2004). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Northwest Fruit Exporters, 105 South 18th Street, Suite 227, Yakima, Washington 98901–2149.

Contact: James R. Archer, Manager, Telephone: (509) 576–8004.

Application No.: 84–16A12.

Date Deemed Submitted: September 6, 2005.

Proposed Amendment: Northwest Fruit Exporters seeks to amend its Certificate to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Bolinger & Sons, Wenatchee, WA; C&M Fruit Packers, Wenatchee, WA; Cascade Fresh Fruits, LLC, Manson, WA; AltaFresh L.L.C. dba Chelan Fresh Marketing, Chelan, WA; Nuchief Sales Inc., Wenatchee, WA; Orchard View Farms, The Dalles, OR; SST Growers and Packers LLC, Granger, WA; Voelker Fruit and Cold Storage, Yakima, WA; and Yakima-Roche Fruit Sales L.L.C., Yakima, WA; and

2. Delete the following companies as "Members" of the Certificate: Fox Orchards, Mattawa, WA; Magi, Inc., Brewster, WA (as a result of a merger with Chelan Fruit Cooperative, a Member of NFE); Monson Fruit Co., Selah, WA (for its cherry operation, only); Rawland F. Taplett dba R.F. Taplett Fruit & Cold Storage Co., Wenatchee, WA; Sund-Roy L.L.C., Yakima, WA; and Washington Export, LLC, Yakima, WA.

Dated: September 13, 2005.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. 05–18492 Filed 9–16–05; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Commerce.

ACTION: Notice of decision of panel.

SUMMARY: On September 9, 2005, the binational panel issued its decision in the review of the final determination made by the International Trade Administration, respecting Alloy Magnesium from Canada Final Countervailing Duty Determination, New Shipper Review, Secretariat File No. USA–CDA–2003–1904–02. The binational panel affirmed the International Trade Administration determination with two dissenting opinions and one concurring opinion. Copies of the panel decision are available from the U.S. Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of the final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these Rules.

Panel Decision

The determination is as follows:

A. With respect to the *de facto* specificity issue, a majority of the panel decided to uphold the Department's Final Determination. Chairman Endsley and panelist Holbein wrote the panel opinion, while panelist Winham wrote separate concurring views. Panelists Anissimoff and LaBarge dissent.

B. With respect to the AUL calculation issue, the panel unanimously upheld the Department's Final Determination.

C. With respect to the discount rate issue, the panel unanimously upheld the Department's Final Determination.

The panel has directed the Secretary to issue a Notice of Final Panel Action on the 11th day following the issuance of the panel decision.

Dated: September 13, 2005.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 05–18499 Filed 9–16–05; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Commercial Fishing Seat for the Flower Garden Banks National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Flower Garden Banks National Marine Sanctuary (FGBNMS or Sanctuary) is seeking applicants for the Commercial Fishing seat on its Sanctuary Advisory Council (Council). The Applicant will be selected based upon his or her particular expertise and experience in relation to the seat for which he or she is applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. The Applicant chosen as a member should expect to serve a 2-year term, pursuant to the Council's Charter.

DATES: Applications are due by October 11, 2005.

ADDRESSES: Application kits may be obtained from Jennifer Morgan at Flower Garden Banks National Marine Sanctuary, 1200 Briarcrest, Suite 4000, Bryan, Texas 77802. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Jennifer Morgan, 1200 Briarcrest, Suite 4000, Bryan, Texas.77802, 979–846–5942, *Jennifer.Morgan@noaa.gov*.

SUPPLEMENTARY INFORMATION: Located in the northwestern Gulf of Mexico, the Flower Garden Banks National Marine Sanctuary includes three separate areas, known as East Flower Garden, West Flower Garden, and Stetson Banks. The Sanctuary was designated on January 17, 1992. Stetson Bank was added to the Sanctuary in 1996. The Sanctuary Advisory Council will consist of no more than 11 members; 8 non-governmental voting members and 3 governmental non-voting members. The Council may serve as a forum for consultation and deliberation among its members and as a source of advice to the Sanctuary manager regarding the management of the Flower Garden Banks National Marine Sanctuary.

Authority: 16 U.S.C. Sections 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: September 9, 2005.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Services, National Oceanic and Atmospheric Administration.

[FR Doc. 05–18506 Filed 9–16–05; 8:45 am]

BILLING CODE 3510–NK–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 70 FR 173.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11 a.m., Wednesday, September 21, 2005.

CHANGES IN THE MEETING: The closed meeting to discuss a Derivatives Clearing Organization Review has been changed to Monday, October 3, 2005 at 11 a.m.

FOR MORE INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Catherine D. Daniels,

Assistant Secretary of the Commission.

[FR Doc. 05–18677 Filed 9–15–05; 11:27 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DoD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0830, Tuesday, September 27, 2005.

ADDRESSES: The meeting will be held at Noesis, Inc., 4100 N. Fairfax Drive, Suite 800, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Schneider, Noesis, Inc., 4100 N. Fairfax Drive, Suite 800, Arlington, VA 22203, 703–741–0300.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition, Technology and Logistics to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development efforts in electronics and photonics with a focus on benefits to national defense. These reviews may form the basis for research and development programs initiated by the Military Departments and Defense Agencies to be conducted by industry, universities or in government laboratories. The agenda for this meeting will include programs on rf technology, microelectronics, electro-optics, and electronic materials.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. 2) it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: September 12, 2005.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–18561 Filed 9–16–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Defense Finance and Accounting Service

Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service; DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Defense Finance and Accounting Service 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 October 19, 2005 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Ms. Linda Krabbenhoft, Freedom of Information Act/Privacy Act Program Manager, Defense Finance and Accounting Service, Denver, 6760 E. Irvington Place, Denver, CO 80279–8000, telephone (303) 676–6045.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service 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: September 12, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7335

SYSTEM NAME:

Defense Civilian Pay System (DCPS) (May 19, 2000, 65 FR 31888).

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records may be temporary in nature and destroyed when actions are completed, they are superseded, obsolete, or no longer needed. Other records may be cut off at the end of the payroll year and destroyed up to 6 years after cutoff or cutoff at the end of the payroll year and then sent to the National Personnel Records Center after 3 payroll years where they are retained for 56 years. Individual retirement records are cut off upon separation, transfer, retirement or death, and forwarded to the Office of Personnel Management."

* * * * *

T7335

SYSTEM NAME:

Defense Civilian Pay System (DCPS).

SYSTEM LOCATION:

Defense Finance and Accounting Service—Denver Finance Center, 6760 East Irvington Place, Denver, CO 80279–5000.

Defense Finance and Accounting Service—Pensacola Operation Location, Civilian Pay Directorate, Code P, 130 West Avenue, Suite A, Pensacola, FL 32508–5120.

Defense Finance and Accounting Service—Charleston Operating Location, Civilian Pay Directorate, Code P, 1545 Truxtun Avenue, Charleston, SC 29405–1968.

Defense Finance and Accounting Service, Systems Engineering Organization Pensacola, 250 Raby Avenue, Building 801, Pensacola, FL 32509–5128.

Director, Area Command Mechanicsburg, 5450 Carlisle Pike, Building 309, Mechanicsburg, PA 17055–0975.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DoD civilian employees paid by appropriated funds and employees of the Executive Office of the President who are paid by the Defense Finance and Accounting Service's consolidated civilian payroll offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's pay and leave records; source documents for posting of time and leave attendance; individual retirement deduction records, source documents, and control files; wage and separation information files; health benefit records; income tax withholding records; allowance and differential eligibility files, such as, but not limited to clothing allowances and night rate differentials; withholding and deduction authorization files, such as, but not limited to federal income tax withholding, insurance and retirement deductions; accounting documents files, input data posting media, including personnel actions affecting pay; accounting and statistical reports and computer edit listings; claims and waivers affecting pay; control logs and collection/disbursement vouchers; listings for administrative purposes, such as, but not limited to health insurance, life insurance, bonds, locator files, and checks to financial institutions; correspondence with the civilian personnel office, dependents, attorneys, survivors, insurance companies, financial institutions, and other governmental agencies; leave and earnings statements; separation documents; official correspondence, federal, state, and city tax reports and tapes; forms covering pay changes and deductions; and documentation pertaining to garnishment of wages.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. Chapter 53, 55, and 81; and E.O. 9397 (SSN).

PURPOSE(S):

The records are used to accurately compute individual employees pay entitlements, withhold required and authorized deductions, and issue payments for amounts due. Output products are forwarded as required to the subject matter areas to ensure accurate accounting and recording of pay to civilian employees.

These records and related products are also used to verify and balance all payments, deductions, and contributions with the DD Form 592 (Payroll for Personal Services certification and Summary) in the DFAS civilian pay office and other applicable subject matter areas, and to report this information to the recipients and other government and nongovernment agencies.

Records are also used for extraction or compilation of data and reports for management studies and statistical analyses for use internally or externally as required by DoD or other government agencies.

All records in this system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

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:

Federal Reserve Banks under procedures specified in 31 CFR part 210 for health benefit carriers to ensure proper credit for employee-authorized health benefit deductions;

Officials of labor organizations recognized under E.O. 11491 and E.O. 11636, as amended, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions (including disclosure of reasons for non-deduction of dues, if applicable);

To the U.S. Treasury, to maintain cash accountability;

To the Internal Revenue Service to record withholding and social security information;

To the Bureau of Employment Compensation to process disability claims;

To the Social Security Administration and Office of Personnel Management to credit the employee's account for Federal Insurance Contributions Act or Civil Service Retirement withheld;

To the National Finance Center, Office of Thrift Savings Plan for participating employees;

To state revenue departments to credit employee's state tax withholding;

To state employment agencies which require wage information to determine eligibility for unemployment compensation benefits of former employees;

To city revenue departments of appropriate cities to credit employees for city tax withheld;

To any agency or component thereof that needs the information for proper accounting of funds, such as but not limited to the Office of Personnel Management to assist in resolving complaints, grievances, etc. and to compute Civil Service Retirement annuity.

To Federal, State, and local agencies for the purpose of conducting computer matching programs as regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a).

The "Blanket Routine Uses" published at the beginning of the DFAS compilation of systems of records notices also apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owned to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, notebooks/binders, and visible file binders/cabinets; in card files; in computers and computer output products; and on microform such as microfiche or microfilm.

RETRIEVABILITY:

Retrieved by name, Social Security Number, civilian payroll number, or other identification number or system identifier (Unit Identification Code, Submitting Office Number, Accountable Disbursing Station Symbol Number).

SAFEGUARDS:

As a minimum, records are accessed by person(s) responsible for servicing and authorized to sue the record system in the performance of their official duties who are properly screened and cleared for need to know. Additionally, at some Centers, records are in office buildings protected by guards and controlled by the screening of personnel and the registration of visitors.

RETENTION AND DISPOSAL:

Records may be temporary in nature and destroyed when actions are completed, they are superseded, obsolete, or no longer needed. Other records may be cut off at the end of the payroll year and destroyed up to 6 years after cutoff or cutoff at the end of the payroll year and then sent to the National Personnel Records Center after 3 payroll years where they are retained for 56 years. Individual retirement records are cut off upon separation, transfer, retirement or death, and forwarded to the Office of Personnel Management.

SYSTEM MANAGER(S) AND ADDRESS:

Program Manager, Defense Finance and Accounting Service-Headquarters, ATTN: DFAS–HQ/FMP–SMO, 250 Raby Avenue, Building 801, Pensacola, FL 32509–5128.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individuals should furnish full name, Social Security Number, current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individuals should provide full name, Social Security Number, or other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Freedom of Information/Privacy Act Program Manager, Office of Corporate Communications, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

Information is obtained from previous employers, financial institutions, medical institutions, automated systems interfaces, state or local governments, and from other DoD components and other Federal agencies such as, but not limited to, Social Security Administration, Internal Revenue Service, state revenue departments, State Department, and Department of Defense components (including the Department of the Air Force, Army, or Navy, or Defense agencies); correspondence with attorneys, dependents, survivors, or guardians may also furnish data for the system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–18566 Filed 9–16–05; 8:45 am]
BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Defense Finance and Accounting Service; Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service; DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Defense Finance and Accounting Service is amending a system of records notice to its existing inventory of records 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 October 19, 2005 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Ms. Linda Krabbenhoft, Freedom of Information Act/Privacy Act Program Manager, Defense Finance and Accounting Service, Denver, 6760 E. Irvington Place, Denver, CO 80279–8000, telephone (303) 676–6045.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service 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 records 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: September 12, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7280

SYSTEM NAME:

Uniformed Services Savings Deposit Program (USSDP) (August 30, 2000, 65 FR 52715).

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Destroy 6 years and 3 months after cutoff."

* * * * *

T7280

SYSTEM NAME:

Uniformed Services Savings Deposit Program (USSDP).

SYSTEM LOCATION:

Defense Finance and Accounting Service—Cleveland Center, 1240 East 9th Street, Cleveland, OH 44199–2055.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members on a permanent duty assignment outside the United States or its possessions, or members on a temporary duty assignment in support of a contingency operation outside the United States or its possessions, who choose to deposit their current pay and allowances, or a portion thereof, into an account administered by the Defense Finance and Accounting Service (DFAS).

Members who are in a missing status and whose pay and allowances, or a portion thereof, are deposited into an account administered by DFAS are also included.

Dependents, next-of-kin, survivors and former spouses of Uniformed Services Savings Deposit Program (USSDP) participants may be included.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records required to administer the account, and account for accrued interest which includes, but is not limited to, the master account records for each depositor, transaction records of monetary data (deposits, withdrawals and adjustments), allotment records, name and Social Security Number change record, settled records, check writing and voucher register data record, interest paid records, quarterly statements records, supplemental address for interest refund records. File also contains correspondence files covering requests for information from embers, Federal agencies, spouses, former spouses, dependents, survivors, widows or widowers, next of kin, the American Red Cross, Congress, and other DoD components.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 89–538, Armed Forces Savings Deposits, 5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 1035, Deposits of Savings; and E.O. 9397 (SSN).

PURPOSE(S)

Information is collected to facilitate account maintenance, including updating for deposits, withdrawals, interest accruals, adjustments and summary data, prior to clearing account when the account is terminated.

All records in this system of records are subject to use in authorized computer matching programs with the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

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 of 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 Veterans Affairs and the Social Security Administration to determine eligibility, entitlements, and addresses of Uniformed Services Deposit Program members.

To the Federal Housing Agency (FHA) to verify eligibility for loans.

To the American Red Cross to use in assisting the member or dependents in emergency situations.

To the widow or widower, dependent, or next-of-kin of deceased members to settle the affairs of the former member.

The DoD 'Blanket Routine Uses' published at the beginning of the DFAS compilation of record system notices also apply to this system.

DISCLOSURE OF CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act, 14 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper files, on computer magnetic tapes and computer paper printouts, and on microfiche.

RETRIEVABILITY:

By name and Social Security Number.

SAFEGUARDS:

As a minimum, records are accessed by person(s) responsible for servicing, and authorized to use, the record system in performance of their official duties who are properly screened and cleared for need to know.

RETENTION AND DISPOSAL:

Destroy 6 years and 3 months after cutoff.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director for Finance Operations, Code F, Defense Finance and Accounting Service-Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199–2055.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Finance and Accounting Service-Cleveland Center, 1240 Ninth Street, Cleveland, OH 44199–2055.

Individuals should provide sufficient proof of identity, such as name, Social Security Number, or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Finance and Accounting Service-Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199–2055.

Individuals should provide sufficient proof of identity, such as name, Social Security Number, or other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determination are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Freedom of Information/Privacy Act Program Manager, Office of Corporate Communications, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

Information is obtained from the member, spouse, next-of-kin, survivors, and automated system interfaces with our pay systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–18567 Filed 9–16–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Defense Finance and Accounting Service; Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service; DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Finance and Accounting Service 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 October 19, 2005, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Ms. Linda Krabbenhoft, Freedom of Information Act/Privacy Act Program Manager, Defense Finance and Accounting Service, Denver, 6760 E. Irvington Place, Denver, CO 80279–8000, telephone (303) 676–6045.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service 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: September 12, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7333

SYSTEM NAME:

Travel Payment System (August 22, 2000, 65 FR 50973).

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records may be temporary in nature and destroyed when superseded, obsolete, no longer needed, or cut off at the end of the fiscal year and destroyed 6 years and 3 months after cutoff."

* * * * *

T7333

SYSTEM NAME:

Travel Payment System.

SYSTEM LOCATION:

Defense Finance and Accounting Service, Finance Directorate (Travel Programs and Services Division), 1931 Jefferson Davis Highway, Room 416, Arlington, VA 22240–5291.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD civilian personnel; active, former, and retired military members; military reserve personnel; Army and Air National Guard personnel; Air Force Academy nominees, applicants, and cadets; dependents of military personnel; and foreign nationals residing in the United States in all receipt of competent government travel orders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel vouchers and subvouchers; travel allowance payment lists; travel voucher or subvoucher continuation sheets; vouchers and claims for dependent travel and dislocation or trailer allowances; certificate of non-availability of government quarters and mess; multiple travel payments list; travel payment card; requests for fiscal information concerning transportation requests; bills of lading; meal tickets; public vouchers for fees and claim for reimbursement for expenditures on official business; claim for fees and mileage of witness; certifications for travel under classified orders; travel card envelopes; and statements of adverse effect utilization of government facilities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD 7000.14–R, Volume 9; and E.O. 9397 (SSN).

PURPOSE(S):

To provide a basis for reimbursing individuals for expenses incident to travel for official Government business purposes and to account for such payments.

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 Internal Revenue Service to provide information concerning the pay of travel allowances which are subject to federal income tax.

The 'Blanket Routine Uses' published at the beginning of the DFAS Compilation of system of records notices apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act, 15 U.S.C. 1671a(f) of the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3). The purpose of the disclosure is to aid in the collection of outstanding debts owed to the Federal Government; typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity for the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, card files, notebooks, binders, visible file binders, cabinets, magnetic tape, cassettes, and computer printouts.

RETRIEVABILITY:

Retrieved by individual's name and/or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record, and who are authorized to use the record system in the performance of their official duties. All individuals are properly screened and cleared for need-to-know. Additionally, at some Centers, records are in office buildings protected by guards and controlled by screening of personnel and registering of visitors.

RETENTION AND DISPOSAL:

Records may be temporary in nature and destroyed when superseded, obsolete, no longer needed, or cut off at the end of the fiscal year and destroyed 6 years and 3 months after cutoff.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Services Directorate, Defense Finance and Accounting Service, Finance Directorate, 1931 Jefferson Davis Highway, Arlington, VA 22240–5291.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Director, Financial Services Directorate, Defense Finance and Accounting Service-Columbus Center, 4280 E. 5th Avenue, Building 6, Columbus, OH 43218–2317.

Individual should furnish full name, Social Security Number, current address, and other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves in this system of records should address written inquiries to the Director, Financial Services Directorate, Defense Finance and Accounting Service-Columbus Center, 4280 E. 5th Avenue, Building 6, Columbus, OH 43218–2317.

Individual should furnish full name, Social Security Number, current address, and other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Freedom of Information/Privacy Act Program Manager, Office of Corporate Communications, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual traveler, related voucher documents, Defense Accounting Officers; and other DoD Components.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–18569 Filed 9–16–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Defense Contract Audit Agency

Membership of the Defense Contract Audit Agency Senior Executive Service Performance Review Boards

AGENCY: Defense Contract Audit Agency, DoD.

ACTION: Notice of Membership of the Defense Contract Audit Agency Senior Executive Service Performance Review Boards.

SUMMARY: This Notice announces the appointment of members to the Defense Contract Audit Agency (DCAA) Performance Review Boards. The Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Director, Defense Contract Audit Agency, regarding final performance ratings and performance awards for DCAA SES members.

EFFECTIVE DATE: Upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Marie Nazari, Acting Chief, Human Resources Management Division, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, Virginia 22060–6219, (703) 767–1042.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of DCAA career executives appointed to serve as members of the DCAA Performance Review Boards. Appointees will serve one-year terms, effective upon publication of this notice.

Headquarters Performance Review Board: Mr. John Farenish, General Counsel, DCAA, chairperson. Mr. Robert DiMucci, Assistant Director, Policy and Plans, DCAA, member. Mr. Earl Newman, Assistant Director, Operations, DCAA, member.

Regional Performance Review Board: Mr. Edward Nelson, Regional Director, Northeastern Region, DCAA, chairperson. Mr. Chris Andrezze, Regional Director, Western Region, DCAA, member. Mr. Paul Phillips, Deputy Regional Director, Eastern Region, member.

Dated: September 12, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–18562 Filed 9–16–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Secretary of the Navy's Advisory Subcommittee on Naval History

AGENCY: Department of the Navy, DOD.

ACTION: Notice of open meeting.

SUMMARY: The Secretary of the Navy's Advisory Subcommittee on Naval History, a subcommittee of the Department of Defense Historical Advisory Committee will meet to review naval historical activities since the last meeting of the Advisory Subcommittee on Naval History, which was conducted on April 29, and April 30, 2004 and to make comments and recommendations on these activities to the Secretary of the Navy. The meetings will be open to the public.

DATES: The meetings will be held on Thursday, September 29, 2005, from 8 a.m. to 4 p.m. and Friday, September 30, 2005, from 8 a.m. to 4 p.m.

ADDRESSES: The meetings will be held at the Navy Museum of The Naval Historical Center, 805 Kidder Breese Street, SE., Building 76, Washington Navy Yard, DC, 20374–5060.

FOR FURTHER INFORMATION CONTACT: Rear Admiral Paul E. Tobin, USN (Ret.), Director of Naval History, 805 Kidder Breese Street, SE., Bldg. 57, Washington Navy Yard, DC 20374–5060, telephone 202–433–2210.

SUPPLEMENTARY INFORMATION: This notice of open meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The purpose of these meetings is to review naval historical activities since the last meeting of the Advisory Subcommittee on Naval History and to make comments and recommendations on these activities to the Secretary of the Navy.

Dated: September 12, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–18538 Filed 9–16–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DOD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The meeting will include discussions of personnel issues at the Naval Academy, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on Tuesday, September 20, 2005, from 8 a.m. to 10:30 a.m. The closed Executive Session will be held on Tuesday, September 20, 2005, from 10:30 a.m. to 12:15 p.m.

ADDRESSES: The meeting will be held in 385 Russell Senate Office Building, Washington, DC 20510.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Marc D. Boran, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of personnel issues at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Secretary of the Navy has determined in writing that the meeting shall be partially closed to the public because it will be concerned with matters listed in section 552b(c)(2), (5), (6), (7) and (9) of title 5, United States Code.

Dated: September 12, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–18537 Filed 9–16–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Drug Risk Solutions, LLC

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Drug Risk Solutions, LLC, a revocable, nonassignable, exclusive license to practice in the field of laboratory and "on site" analysis of human hair, other keratinized structures, blood, urine and saliva for drugs of abuse in the United States and certain foreign countries, the Government-owned inventions described in U.S. Patent No. 5,183,740: Flow Immunosensor Method and Apparatus, Navy Case No. 71,694.//U.S. Patent No. 5,354,654: Lyophilized Ligand-Receptor Complexes for Assays and Sensors, Navy Case No. 75,239.// U.S. Patent No. 6,020,209: Microcapillary-Based Flow-Through Immunosensor and Displacement Immunoassay Using the Same, Navy Case No. 78,211.//U.S. Patent No. 6,245,296: Flow Immunosensor Apparatus, Navy Case No. 74,399.//U.S. Patent No. 6,323,042: Microcapillary-Based Flow-Through Immunosensor and Displacement Immunoassay Using the Same, Navy Case No. 80,164.//U.S. Patent No. 6,750,031: Displacement Assay on a Porous Membrane, Navy Case No. 77,298.//U.S. Patent No. 6,808,937: Displacement Assay on a Porous Membrane, Navy Case No. 83,243 and any continuations, divisionals or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than October 4, 2005.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, tel 202–767–3083. Due to U.S. Postal delays, please fax 202–404–7920, E-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: September 13, 2005.

I. C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–18535 Filed 9–16–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Seahawk Biosystems Corporation

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Seahawk Biosystems Corporation, a revocable, nonassignable, exclusive license to practice in the fields of pathogen detection, disease and infection diagnostic testing, and genetic testing for veterinary applications (small and large animals, including equine); pathogen and toxin detection and genetic testing in food products derived from animals; pathogen and toxin detection and genetic testing in food processing; pathogen and toxin detection in, and monitoring of, public water, wastewater, and groundwater in the United States and certain foreign countries, the Government-Owned inventions described in Navy Case No. 97,198 entitled "Method for Modifying Nitride Substrates for Covalent Immobilization of Aminated Molecules" and any continuations, divisionals or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than October 4, 2005.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Ms. Jane F. Kuhl, Technology Transfer Office, NRL Code 1004, 4555, Overlook Avenue, SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to U.S. Postal delays, please fax 202–404–7920, E-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR 404.)

Dated: September 13, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–18534 Filed 9–16–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Navy proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552), as amended.

DATES: This proposed action will be effective without further notice on October 19, 2005 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's 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 reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on September 7, 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: September 12, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NM01500–9

SYSTEM NAME:

Integrated Learning Environment (ILE) Registration and Training Records (July 6, 2005, 70 FR 38896).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with: "All uninformed service members, civilian, and contractor personnel having a Common Access Card (CAC) or Military ID Card; dependent family members of Navy, Marine Corps and Coast Guard military members (active duty and reserve); and, Non-Appropriated Fund personnel who are granted limited access for job performance requirements."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Name, home address, telephone numbers, Social Security Number (SSN), date of birth, unique personal identifier number assigned to individual, pay plan/grade, rank, occupation, Unit Identification Code (UIC), military status, individualized training plan, and course progress of individuals who register to take classes offered under Navy Knowledge On-Line."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

At beginning of entry, add "5 U.S.C. 301, Departmental Regulations;"

* * * * *

NM01500–9

SYSTEM NAME:

Integrated Learning Environment (ILE) Classes.

SYSTEM LOCATION:

Naval Education Training Professional Development Technology Center (NETPDTC), Saufley Field, FL 32509–5337.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All uniformed service members, civilian, and contractor personnel having a valid Common Access Card (CAC) or Military ID Card; dependent family members of Navy, Marine Corps and Coast Guard military members (active duty and reserve); and, Non-Appropriated Fund personnel who are granted limited access for job performance requirements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, home address, telephone numbers, Social Security Number (SSN), date of birth, unique personal identifier number assigned to individual, pay plan/grade, rank, occupation, Unit Identification Code (UIC), military status, individualized training plan, and course progress of individuals who register to take classes offered under Navy Knowledge On-Line.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; 14 U.S.C. 93, Commandant, U.S. Coast Guard General Power; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of this system is to identify individuals who enroll and take computerized training courses offered through the Navy's Integrated Learning Environment (ILE). Each user will be able to create an individualized training plan, complete Web-based training courses and track their course progress.

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' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETRAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic storage media.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number (SSN) and date of birth.

SAFEGUARDS:

Access is provided on a 'need-to-know' basis and to authorized authenticated personnel only. Records are maintained in controlled access rooms or areas. Data is limited to personnel training information. Computer terminal access is controlled by terminal identification and the password or similar system. Terminal identification is positive and maintained by control points. Physical access to terminals is restricted to

specifically authorized individuals. Password authorization, assignment and monitoring are the responsibility of the functional managers.

RETENTION AND DISPOSAL:

Records are maintained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Education and Training Command, 250 Dallas Street, Pensacola, FL 32508–5220.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves system of records should address written inquiries to the Commander, Naval Education and Training Command (ATTN: ILE Program Manager), 250 Dallas Street, Pensacola, FL 32508–5220.

Requests should contain full name, address, Social Security Number (SSN) and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Naval Education and Training Command (ATTN: ILE Program Manager), 250 Dallas Street, Pensacola, FL 32508.

Requests should contain full name, address, Social Security Number (SSN) and be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from Individual; Navy Knowledge On-Line clearance; schools and educational institutions; Navy Personnel Command; and Naval Education and Training Command.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–18563 Filed 9–16–05; 8:45 am]
BILLING CODE 5001–06–M

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Teleconference Meeting

AGENCY: Department of Energy.

SUMMARY: This notice announces an open teleconference meeting of the Secretary of Energy Advisory Board. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation. The purpose of the teleconference is to discuss the interim findings and recommendations of the Secretary of Energy Advisory Board's Nuclear Weapons Complex Infrastructure Task Force.

Note: Copies of the draft final report of the Nuclear Weapons Complex Infrastructure Task Force may be obtained from the following Internet address *http://www.seab.energy.gov/news.htm* or by contacting the Office of the Secretary of Energy Advisory Board at (202) 586–7092.

NAME: Secretary of Energy Advisory Board.

DATES: Tuesday, October 4, 2005, 1:30 p.m.–3 p.m., Eastern Daylight Standard Time.

ADDRESSES: Participants may call the Office of the Secretary of Energy Advisory Board at (202) 586–7092 to reserve a teleconference line and receive a call-in number, or to preregister for public comment. Public participation is welcome. However, the number of teleconference lines are limited and are available on a first come basis.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Burrow, Deputy Director and Acting Executive Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Secretary of Energy Advisory Board (The Board) is to provide the Secretary of Energy with essential independent advice and recommendations on issues of national importance. The Board and its subcommittees provide timely, balanced, and authoritative advice to the Secretary of Energy on the Department's management reforms, research, development, and technology activities, energy and national security responsibilities, environmental cleanup activities, and economic issues relating to energy. During the open teleconference meeting the Board will discuss the interim findings and recommendations of the Nuclear Weapons Complex Infrastructure Task Force. The Nuclear Weapons Complex Infrastructure Task Force, a subcommittee of the Secretary of Energy Advisory Board, was formed to provide the Board and the Secretary of Energy with an independent assessment leading to options and recommendations to modernize, consolidate, and, where possible, to reduce costs of the infrastructure and facilities across the nuclear weapons complex based upon recent stockpile reductions and new security Design Basis Threat requirements.

On October 4th, the Board will conduct a teleconference to discuss the findings and recommendations contained in the draft final report of the Nuclear Weapons Complex Infrastructure Task Force.

Tentative Agenda

Tuesday, October 4, 2005.

1:30 p.m.–1:40 p.m. Welcome & Opening Remarks—Mr. M. Peter McPherson, Chairman of the Secretary of Energy Advisory Board.

1:40 p.m.–2 p.m. Overview of the Nuclear Weapons Complex Infrastructure (NWCI) Task Force's draft Findings and Recommendations—Dr. David O. Overskei, NWCI Task Force Chairman.

2 p.m.–2:30 p.m. Public Comment Period.

2:30 p.m.–3 p.m. Board Review & Comment and Action—Mr. M. Peter McPherson, Chairman of the Secretary of Energy Advisory Board.

3 p.m. Adjourn.

This agenda is tentative and subject to change.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Secretary of Energy Advisory Board and submit advance written comments or comment during the scheduled public comment period. The Chairman of the Board is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its open teleconference meeting, the Board welcomes public comment. Members of the public will be heard in the order in which they have registered for public comment at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. You may also submit written comments in advance of the meeting to Richard Burrow, Deputy Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Advance written comments should be received by the Board no later than September 27, 2005.

Minutes: A copy of the minutes and a transcript of the open teleconference meeting will be made available for public review and copying approximately 30 days following the

meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's Web site, located at *http://www.seab.energy.gov/*.

Issued at Washington, DC, on September 13, 2005.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–18560 Filed 9–16–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

September 12, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for Temporary Variance of Minimum Flow Requirement.

b. *Project No:* 10440–094.

c. *Date Filed:* August 23, 2005.

d. *Applicant:* Alaska Power and Telephone Company.

e. *Name of Project:* Black Bear Lake Hydroelectric Project.

f. *Location:* Black Bear Lake on Prince of Wales Island in southeast Alaska in Prince of Wales-Outer Ketchikan Borough.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Glen Martin, P.O. Box 222, Port Townsend, WA 98368.

i. *FERC Contact:* John K. Novak, *john.novak@ferc.gov*, (202) 502–6076.

j. *Deadline for filing comments, motions to intervene and protest:* October 6, 2005.

k. *Description of Application:* The licensee is requesting a temporary waiver of the minimum flow requirements as set forth in Article 405 of the project license. Article 405 requires monthly minimum flows ranging from 9 cubic feet per second (cfs) to 24 cfs; for August and September the flow requirement is 17 cfs and 24 cfs, respectively. As a result of drought conditions in Southeast Alaska and Prince of Wales Island, the licensee has not been able to maintain the required license flows and is requesting approval to operate at reduced flows through September. Currently the licensee is supplementing generation with diesel. The licensee has consulted with the appropriate resource agencies, and these agencies are in agreement with the licensee(s mode of operation during this drought.

l. *Location of the Application:* The filing is available for inspection and review at the Commission's 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) into 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 e-mail of new filings and issuances related to this or other pending projects. For assistance, call 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.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers (P–10440–094). All documents (including an original and eight copies) should be filed with: Ms. 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 licensee specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described filing. A copy of the filing may be obtained by agencies directly from the licensee. 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 licensee'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 e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5095 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–419–001]

Canyon Creek Compression Company; Notice of Compliance Filing

September 12, 2005.

Take notice that on September 6, 2005, Canyon Creek Compression Company (Canyon) submitted a compliance filing pursuant to the Commission's Letter Order issued on August 26, 2005 in Docket No. RP05–419–000.

Canyon states that copies of its filing were served on all 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 e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5105 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–661–000]

Cheyenne Plains Gas Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Filing

September 12, 2005.

Take notice that on September 8, 2005, Cheyenne Plains Gas Pipeline Company, L.L.C. (Cheyenne Plains) tendered for filing six Firm Transportation Service Agreements (FTSA).

Cheyenne Plains states that the four amended FTSAs update previously accepted negotiated rate agreements to revise the designations of receipt and delivery points and the two new FTSAs implement a permanent release of capacity with a proposed effective date of October 10, 2005.

Cheyenne Plains states that copies of its filing have been sent to all firm customers, interruptible customers, and affected State commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERG 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. E5–5119 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–435–002]

Crossroads Pipeline Company; Notice of Compliance Filing

September 12, 2005.

Take notice that on September 8, 2005, Crossroads Pipeline Company (Crossroads) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No., the following revised tariff sheets, with a proposed effective date of September 1, 2005:

Fourth Revised Sheet No. 380
Second Revised Sheet No. 380A

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 e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5109 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–443–001]

Enbridge Pipelines (KPC); Notice of Compliance Filing

September 12, 2005.

Take notice that on September 2, 2005, Enbridge Pipelines (KPC), (KPC) filed the following revised tariff sheets in compliance with the Commission's August 22, 2005 Order in this proceeding with a proposed effective date of September 1, 2005:

Substitute Second Revised Sheet No. 121
Substitute Second Revised Sheet No. 179

KPC states that complete copies of its filing are being mailed to all of the parties on the official service list, all of its jurisdictional customers, and applicable state 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, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5110 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–501–001]

Florida Gas Transmission Company; Notice of Compliance Filing

September 12, 2005.

Take notice that on September 2, 2005, Florida Gas Transmission Company (FGT) submitted a compliance filing pursuant to the Commission's Letter Order dated August 19, 2005 in Docket No. RP05 501–000.

FGT 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 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. E5–5117 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–509–003]

Granite State Gas Transmission, Inc.; Notice of Compliance Filing

September 12, 2005.

Take notice that on September 8, 2005, Granite State Gas Transmission, Inc. (Granite) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet, with a proposed effective date of August 21, 2005:

Second Revised Sheet No. 339A

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. E5–5104 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–447–001]

Granite State Gas Transmission, Inc.; Notice of Compliance Filing

September 12, 2005.

Take notice that on September 2, 2005, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, with a proposed effective date of September 1, 2005:

Fifteenth Revised Sheet No. 289
First Revised Sheet No. 289A

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 e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5111 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–414–001]

Gulfstream Natural Gas System, L.L.C.; Notice of Compliance Filing

September 12, 2005.

Take notice that on September 8, 2005, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed in Appendix A to be effective on the dates listed.

Gulfstream states that it is making this filing in compliance with the letter order issued by the Commission in Docket No. RP05–414–000 on August 24, 2005.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state 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, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5120 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–221–008]

High Island Offshore System, L.L.C.; Notice of Filing

September 12, 2005.

Take notice that on September 8, 2005, High Island Offshore System, L.L.C. (HIOS), tendered for filing its Refund Report in Docket No. RP03–221–003 and 004.

HIOS states that the purpose of the filing is to provide to the Commission the Refund Report as required by the Commission's regulations 18 CFR 154.501, and the Commission Order dated July 7, 2005.

HIOS state that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

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 on or before the date as indicated below. 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.

Comment Date: 5 p.m. Eastern Time on September 19, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5100 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–429–001]

Honeoye Storage Corporation; Notice of Compliance Filing

September 12, 2005.

Take notice that on September 1, 2005, Honeoye Storage Corporation (Honeoye) tendered for filing and acceptance by the Commission as part of its FERC Gas Tariff, Original Volume No. 1A, to be effective September 1, 2005:

Substitute Fourth Revised Sheet No. 105

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 e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5108 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–413–001]

Horizon Pipeline Company, L.L.C.; Notice of Compliance Filing

September 12, 2005.

Take notice that on September 6, 2005, Horizon Pipeline Company, L.L.C. (Horizon) submitted a compliance filing pursuant to the Commission's Letter Order issued on August 26, 2005 in Docket No. RP05–413–000.

Horizon states that copies of its filing were served on all 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 online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5094 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–468–001]

Iroquois Gas Transmission System, L.P.; Notice of Change to FERC Gas Tariff

September 12, 2005.

Take notice that on September 2, 2005, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing the following revised sheet to its FERC Gas Tariff, First Revised Volume No. 1, to be effective on September 1, 2005:

Substitute Fourteenth Revised Sheet No. 120

Iroquois states that on August 25, 2005, it requested an extension of time to comply with the requirements of Order No. 587–S (111 FERC ¶ 61,203); accordingly, Iroquois is requesting that the effective date of Sheet No. 120 be November 1, 2005.

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 e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5112 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–666–000]

Louisiana Municipal Gas Authority in Re: Acadian Gas Pipeline System, Crosstex Lig, LLC, Cypress Gas Pipeline, LLC, Enbridge Pipelines (MIDLA, LLC), Florida Gas Transmission Company, Gulf South Pipeline Company, LP, Southern Natural Gas Company, Tennessee Gas Pipeline Company, Texas Eastern Transmission Corporation, Texas Gas Transmission, LLC, Transcontinental Gas Pipe Line; Notice of Filing of Request for Waiver of Pipeline Penalties Due to Hurricane Katrina

September 13, 2005.

Take notice that on September 6, 2005, Louisiana Municipal Gas Authority (LMGA) tendered for filing with the Federal Energy Regulatory Commission (Commission) a request for waiver, for all LMGA member customers, of any penalties, fees and charges that might be assessed by the pipelines but for the effects of the Hurricane Katrina emergency.

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) by the comment date stated 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 September 20, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5125 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–420–001]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

September 12, 2005.

Take notice that on September 6, 2005, Natural Gas Pipeline Company of America (Natural) submitted a compliance filing pursuant to the Commission's Letter Order issued on August 25, 2005 in Docket No. RP05–420–000.

Natural states that copies of its filing were served on all 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 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. E5–5106 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–498–001]

Nautilus Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

September 12, 2005.

Take notice that on September 6, 2005, Nautilus Pipeline Company, L.L.C. (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 the following tariff sheets to become effective September 1, 2005:

Substitute First Revised Sheet No. 122
Substitute Original Sheet No. 122A
Substitute Third Revised Sheet No. 153
Substitute Third Revised Sheet No. 154
Substitute Second Revised Sheet No. 154B
Substitute Eighth Revised Sheet No. 216
Substitute Fourth Revised Sheet No. 217

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. E5–5116 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–392–001]

Northern Border Pipeline Company; Notice of Compliance Filing

September 12, 2005.

Take notice that on September 2, 2005, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border's FERC Gas Tariff, First Revised Volume No. 1, tariff sheets to become effective September 1, 2005.

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 online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5102 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–497–001]

Overthrust Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 12, 2005.

Take notice that on September 8, 2005, Overthrust Pipeline Company (Overthrust) tendered for filing Substitute Eleventh Revised Sheet No. 78 to its FERC Gas Tariff, First Revised Volume No. 1–A.

Overthrust states that it is filing the substitute revised tariff sheet in compliance with the Commission's Letter Order issued on August 26, 2005, in Docket No. RP05–497–000, to remove the reference to principle 4.1.25 as required by Order No. 587–S.

Overthrust states that copies of the filing have been served upon Overthrust's customers and the public service commissions of Utah and 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 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. E5–5115 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–660–000]

Penn-Jersey Pipe Line Company; Notice of Proposed Cancellation of FERC Gas Tariff

September 12, 2005.

Take notice that on September 7, 2005, Penn-Jersey Pipe Line Company (Penn-Jersey) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to become effective August 31, 2005:

First Revised Sheet No. 1

The revised sheet provides notice of the cancellation of Penn-Jersey's Tariff pursuant to the order issued by the Commission on September 30, 2004 in *Penn-Jersey Pipeline Co. and NUI Utilities, Inc.* (Elizabethtown Gas Division), Docket No. CP04–392–000, 108 FERC ¶ 62,288, approving the abandonment by sale of its jurisdictional pipeline to its sole customer NUI Utilities, Inc. and its exit from the interstate pipeline business.

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. E5–5118 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–84–001, CP05–85–001 and CP05–86–001]

Port Arthur Pipeline, L.P.; Notice of Amendment

September 12, 2005.

Take notice that on September 2, 2005, Port Arthur Pipeline, L.P. (Port Arthur Pipeline), 101 Ash Street, HQ15, San Diego, California 92101, filed an amendment to its pending applications filed on February 28, 2005, in Docket Nos. CP05–84–000, CP05–85–000 and CP05–86–000, pursuant to section 7(c) of the Natural Gas Act (NGA), to reflect certain changes to its draft tariff in order to improve service to potential customers. In addition, Port Arthur Pipeline states that it is updating the general terms and conditions of the draft tariff to reflect the latest standards (Version 1.7) promulgated by the North America Energy Standards Board.

This amendment is on file with the Commission and open to public inspection. 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 "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any initial questions regarding this amendment should be directed to Georgetta J. Baker, Sempara Energy, 101 Ash Street, HQ13D, San Diego, California 92101, Phone: (619) 699–5064, Fax: (619) 699–5027 or *gbaker@sempra.com* or Stacy Van Goor, Sempra Energy, 101 Ash Street, HQ8, San Diego, California 92101, Phone: (619) 696–2264, Fax: (619) 696–2500 or *svangoor@sempraglobal.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

The Commission strongly encourages electronic filings of comments, protests, and interventions 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.

Comment Date: October 3, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5103 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–470–001]

Sea Robin Pipeline Company, LLC Notice of Compliance Filing

September 12, 2005.

Take notice that on September 2, 2005, Sea Robin Pipeline Company, LLC (Sea Robin) submitted a compliance filing pursuant to the Commission's Letter Order dated August 30, 2005 in Docket No. RP05–470–000.

Sea Robin 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 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. E5–5113 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–523–008]

Southern Natural Gas Company; Notice of Motion To Withdraw Tariff Sheet

September 12, 2005.

Take notice that on August 17, 2005, Southern Natural Gas Company (Southern) filed to withdraw Third Revised Sheet No. 103 which was part of its rate case filing made on August 31, 2004, in the above-captioned docket.

Southern states that pursuant to section 154.205 of the Commission's Regulations, and Article XI, Paragraph 1 of the stipulation and agreement filed in this proceeding, Southern moves to withdraw said tariff sheet which was suspended by Commission Order on September 30, 2004.

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. E5–5101 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–421–001]

Trailblazer Pipeline Company; Notice of Compliance Filing

September 12, 2005.

Take notice that on September 6, 2005, Trailblazer Pipeline Company (Trailblazer) submitted a compliance filing pursuant to the Commission's Letter Order issued on August 26, 2005 in Docket No. RP05–421–000.

Trailblazer states that copies of its filing were served on all 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 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. E5–5107 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–492–001]

Trunkline LNG Company, LLC; Notice of Compliance Filing

September 12, 2005.

Take notice that on September 2, 2005, Trunkline LNG Company, LLC (TLNG) submitted a compliance filing pursuant to the Commission's Letter Order dated August 19, 2005 in Docket No. RP05–492–000.

TLNG states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

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. E5–5114 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2194–020–ME]

FPL Energy Maine Hydro LLC; Notice of Availability of Environmental Assessment

September 12, 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 Bar Mills Hydroelectric Project, located on the Saco River, York County, Maine, and has prepared an Environmental Assessment (EA). In the EA, Commission 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 that would significantly affect 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 "Bar Mills Project No. 2194–020" 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 Jack Hannula at (202) 502–8917.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5098 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application and Applicant-Prepared EA Accepted for Filing, Soliciting Motions To Intervene and Protests, and Soliciting Comments, and Final Recommendations, Terms and Conditions, and Prescriptions

September 12, 2005.

Take notice that the following hydroelectric application and applicant-prepared environmental assessment has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New—Major License.

b. *Project No.:* 2100–52.

c. *Date Filed:* January 26, 2005.

d. *Applicant:* California Department of Water Resources.

e. *Name of Project:* Oroville Facilities.

f. *Location:* On the Feather River near Oroville, California. The project affects federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Henry M. "Rick" Ramirez, Program Manager, Oroville Facilities Relicensing Program, California Department of Water Resources, 1416 9th Street, Sacramento, California 95814 Phone: 916–657–4963. E-mail: *ramirez@water.ca.gov.*

i. *FERC Contact:* James Fargo at (202) 502–6211, or *james.fargo@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, and final recommendations, terms and conditions, and prescriptions is January 30, 2006; reply comments are due March 16, 2006.

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, comments, recommendations, terms and conditions, and prescriptions 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 for filing.

l. Description of Project: The Oroville Facilities are located on the Feather River in the foothills of the Sierra Nevada in Butte County, California. Oroville Dam is located 5 miles east of the City of Oroville and about 130 miles northeast of San Francisco. The Oroville Facilities are part of the State Water Project (SWP), a water storage and delivery system of reservoirs, aqueducts, power plants, and pumping plants. One of the two main purposes of the SWP is to store and distribute water to supplement the needs of urban and agricultural water users in Northern California, the San Francisco Bay Area, the San Joaquin Valley Central Coast, and Southern California. The Oroville Facilities are also operated for flood management, power generation, water quality improvement in the Sacramento-San Joaquin Delta (Delta), recreation, and fish and wildlife enhancement.

Oroville, three power plants (Hyatt Pumping-Generating Plant, Thermalito Diversion Dam Powerplant, and Thermalito Pumping-Generating Plant), Thermalito Diversion Dam, the Feather River Fish Hatchery and Fish Barrier Dam, Thermalito Power Canal, the Oroville Wildlife Area, Thermalito Forebay, Thermalito Forebay Dam, Thermalito Afterbay, Thermalito Afterbay Dam, and the existing facilities encompass 41,100 acres and include Oroville Dam, Lake transmission lines, as well as a number of recreational facilities. Oroville Dam, along with two small saddle dams, impounds Lake Oroville, a 3.5 million acre-foot capacity storage reservoir with a surface area of 15,810 acres at its normal maximum operating level. The hydroelectric units at the Oroville Facilities have a combined licensed generating capacity of approximately 762 MW

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.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (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. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). 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. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5096 Filed 9–16–05; 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

September 12, 2005.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. (e.s.t.) on Thursday, September 15, 2005 and continuing, if necessary, on Friday, September 16, 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.

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.

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).

For additional information, please contact Lorna J. Hadlock (202–502–8737).

Magalie R. Salas,

Secretary.

[FR Doc. E5–5099 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sacramento Municipal Utility District (Project No. 2101–084—California) and Pacific Gas and Electric Company (Project No. 2155–024—California); Notice of Site Visit

September 12, 2005.

On October 4 and October 5, 2005, the Federal Energy Regulatory Commission (Commission) Staff will visit the Upper American River Project (UARP) and the Chili Bar Project, located on the South Fork American River, Rubicon River and tributaries in El Dorado County, California. Sacramento Municipal Utility District (SMUD), applicant for the UARP, and Pacific Gas and Electric Company, applicant for the Chili Bar Project, will accompany the Commission Staff on the site visit.

The site visit is open to the public and resource agencies. SMUD will provide vans to help in traveling to the various locations (please see the tentative schedule below).

Due to the logistics involved in traveling to some locations, there is the need to know the number of attendees in advance. All individuals planning to attend need to call or e-mail James Fargo, FERC Team Leader, at (202) 502–6095 or *james.fargo@ferc.gov* no later than September 27, 2005.

Tentative schedule for site visit (times given are in Pacific Daylight Savings):

Dates: October 4 and October 5.

Time: 7:30 a.m. to about 6 p.m. (PST) both days.

Arrangements: Vans will be provided for both days. Those interested in attending should contact Jim Fargo at the phone number or e-mail listed above. Comfortable walking shoes and attire are strongly recommended.

October 4, 2005

Meeting Place: Placerville Transit Center: Mosquito Road at Clay Street, Placerville, CA 95667.

Departure Time: 7:30 a.m.

General Itinerary: Visit Chili Bar Dam, White Rock Powerhouse, Slab Creek Dam (arriving at about 10:30 a.m.), Iowa Hill, Camino Dam, Union Valley Dam, and associated reservoirs and streams.

October 5, 2005

Meeting Place: SMUD's Fresh Pond Office: 7540 Highway 50, Pollock Pines, CA 95726, phone: (530) 644–2013.

Departure Time: 7:30 a.m.

General Itinerary: Visit Ice House, Union Valley, Gerle Creek and Loon Lake reservoirs and associated streams and recreation facilities.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5097 Filed 9–16–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7970–3]

Air Quality Management Subcommittee to the Clean Air Act Advisory Committee (CAAAC); Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical, scientific, and enforcement policy issues.

Open Meeting Notice: Pursuant to 5 U.S.C. App. 2 Section 10(a)(2), notice is hereby given that the Air Quality Management subcommittee to the Clean Air Act Advisory Committee will hold its next open meeting on Tuesday, October 18 and Wednesday, October 19, 2005, from approximately 2 p.m. to 4:30 p.m. on October 18, and 8 a.m. to 5 p.m. on October 19 at the Catamaran Hotel in San Diego, California. Any member of the public who wishes to submit written or brief oral comments; or who wants further information concerning this meeting, should follow the procedures outlined in the section below titled "Providing Oral or Written Comments at this Meeting." Seating will be limited and available on a first come, first served basis. The agenda for this meeting may be obtained by contacting Mr. Whitlow at the address noted in the section titled **FOR FURTHER INFORMATION CONTACT**.

Inspection of Committee Documents: The subcommittee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with the meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket OAR–2004–0075. The Docket office can be reached by telephoning 202–260–7548; FAX 202–260–4400.

FOR FURTHER INFORMATION CONTACT: For further information concerning the Air Quality Management subcommittee to the CAAAC, please contact Mr. Jeffrey Whitlow, Office of Air and Radiation, US EPA (919) 541–5523, FAX (919) 685–3307 or by e-mail at US EPA, Office of Air Quality Planning and Standards (Mail code C 439–04), 109 T.W. Alexander Drive, Research Triangle Park, NC 27711, or e-mail at: *whitlow.jeff@epa.gov*. Additional information on this meeting, the CAAAC, and its Subcommittees can be found on the CAAAC Web site: *http://www.epa.gov/air/caaac*.

Providing Oral or Written Comments at This Meeting: It is the policy of the subcommittee to accept written public comments of any length and to accommodate oral public comments whenever possible. The subcommittee expects that public statements presented at this meeting will not be repetitive of previously-submitted oral or written statements. Oral Comments: In general, each individual or group requesting an oral presentation at this meeting is limited to a total time of 5 minutes (unless otherwise indicated). However, no more than 30 minutes total will be allotted for oral public comments at this meeting; therefore, the time allowed for each speaker's comments will be adjusted accordingly. In addition, for scheduling purposes, requests to provide oral comments must be in writing (e-mail, fax, or mail) and received by Mr. Whitlow no later than noon Eastern Time five business days prior to the meeting in order to reserve time on the meeting agenda. Written Comments: Although the subcommittee accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received by Mr. Whitlow no later than noon Eastern Time five business days prior to the meeting so that the comments may be made available to the subcommittee members for their consideration. Comments should be supplied to Mr. Whitlow (preferably via e-mail) at the address/contact information noted above, as follows: one hard copy with original signature, or one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files (in IBM–PC/Windows 98/2000/XP format).

Dated: September 12, 2005.

Gregory A. Green,

Deputy Director, Office of Air Quality Planning and Standards.

[FR Doc. 05–18576 Filed 9–16–05; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7970–5]

Science Advisory Board Staff Office; Clean Air Scientific Advisory Committee (CASAC); CASAC Ozone Review Panel; Notification of Public Advisory Committee Meeting (Teleconference)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public teleconference of the Clean Air Scientific Advisory Committee (CASAC) Ozone Review Panel (Panel) to conduct a consultation on EPA's draft Ozone Environmental Assessment Plan: Scope and Methods for Exposure, Risk and Benefits Assessment (August 2005).

DATES: The teleconference meeting will be held on October 3, 2005, from 1 to 4 p.m. (Eastern Time).

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to obtain the teleconference call-in numbers and access codes; would like to submit written or brief oral comments; or wants further information concerning this teleconference meeting, should contact Mr. Fred Butterfield, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9994; fax: (202) 233–0643; or e-mail at: *butterfield.fred@epa.gov*. General information concerning the CASAC or the EPA SAB can be found on the EPA Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background: Under section 108 of the Clean Air Act (CAA or Act), the Agency is required to establish National Ambient Air Quality Standards (NAAQS) for each pollutant for which EPA has issued criteria, including ozone (O_3). Section 109(d) of the CAA subsequently requires periodic review and, if appropriate, revision of existing air quality criteria and standards to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. The Agency revised the NAAQS for O_3 in July 1997. EPA's Office of Research and Development (ORD) released a draft updated air quality criteria document for O_3 (draft Ozone AQCD) in January 2005. The CASAC Ozone Review Panel met in a public meeting to conduct a peer review on this draft Ozone AQCD on May 4–5, 2005. EPA's Office of Air Quality Planning and Standards (OAQPS), within the Office of Air and Radiation (OAR), is in the process of developing a draft updated Staff Paper for O_3 as part of its review of the O_3 NAAQS. This draft Staff Paper will evaluate the policy implications of the key scientific and technical information contained in the draft Ozone AQCD and identify critical elements that EPA believes should be considered in the review of the O_3 NAAQS. The O_3 Staff Paper is intended to "bridge the gap" between the scientific review contained in the Ozone AQCD and the public health and welfare policy judgments required of the EPA Administrator in reviewing the O_3 NAAQS. OAQPS has developed a draft Ozone Environmental Assessment Plan, which outlines the scope, approaches, and key issues in estimating vegetation exposure, risk, and impacts on economic values posed by O_3.

EPA is soliciting advice and recommendations from the CASAC, by means of a consultation on the draft Ozone Environmental Assessment Plan, on the overall scope, approaches, and key issues in advance of the completion of such analyses and presentation of results in the draft O_3 Staff Paper. The CASAC, which is comprised of seven members appointed by the EPA Administrator, was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee, in part to provide advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The CASAC Ozone Review Panel complies with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Technical Contact: Any questions concerning the draft Ozone Environmental Assessment Plan should be directed to Ms. Vicki Sandiford, OAQPS, at phone: (919) 541–2629, or e-mail: *sandiford.vicki@epa.gov*.

Availability of Meeting Materials

The draft Ozone Environmental Health Assessment Plan can be accessed via the Agency's Technology Transfer Network (TTN) Web site at: *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html* under "Planning Documents." In addition, a

copy of the draft agenda for this meeting will be posted on the SAB Web Site at: *http://www.epa.gov/sab* (under the "Agendas" subheading) in advance of this CASAC Ozone Review Panel meeting. Other meeting materials, including the charge to the CASAC Ozone Review Panel, will be posted on the SAB Web site at: *http://www.epa.gov/sab/panels/casacorpanel.html* prior to this meeting.

Providing Oral or Written Comments at SAB Meetings

The SAB Staff Office accepts written public comments of any length, and will accommodate oral public comments whenever possible. The SAB Staff Office expects that public statements presented at its face-to-face meetings and teleconferences will not repeat previously-submitted oral or written statements.

Oral Comments: In general, each individual or group requesting an oral presentation at a CASAC meeting or teleconference is limited to a total time of five minutes (unless otherwise indicated). However, no more than 30 minutes will be allotted for all oral public comments at this teleconference; therefore, the time allowed for each speaker's comments will be adjusted accordingly. In addition, for scheduling purposes, requests to provide oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Butterfield no later than September 26, 2005 in order to reserve time on the meeting agenda.

Written Comments: Written comments should be received in the SAB Staff Office by September 26, 2005 so that the comments may be made available to the CASAC PM Review Panel for their consideration. Comments should be supplied to Mr. Butterfield (preferably via e-mail) at the address/contact information noted above, as follows: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files (in IBM-PC/Windows 98/2000/XP format)).

Meeting Accommodations

Individuals requiring special accommodation to access this meeting, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: September 13, 2005.

Anthony Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. 05–18578 Filed 9–16–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7970–6]

Science Advisory Board Staff Office; Notification of Advisory Meeting of the Science Advisory Board; Regulatory Environmental Modeling (REM) Guidance Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Science Advisory Board (SAB) Regulatory Environmental Modeling (REM) Guidance Review Panel will hold two public teleconferences to discuss its draft peer review report of the Agency's Draft Guidance on the Development, Evaluation, and Application of Regulatory Environmental Models, dated November 2003 (referred to here also as the Draft Guidance), and the Models Knowledge Base related to modeling activity within the EPA.

DATES: October 12, 2005, 1 p.m. to 4 p.m. Eastern Standard Time and October 13, 2005, 10 a.m. to 1 p.m. Eastern Standard Time.

ADDRESSES: The public teleconferences will take place via telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to obtain the teleconference call-in number and access code, or who wants further information concerning these public teleconferences should contact Dr. K. Jack Kooyoomjian, Designated Federal Officer (DFO), EPA SAB, 1200 Pennsylvania Avenue, NW. (MC 1400F), Washington, DC 20460; via telephone/voice mail: (202) 343–9984; fax: (202) 233–0643; or e-mail at: *kooyoomjian.jack@epa.gov*. General information concerning the SAB can be found on the SAB Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background: The EPA's Council for Regulatory Environmental Modeling (CREM) has requested that the SAB review the Agency's Draft Guidance and Models Knowledge Base. The Draft Guidance was prepared by the CREM in response to the EPA Administrator's request to continue to strengthen EPA's development, evaluation and use of models in the Agency. The CREM Models Knowledge Base provides public Internet access to information on some of EPA's most frequently used models. The Draft Guidance and Models Knowledge Base are currently under review by the SAB's REM Guidance Review Panel, and are the subject of these conference calls. Additional background information on this review and all previous announcements [68 FR 46602, Aug. 6, 2003; 70 FR 1243, January 6, 2005; 70 FR 12477, March 14, 2005; and 70 FR 30948, May 31, 2005, and 70 FR 41008, July 15, 2005], meeting agendas, review and background materials can be found at the SAB Web site. The purpose of these meetings is for the SAB Panel to review the working draft report. If the second conference call is not necessary, Dr. Kooyoomjian will announce this prior to adjournment of the October 12, 2005 meeting, and will be on the line for the first ten minutes commencing at 10 a.m. EST on October 13, 2005 to advise interested parties.

Availability of Meeting Materials: Copies of the meeting agenda, the roster of the SAB's REM Guidance Review Panel, and the latest working draft report of the REM Guidance Advisory Panel will be posted on the SAB Web site at: *http://www.epa.gov/sab/panels/cremgacpanel.html* prior to the meetings.

Copies of the Agency's Draft Guidance and Models Knowledge Base and other background materials pertinent to this advisory activity may be obtained at: *www.epa.gov/crem*, or *www.epa.gov/crem/sab*. For further information regarding the Agency's Draft Guidance and Models Knowledge Base, contact Pasky Pascual, Office of Research & Development, National Center for Environmental Research (Mail Code 8701F), by telephone/voice mail at (202) 343–9710, by fax at (202) 233–0680; or via e-mail at *pascual.pasky@epa.gov*.

Providing Oral or Written Comments at SAB Meetings: The SAB Staff Office accepts written public comments of any length, and will accommodate oral public comments wherever possible. The SAB Staff Office expects that public statements presented at its meetings will not repeat previously submitted oral or written statements.

Oral Comments: In general, each individual or group requesting an oral presentation at a public teleconference will be limited to a total time of three minutes (unless otherwise indicated). Requests to provide oral comments must be *in writing* (e-mail, fax, or mail) and received by the DFO no later than noon Eastern Standard Time, October 4, 2005 in order to reserve time on the meeting agenda.

Written Comments: Written comments should be received in the SAB Staff Office no later than noon Eastern Standard Time October 4, 2005 so that the comments may be made available to the Panelists for their consideration. Comments should be supplied to the DFO (preferably by e-mail) at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 98/2000/XP format).

Meeting Access: For information on access or services for individuals with disabilities, please contact Dr. K. Jack Kooyoomjian at 202–343–9984 or *kooyoomjian.jack@epa.gov* to request accommodation of a disability. Please contact Dr. Kooyoomjian, preferably by September 27, 2005, to give EPA as much time as possible to process your request. Such accommodation is required by sections 504 and 508 of the Rehabilitation Act of 1973, 29 U.S.C. 794 and 794d, EPA's implementing regulations, 40 CFR Part 12, and the federal standards for "Electronic and Information Technology Accessibility," 36 CFR Part 1194, which govern accessibility and accommodation in relation to EPA programs and activities, such as Federal Advisory Committee meetings.

Dated: September 13, 2005.

Anthony F. Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. 05–18577 Filed 9–16–05; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

FEDERAL REGISTER CITATIONS OF PREVIOUS ANNOUNCEMENT: 70 FR 54381, September 14, 2005.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2 p.m. (Eastern Time) Wednesday, September 21, 2005.

CHANGE IN THE MEETING: The meeting has been cancelled.

FOR FURTHER INFORMATION CONTACT: Stephen Llewellyn, Acting Executive Officer on (202) 663–4070.

Dated: September 14, 2005.

Stephen Llewellyn,

Acting Executive Officer.

[FR Doc. 05–18691 Filed 9–15–05; 12:22 pm]

BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability and Interoperability Council Meeting Postponed

AGENCY: Federal Communications Commission.

ACTION: Notice of postponement of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, Public Law 92–463, as amended, this notice advises interested persons that the meeting of the Network Reliability and Interoperability Council scheduled for September 21, 2005 has been cancelled and will be rescheduled for a date to be subsequently announced.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp at (202) 418–1096, TTY (202) 418–2989, or e-mail *Jeffery-Goldthorp@fcc.gov*.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 05–18697 Filed 9–16–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Schedule and Venue Change: FCC to Hold Open Commission Meeting In Atlanta, GA at 11 a.m.

September 14, 2005.

Please note that the time and venue for the Federal Communications Commission's September Open Meeting has changed.

As described in the Commission's Thursday, September 8th Notice, on Thursday, September 15th, the Commission will hold an open meeting. At this meeting, it will hear presentations from Commission staff and various industry representatives concerning their role in Hurricane Katrina recovery efforts. For the convenience of those testifying, the Federal Communications Commission will hold its meeting in Atlanta, Georgia at BellSouth Telecommunications Inc.'s Emergency Control Center located at the following address:

BellSouth Midtown I Building, 4th Floor, 754 Peachtree Street, Atlanta, Georgia 30309.

The meeting is scheduled to commence at 11 a.m. Seating is limited and will be on a first come, first serve basis.

The prompt and orderly conduct of Commission business permits less than 7-days notice be given.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–18693 Filed 9–15–05; 3:43 pm]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice: Addition of Agenda Item

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 70 FR 53796, September 12, 2005.

ADDITION OF AGENDA ITEM: The Board of Directors determined that agency business required the addition on less than seven days notice and that no earlier notice was practicable of the following item to the open portion of the meeting held on September 14, 2005:

Expedited Regulatory Relief to Support Victims of Hurricane Katrina. The Board of Directors will consider a resolution that would extend any regulatory relief granted to an individual Federal Home Loan Bank for purposes of assisting victims of Hurricane Katrina to any or all of the other Banks, so that the members of other Banks also may provide housing and financial assistance to victims of Hurricane Katrina throughout the country.

FOR FURTHER INFORMATION CONTACT: Shelia Willis, Paralegal Specialist, Office of General Counsel, at (202) 408–2876 or *williss@fhfb.gov*.

Dated: September 14, 2005.

By the Federal Housing Finance Board.

John P. Kennedy,

General Counsel.

[FR Doc. 05–18692 Filed 9–15–05; 12:22 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change In Bank Control Notices, Acquisition of Shares or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 05-16147) published on page 48133 of the issue for Tuesday, August 16, 2005.

Under the Federal Reserve Bank of Atlanta heading, the entry for York Capital Management, L.P., New York

Investment Limited, and New York Global Partners, L.P., all of New York, New York, is revised to read as follows:

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. York Capital Management, L.P., York Investment Limited, York Global Value Partners, L.P., York Global Value Holdings, LLC, Dinan Management, LLC, York Offshore Holdings, Limited, Dinan Management, L.P., Dinan Management Corporation, and James G. Dinan (collectively, "York"), all of New York, New York, and York Global Value Holdings, L.P., York Global Value Holdings, LLC and James G. Dinan, individually and on behalf of the York group, to acquire up to 24.9 percent of the voting shares of PanAmerican Bancorp, Miami, Florida, and thereby indirectly acquire voting shares of PanAmerican Bank, Miami, Florida.

Comments on this application must be received by October 4, 2005.

Board of Governors of the Federal Reserve System, September 14, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–18597 Filed 9–16–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of August 9, 2005

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on August 9, 2005.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with increasing the federal funds rate to an average of around 3½ percent.

The vote encompassed approval of the paragraph below for inclusion in the statement to be released shortly after the meeting:

"The Committee perceives that, with appropriate monetary policy action, the upside and downside risks to the attainment of both sustainable growth and price stability should be kept roughly equal. With underlying inflation expected to be contained, the Committee believes that policy accommodation can be removed at a pace that is likely to be measured. Nonetheless, the Committee will respond to changes in economic prospects as needed to fulfill its obligation to maintain price stability."

By order of the Federal Open Market Committee, September 6, 2005.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 05–18559 Filed 9–16–05; 8:45 am]

BILLING CODE 6210–01–P

[1] Copies of the Minutes of the Federal Open Market Committee Meeting on August 9, 2005, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panels (SEP): Surveillance Review, Program Announcement PAR–04–106

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Surveillance Review, Program Announcement PAR–04–106.

Times and Dates: 8 a.m.–5 p.m., November 2, 2005 (Closed), 8 a.m.–5 p.m., November 3, 2005 (Closed).

Place: Marriott Inner Harbor at Camden Yard, 110 South Eutaw Street, Baltimore, MD 21201, Telephone Number 410.962.0202.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to: Surveillance Review, Program Announcement PAR–04–106.

Contact Person For More Information: Steve Olenchock, PhD, Scientific Review Administrator, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, Morgantown, WV 26506, Telephone 304.285.6127.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 13, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–18527 Filed 9–16–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0262]

Submission of Chemistry, Manufacturing, and Controls Information in a New Drug Application Under the New Pharmaceutical Quality Assessment System; Extension of Application and Comment Deadlines

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice to extend application and comment deadlines.

SUMMARY: The Food and Drug Administration (FDA) is announcing an extension in the deadlines for submitting requests to participate in and comment on a pilot program involving the submission of chemistry, manufacturing, and controls (CMC) information consistent with the new pharmaceutical quality assessment system.

DATES: Submit written requests to participate in the pilot program by March 31, 2006. Submit eligible new drug applications (NDAs) by March 31, 2007. Submit written or electronic comments on the pilot program by March 31, 2007.

ADDRESSES: Submit written requests to participate in the pilot program and comments on the pilot program to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic requests to participate in and comments on the pilot program to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Michael Folkendt, Center for Drug Evaluation and Research (HFD–800), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5918, e-mail: *folkendtm@cder.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 14, 2005 (70 FR 40719), FDA announced

that it is seeking pharmaceutical companies to participate in a pilot program involving the submission of CMC information consistent with a new pharmaceutical quality assessment system. The Office of New Drug Chemistry (ONDC) in the Office of Pharmaceutical Science, Center for Drug Evaluation and Research, is establishing a modern, risk-based pharmaceutical quality assessment system, as described in a September 2004 White Paper, "ONDC's New Risk-Based Pharmaceutical Quality Assessment System" (*http://www.fda.gov/cder/gmp/gmp2004/ondc_reorg.htm*). The pilot program will provide additional information for ONDC to use in implementing the new quality assessment system. The pilot program will provide participating pharmaceutical companies an opportunity to submit critical CMC information that demonstrates their understanding of quality by design, product knowledge, and process understanding of the drug substance and drug product at the time of submission of an NDA. The pilot program will also enable the public and regulated industry to provide feedback that will assist FDA in developing guidance for industry on the new quality assessment system.

The July 14, 2005 (70 FR 40719), notice provided deadlines related to the submission of certain information related to the pilot program. To ensure inclusive and relevant results from the pilot program, this notice extends the deadlines as follows: Requests to participate in the pilot program to March 31, 2006, from October 31, 2005, and submission of eligible New Drug Applications (NDA) to March 31, 2007, from December 31, 2006. This notice also extends the comment period on the pilot program to March 31, 2007, from December 31, 2006. See the process section (II.B) in the July 14, 2005 (70 FR 40719) notice for instructions on submitting requests to participate in the pilot program. All requests to participate in the pilot program, both written and electronic, should be marked confidential.

II. Comments

Interested persons may submit written comments on this pilot program to the Division of Dockets Management (see **ADDRESSES**). Two copies of any comments are to be submitted, 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. While detailed information on participating NDAs will not be publicly available, names of participating applicants will be made public.

Dated: September 8, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–18515 Filed 9–16–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–02–1000]

Memorandum of Understanding Between the Food and Drug Administration, Center for Biologics Evaluation and Research, and the National Institutes of Health, National Institute of Neurological Disorders and Stroke

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the Food and Drug Administration, Center for Biologics Evaluation and Research (FDA/CBER), and the National Institutes of Health, National Institute of Neurological Disorders and Stroke (NIH/NINDS). The purpose of this MOU is to provide a framework for coordination and collaborative efforts between these two entities, which are both components of the Department of Health and Human Services. This MOU also provides the principles and procedures by which information sharing between FDA/CBER and NIH/NINDS units shall take place.

DATES: The agreement became effective February 12, 2002.

FOR FURTHER INFORMATION CONTACT: *For FDA/CBER*: Kimberly Benton, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, WOC1/rm. 209N, Rockville, MD 20852, 301–827–5102.

For NIH/NINDS: Robert Finkelstein, Extramural Research, Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., rm. 2143, Bethesda, MD 20892, 301–496–9248.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: September 8, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

225-02-1000

MEMORANDUM OF UNDERSTANDING
Between the
FOOD AND DRUG ADMINISTRATION
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH
and the
NATIONAL INSTITUTES OF HEALTH
NATIONAL INSTITUTE OF NEUROLOGICAL DISORDERS AND STROKE

I. PURPOSE

This Memorandum of Understanding (MOU) between the Food and Drug Administration/Center for Biologics Evaluation and Research (FDA/CBER) and the National Institutes of Health/National Institute of Neurological Disorders and Stroke (NIH/ NINDS) provides a framework for coordination and collaborative efforts between these two entities, which are both components of the Department of Health and Human Services. This MOU also provides the principles and procedures by which information sharing between FDA/CBER and NIH/NINDS units shall take place.

II. BACKGROUND

FDA and NIH are sister agencies within the Department of Health and Human Services. Both FDA and NIH exist and work to protect the public health but have different statutory mandates and responsibilities.

FDA is a science-based regulatory agency responsible for protecting the public health through the regulation of food, cosmetics, and medical products, including human drugs, biological products, animal drugs, and medical devices. FDA administers the Federal Food, Drug, and Cosmetic Act and relevant sections of the Public Health Service Act, among other statutes. Among its duties, FDA reviews and monitors the use of investigative articles in clinical studies, conducts on-site inspections of biomedical research, approves pre-market applications, conducts regulatory research, conducts inspections of manufacturing facilities, and monitors post-marketing adverse events. FDA also refers civil and criminal cases to the Department of Justice to enforce applicable laws and regulations. Within FDA, CBER's mission is to protect and enhance the public health through regulation of biological and many combination products according to statutory authorities. The regulation of these products is founded on science and law to ensure their purity, potency, safety and efficacy.

The NIH is the Federal focal point for biomedical research in the United States. The NIH mission is to uncover new knowledge that will lead to better health for everyone. NIH works toward that mission by conducting research in its own laboratories; supporting the research of non-Federal scientists in universities, medical schools, hospitals and research institutions throughout the country and abroad; helping in the training of research investigators; and fostering communication of medical information. Within the NIH, the NINDS is the nation's

leading supporter of biomedical research on disorders of the brain and nervous system. The mission of the NINDS is to reduce the burden of neurological disease. To achieve this mission, the NINDS conducts, fosters, coordinates and guides research on the causes, prevention, diagnosis and treatment of neurological disorders and stroke, including basic research in related scientific areas.

NIH's and FDA's respective missions to protect the public health are complementary and may overlap depending upon the subject matter. The agencies work collaboratively to protect and improve public health. Sometimes FDA/CBER or NIH/NINDS may have information that could be useful to the other unit in that unit's performance of its responsibilities. Timely sharing of information between NIH/NINDS and FDA/CBER is therefore critical to protect and improve the public health.

III. SUBSTANCE OF AGREEMENT AND RESPONSIBILITIES OF EACH AGENCY

A. *Coordination and Collaboration Relative to Public Health Activities*

It is mutually agreed that:

1. FDA/CBER and NIH/NINDS will coordinate and collaborate with each other to protect and improve the public health. To achieve this, each unit will utilize the expertise, resources, and relationships of the other in order to increase its own capability and readiness to respond to situations. In addition, each unit will designate central contact points to coordinate communications from the other, dealing with matters covered by this agreement.

2. Each unit will participate in periodic joint meetings to promote better communication and understanding of regulations, policies, and statutory responsibilities, and to serve as a forum for questions and problems that may arise.

3. Each unit will notify the other when issues of mutual concern become evident to the extent such notification does not interfere with the public health, oversight, enforcement, or compliance responsibilities of the notifying agency.

4. Each unit will work to execute the Implementation Work Plan *(Appendix)*

5. This agreement does not preclude NIH/NINDS or FDA/CBER from entering into other agreements which may set forth procedures for special programs which can be handled more efficiently and expertly by other agreements.

B. *Principles and Procedures for the Sharing of Non-Public Information*

FDA/CBER and NIH/NINDS agree that the following principles and procedures will govern the

sharing of non-public information between the two units.

FDA/CBER and NIH/NINDS agree that there should be a presumption in favor of full and free sharing of information between FDA/CBER and NIH/NINDS. As units of sister public health agencies within the Department of Health and Human Services, FDA/CBER and NIH/NINDS legally may share with each other most information in their possession, including non-public information in electronic databases. Both units recognize and acknowledge, however, that it is essential that any non-public information that is shared between FDA/CBER and NIH/NINDS whether in writing or orally must be protected from any disclosure that is not authorized by law or regulation. See e.g., 5 U.S.C. § 552; 5 U.S.C § 552a; 18 U.S.C. § 1905; 21 U.S.C. § 331(j); 21 C.F.R. Parts 20 and 21. Safeguards are important to protect non-public information shared, such as trade secrets and confidential commercial information; identities of study participants and other personal privacy information; privileged and/or pre-decisional agency information; research proposals, progress reports, and/or unpublished data; or information protected for national security reasons. Such safeguards also help ensure FDA/CBER's and NIH/NINDS's compliance with applicable laws and regulations.

To facilitate the sharing of non-public information with each other, FDA/CBER and NIH/NINDS are implementing procedures to ensure, at a minimum, that such sharing is indeed appropriate and that the recipient unit guards the confidentiality of all information received.[1] It is incumbent upon both units to respond to requests for information in a complete and timely manner, consistent with budgetary and resource constraints, and to the extent permitted by law, regulation or agency policy and practice. The unit receiving shared non-public information shall be responsible for protecting that information from any unauthorized disclosure. Additional information-sharing provisions, none of which shall preclude the sharing orally of non-public information in accordance with applicable statutes or regulations, are set out below:

1. The requesting unit must specify, in writing[2], the information requested (to facilitate identification of relevant information) and provide a brief statement of why the information is needed. This request shall state which internal unit offices and/or individuals are requesting the information. A model request letter is attached. Upon mutual agreement, FDA/CBER and NIH/NINDS may modify the request letter appropriately, e.g., to permit the sharing of related non-public information over a specified period of time.

2. The unit receiving the request shall, based upon the request described in section III B 1 above, determine whether it is appropriate to share the requested non-public information. For example, a unit should decide not to share information if it has credible information and a reasonable belief that the requesting unit may not be able to comply with applicable laws or

[1] It is assumed that each agency has implemented or will implement all data and information security statutory, regulatory, policy, or procedural requirements and has implemented or will implement, to the extent necessary and practicable, all data and information security recommendations suggested by the other agency.

[2] The term "writing" used throughout this MOU includes a writing by electronic means.

regulations governing the protection of non-public information or with the principles or procedures set forth in this MOU. If a unit decides not to share information, it shall describe to the requesting unit the reasons for such decision.

3. The requesting unit shall comply with the following conditions:

a. The requesting unit shall limit the dissemination of shared non-public information it receives to internal unit offices and/or employees that have been identified in its written request and/or have a need to know. The unit official who signs the request letter shall be responsible for ensuring that there are no inappropriate recipients of the information.

b. The requesting unit shall agree in writing, by using the model request letter (or a reasonable, mutually agreed upon facsimile), not to disclose any shared non-public information in any manner not authorized by law or regulation, including disclosure in publications and public meetings. If the requesting unit wishes to disclose shared information that the sharing unit has designated as nonpublic, it shall first obtain the written permission of the sharing unit. If the requesting unit receives a Freedom of Information Act (FOIA) request for the shared information, it shall: (a) refer the request to the information-sharing unit for that unit to respond directly to the requester regarding the releaseability of the information, and (b) notify the requester of the referral and that a response will issue directly from the other unit.

c. The unit that shares non-public information shall include a transmittal letter along with any agency information shared. The transmittal letter shall indicate the type of information (e.g., confidential commercial information, personal privacy, or pre-decisional). A model transmittal letter is attached. The shared documents containing non-public information should be stamped ***"Do not disclose without permission of CBER/FDA or NIH/NINDS"*** as is applicable.

d. The requesting unit shall promptly notify the contact person or designee of the information-sharing unit when there is any attempt by a third party to obtain shared non-public information by compulsory process, including, but not limited to, a FOIA request, subpoena, discovery request, or litigation complaint or motion.

e. The requesting unit shall notify the information-sharing unit before complying with any judicial order that compels the release of shared non-public information, so that the units may determine the appropriate measures to take, including, where appropriate, the filing of a motion or an appeal with the court.

IV. NAME AND ADDRESS OF PARTICIPATING UNITS

A. Food and Drug Administration
Center for Biologics Evaluation and Research
29 Lincoln Drive (HFM-1)

Bethesda, MD 20892-4555
Telephone: (301) 827-0548
Fax: (301) 827-0440

B. National Institutes of Health
National Institute of Neurological Disorders and Stroke
Building 31, Room 8A52
31 Center Drive MSC 2450
Bethesda, MD 20892-2540
Telephone: (301) 496-3167
Fax: (301) 496-0296

V. LIAISON OFFICERS

Liaison Officers will participate in the management, coordination and oversight of this agreement and the attached Implementation Work Plan. The Liaison Officers will constitute a Steering Committee comprised of an equal number of member representatives from the FDA-CBER and the NIH-NINDS. Two Liaison Officers, one designate from each participating agency, will serve as co-chairs of the Committee.

Member appointments shall be authorized by the signatories to this agreement and shall last for a period of one (1) year, unless renewed by mutual, written agreement by the signatories. The Liaison Officer Steering Committee shall meet at least once every six months for the first year of this agreement and then at least once annually thereafter to review the progress of this agreement, resolve any issues and disputes that may arise, re-direct specific activities set forth in the Work Plan, and oversee necessary modifications to the agreement.

A. **A. For FDA/CBER**

Kimberly Benton, Ph.D.
Chief, Cell Therapy Branch
Division of Cell and Gene Therapy
Office of Office of Cellular, Tissue and Gene Therapies
Center for Biologics Evaluation and Research
US Food and Drug Administration
1401 Rockville Pike
WOC1 / Room 209N
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Rockville, MD 20852
Telephone: (301) 827-5102
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Mercedes Serabian, M.S.
Chief, Pharmacology/Toxicology Review Branch
Division of Clinical Evaluation and Pharmacology/Toxicology
Office of Cellular, Tissue and Gene Therapies
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B. For NIH/NINDS

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VI. PERIOD OF AGREEMENT

This agreement becomes effective upon signature of both units and will continue for five years. It may be modified by mutual consent or terminated by either agency upon 120 days written notice. Not later than 120 days prior to the expiration of this agreement, each unit will provide a recommendation regarding the extension of the agreement, including modifications if any.

APPROVED AND ACCEPTED FOR NATIONAL INSTITUTES OF HEALTH
National Institute of Neurological Disorders and Stroke

By: Audrey Penn

Audrey Penn, M.D.
Acting Director
National Institute of
Neurological Disorders and Stroke
National Institutes of Health

Date: February 7, 2002

APPROVED AND ACCEPTED FOR THE THE FOOD AND DRUG ADMINISTRATION
Center for Biologics Evaluation and Research

By: Kathryn Zoon

Kathryn Zoon, Ph.D.
Center Director
Center for Biologics Evaluation and
Research
Food and Drug Administration

Date: 02/12/02

ATTACHMENTS:
Model Request Letter
Model Transmittal Letter

APPENDIX: Implementation Work Plan

ATTACHMENTS

Model Language for Request from FDA/CBER

The Food and Drug Administration/Center for Biologics Evaluation and Research (FDA/CBER) requests the following information from the National Institutes of Health, National Institute of Neurological Disorders and Stroke (NIH/NINDS) for the following purposes: ***[Identify information and purpose]***

FDA/CBER agrees that it will not disclose any information that NIH/NINDS shares with it and designates non-public without prior written permission from NIH/NINDS and that FDA/CBER will comply with the principles and procedures set forth in the Memorandum of Understanding on information sharing between FDA/CBER and NIH/NINDS dated ***[Insert date MOU between FDA/CBER and NIH/NINDS initiated]***. FDA/CBER acknowledges that applicable laws and regulations may govern the disclosure of such information. See, e.g., 5 U.S.C. § 552; 5 U.S.C. § 552a; 18 U.S.C. § 1905; 21 U.S.C. § 331(j); 21 C.F.R. Parts 20 and 21.

FDA/CBER will limit dissemination of any shared information to the following FDA/CBER offices and/or employees, unless it identifies additional FDA/CBER employees who have a need to know the non-public information: [Identify office(s) and/or employee(s)]

_____ _____
Name Date

[Signature and Date by FDA/CBER official with requisite responsibility and authority.]

Model Language for Request from NIH/NINDS

The National Institutes of Health/National Institute of Neurological Disorders and Stroke (NIH/NINDS) requests the following information from the Food and Drug Administration/Center for Biologics Research and Review (FDA/CBER) that for the following purposes: ***[Identify information and purpose]***

NIH/NINDS agrees that it will not disclose any information that FDA/CBER shares with it and designates nonpublic without prior written permission from FDA/CBER and that NIH/NINDS will comply with the principles and procedures set forth in the Memorandum of Understanding on information sharing between NIH/NINDS and FDA/CBER dated _____. NIH/NINDS acknowledges that applicable laws and regulations may govern the disclosure of such information. See, e.g., 5 U.S.C. § 552; 5 U.S.C. § 552a; 18 U.S.C. § 1905; 21 U.S.C. § 331(j); 21 C.F.R. Parts 20 and 21.

NIH/NINDS will limit dissemination of any shared information to the following NIH/NINDS offices and/or employees, unless it identifies additional NIH/NINDS employees who have a need to know the non-public information: ***[Identify office(s) and/or employee(s)]***

_____ _____

Name Date

[Signature and Date by NIH/NINDS official with requisite responsibility and authority.]

Model Transmittal letter from NIH/NINDS to FDA/CBER

This letter accompanies information that the National Institutes of Health/National Institute for Neurological Disorders and Stroke (NIH/NINDS) is sharing with the Food and Drug Administration/Center for Biologics Evaluation and Research (FDA/CBER) in response to FDA/CBER's request, dated _____. This information contains one or more of the following categories of non-public information, including information the disclosure of which

may be prohibited by law:

[NIH/NINDS checks applicable numbers below]

__ confidential research proposals, progress reports, and/or unpublished data;
__ privileged or pre-decisional agency information;
__ trade secrets;
__ confidential commercial or financial information;
__ information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
__ information contained in records subject to the Privacy Act;
__ information contained in the inter-agency or intra-agency memoranda;
__ records or information compiled for law enforcement purposes;
__ information protected for national security reasons; or
__ other (explain).

FDA/CBER shall notify the contact person or designee of NIH/NINDS if there are any attempts to obtain such shared non-public information by compulsory process, including, but not limited to, Freedom of Information Act requests, subpoenas, discovery requests, and litigation complaints or motions.

FDA/CBER shall notify NIH/NINDS before complying with any judicial order that compels the release of such shared non-public information so that FDA/CBER and/or NIH/NINDS may take appropriate measures, including filing a motion with the court or an appeal.

By a signed request letter dated _____, FDA/CBER has agreed not to disclose the above-described shared non-public information without prior written permission of NIH/NINDS. FDA/CBER has acknowledged that applicable laws and regulations may govern the disclosure of such information. See, e.g., 5 U.S.C. § 552; 5 U.S.C. § 552a; 18 U.S.C. § 1905; 21 U.S.C. § 331(j); 21 C.F.R. Parts 20 and 21.

FDA/CBER has also agreed to comply with the principles and procedures set forth in the Memorandum of Understanding on information sharing between FDA/CBER and NIH/NINDS, dated _____.

Model Transmittal letter from FDA/CBER to NIH/NINDS

This letter accompanies information that the Food and Drug Administration/Center for Biologics Evaluation and Research (FDA/CBER) is sharing with the National Institutes of

Health/National Institute for Neurological Disorders and Stroke (NIH/NINDS) in response to NIH/NINDS's request, dated _____. This information contains one or more of the following categories of non-public information, including information the disclosure of which may be prohibited by law:

[FDA/CBER checks applicable numbers below]

__ trade secrets;
__ confidential commercial or financial information;
__ information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy
__ information contained in records subject to the Privacy Act;
__ information contained in inter-agency or intra-agency memoranda;
__ records or information compiled for law enforcement purposes;
__ information protected for national security reasons; or
__ other (explain).

NIH/NINDS shall notify the contact person or designee of FDA/CBER if there are any attempts to obtain such shared non-public information by compulsory process, including, but not limited to, Freedom of Information Act requests, subpoenas, discovery requests, and litigation complaints or motions.

NIH/NINDS shall notify FDA/CBER before complying with any judicial order that compels the release of such shared non-public information, so that FDA/CBER and/or NIH/NINDS may take appropriate measures, including filing a motion with the court or an appeal.

By a signed request letter dated _____, NIH/NINDS has agreed not to disclose the above-described shared non-public information without prior written permission of FDA/CBER. NIH/NINDS has acknowledged that applicable laws and regulations may govern the disclosure of such information. See, e.g., 5 U.S.C. § 552; 5 U.S.C. § 552a; 18 U.S.C. § 1905; 21 U.S.C. § 331(j); 21 C.F.R. Parts 20 and 21. NIH/NINDS has also agreed to comply with the principles and procedures set forth in the Memorandum of Understanding on information between FDA/CBER and NIH/NINDS, dated _____.

APPENDIX

IMPLEMENTATION WORK PLAN FOR THE MEMORANDUM OF UNDERSTANDING BETWEEN THE FOOD AND DRUG ADMINISTRATION CENTER FOR BIOLOGICS EVALUATION AND RESEARCH AND THE NATIONAL INSTITUTES OF HEALTH NATIONAL INSTITUTE OF NEUROLOGICAL DISORDERS AND STROKE

Introduction

The Food and Drug Administration/Center for Biologics Evaluation and Research (FDA/CBER), and the National Institutes of Health/National Institute of Neurological Disorders and Stroke (NIH/NINDS), have established a formal collaborative arrangement. The principal goal of this interagency working relationship is to expedite translation of basic research involving promising biological therapies to well-designed clinical studies for the treatment of neurological disorders and provide complementary support and expertise to enable each agency to better fulfill its public health mission.

This Implementation Work Plan itemizes specific projects and activities that constitute the substance of the collaborative arrangement between the two agencies, and is intended to serve as a general working plan for FDA/CBER and NIH/NINDS staff. Individuals designated by each agency to serve on interagency working groups will define the specific outcomes, completion timeframes, mechanisms of interaction, and other considerations associated with each project and activity. The relative priority of each project/activity is identified by the letters "I", for immediate (within 3 months), "S" for short-term (within 6-12 months), and "L" for long-term (beyond 12 months).

This agreement will be implemented on an incremental basis subject to available organizational resources and mutual determination of the feasibility and anticipated benefit(s) of individual activities. Moreover, both parties have agreed that, whenever appropriate and possible, interagency activities should be evaluated periodically to determine whether the benefits realized justify continuation or expansion of the activities conducted under this agreement. Success of this collaboration may lead to similar arrangements between other FDA and NIH units in the future.

The Working Group and the MOU will be supported in the budgets of both the FDA/CBER and NIH/NINDS in order to fund related activities, but are not expected to involve the exchange of funds. These activities will be planned in advance and budgets projected prior to the start of the fiscal year.

A. Information Exchange

- Initiate a series of introductory meetings and orientation briefings to acquaint FDA/CBER and NIH/NINDS personnel with each agency's statutory obligations, programs, operational capacities, policies, processes, etc. relevant to this agreement. [I]

- Identify key contact persons at each agency, and prepare a contact/referral directory to facilitate interagency communication and information exchange. [I]

- Establish a hyperlink between existing FDA/CBER and NIH/NINDS Internet websites to facilitate rapid access to routine and late-breaking information of mutual interest. [I]

- Establish an inter-agency forum for regular sharing of information related to new research initiatives by both agencies, investigational new drug and market applications for significant new products pending with FDA/CBER, emerging public health issues and emergencies, and policy development. Stem cells as cellular replacement therapies and gene transfer represent two specific examples that could serve as case studies to identify optimal working practices for both agencies to monitor an issue from the conceptual stage through research/development and clinical testing. [S]

- Use the inter-agency forum to share information on clinical research studies for treating neurologic disease that involve stem cells, gene transfer therapy and other therapeutic biologics such as recombinant proteins and monoclonal antibodies. Other information that may also be shared includes status updates on NIH/NINDS initiatives and funding of pre-clinical studies intended to promote development of novel biologic therapeutics for treating neurologic disorders, as well as advance notice of plans/agenda items for FDA/CBER committee meetings and workshops. [S]

- Assess the possibility of FDA/CBER and NIH/NINDS experts serving as Federal "facilitators" to oversee state-of-the-art advances in cellular and gene transfer technologies and therapeutics for treating neurological dysfunction through direct interactions with clinical investigators, product developers, scientific researchers, etc. One function of the facilitators would be to provide information on regulatory process and research funding to the commercial and academic research sectors, and to relay information on emerging products, in both the conceptual and development stage, back to NIH/NINDS and

FDA/CBER, with the goal of accelerating the flow of new, safe, and effective products from the research and development arena to the clinical environment. [L]

B. Education

- Staff jointly (by NIH/NINDS and FDA/CBER personnel) exhibitor's booths at national and international scientific or clinical meetings. This will enable FDA/CBER staff to interact directly with NIH/NINDS grantees in order to provide information about the regulatory review process to academic investigators, and to increase the visibility of FDA/CBER in the scientific community. [I]

- Present reciprocal in-house seminars to FDA/CBER and NIH/NINDS staff regarding the managed review regulatory process and the development of federally funded research initiatives and programs specifically applicable to the use of biologic therapies to treat neurological conditions and disorders. [S]

- Invite FDA/CBER staff to attend, participate in and/or present at NIH/NINDS-organized workshops and National Advisory Neurological Disorders and Stroke Council meetings, particularly when stem cells, gene transfer therapies or other related issues are under discussion. [S/L]

- Develop presentations on FDA/CBER requirements for conducting clinical trials involving fetal tissue and stem cell transplantation as well as gene transfer therapies to target investigators receiving NIH/NINDS funding. Topics to be covered would include the extent of proof-of-concept and pharmacological/toxicological pre-clinical testing expected with respect to determining target dosing and safety. Such presentations would be delivered at conferences such as the annual meetings of the American Academy of Neurology, the American Neurological Association, the Society for Neuroscience, the Congress of Neurological Surgeons, the American Society for Neural Transplantation and Repair, as well as the annual SBIR/STTR meeting, the bi-annual ASILOMAR International Symposium on Neural Regeneration, other stem cell meetings and relevant Gordon Research Conferences.

- Provide reference documents that describe the FDA/CBER investigational product and market approval processes for use by NIH/NINDS program staff and reviewers in conferring with prospective research grantees and contractors to help them plan their clinical studies to conform to FDA/CBER guidances and regulations where appropriate. Compliance with FDA/CBER requirements will eliminate duplication of effort, and streamline the process for academic clinical investigators seeking NIH/NINDS funding to conduct clinical studies that require an IND. [S/L]

- Review the feasibility and utility of live, jointly-produced video-teleconferences using FDA/CBER and/or NIH/NINDS facilities to communicate with each agency's constituencies on topical areas of interest, fast-moving events, new research and regulatory initiatives, etc. [S]

C. Resource Leveraging and Staff Collaborations

- Encourage collaborations between NIH/NINDS and FDA/CBER specialists; these could include rotations and service details of FDA/CBER scientists and clinicians in extramural and intramural divisions of NIH/NINDS, and of NIH/NINDS scientific staff and program directors in FDA/CBER regulatory offices. Such exchanges could promote a better understanding of the practices unique to each agency and enhance scientific exchange. [S]

- Provide the opportunity for FDA/CBER scientists and regulatory process experts to attend NIH/NINDS reviews of research applications, where they could provide valuable technical input to the reviewers. In turn, this at would enable FDA/CBER product reviewers to gain insight into future directions in research and product development, and to anticipate and prepare for scientific and clinical issues associated with future product applications. [S]

- Evaluate the feasibility of establishing a co-ordinated and efficient submission and review process for those clinical applications requesting NIH/NINDS funding and requiring submission of an IND to FDA/CBER. [S/L]

D. Policy Development

- Promote communication and consultation on select policy issues and guidance documents of particular interest and relevance to researchers, consumers and/or health care professionals that involve novel cellular or gene transfer therapies posing a potential health risk to the general public, or that relate to research and regulatory processes affecting the pace of translating research from bench-top to bed-side. For example, during drafting of policy documents such as FDA Guidance for Industry or NIH Points-to-Consider relating to cell or tissue-based therapy or gene transfer, each agency is encouraged to seek input from the other so that modifications can be made prior to the formal clearance process. [I]

E. Promotion of Interagency Joint Reviews

- Invite FDA/CBER input and recommendations during the development of NIH/NINDS-

initiated Requests for Applications (RFA) and Program Announcements (PA) that target relevant or essential research areas to foster and support the development of biologic tissue, cellular and gene transfer therapies for treating neurologic disease. [I]

- Provide for NIH/NINDS experts to participate in pre-decisional evaluation of selected relevant Investigative New Drug Applications seeking FDA/CBER authorization to conduct clinical studies involving novel biologic products whose scientific and clinical aspects may be complex or controversial. [S]

- Investigate the feasibility of allowing FDA/CBER staff with appropriate expertise to participate as members of the NIH/NINDS Stem Cell Working Group. FDA/CBER regulatory review scientists will see the types of grants funded by NIH/NINDS, and they could help identify important areas of research not being funded that would facilitate the development of biologic products for treating neurological disorders. [S/L]

- Create an opportunity for FDA/CBER medical officers with appropriate clinical training to serve as a consultant to the Clinical Trials Group at NIH/NINDS. [S/L]

- Provide advice on candidate nominations for appointment to FDA/CBER and NIH/NINDS review and planning bodies. [S/L]

F. Joint Sponsorship of State-of -Science Workshops/Conferences

- Provide for participation by FDA/CBER regulatory policy-makers and program officials in NIH/NINDS sponsored conferences that involve cell and gene transfer. Contributions from FDA/CBER may include: (1) participation in formal workshops, (2) individual presentations, (3) use of existing videotaped FDA teleconferences on selected regulatory policy and process issues, and technology transfer. In turn, NIH/NINDS staff will participate in FDA/CBER-sponsored workshops and conferences on relevant tissue, stem cell and gene transfer biologic therapies for treating neurologic dysfunction. Collaborative discussions and planning between NIH/NINDS and FDA/CBER could serve to focus the form and content of information and ensure appropriate coverage by both agencies at key extramural conferences and meetings. [I/S]

[FR Doc. 05–18514 Filed 9–16–05; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–05–3000]

Memorandum of Understanding Between the Food and Drug Administration and the Veterans Health Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the Veterans Health Administration (VHA). The purpose of this MOU is to extend an existing formal collaboration between FDA and VHA for the purpose of developing and implementing terminology standards for medication information.

DATES: The agreement became effective June 28, 2005.

FOR FURTHER INFORMATION CONTACT: Randy Levin, Health and Regulatory Data Standards (HFD–001), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5411.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: September 8, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

225-05-3000

Memorandum of Understanding Between the Food and Drug Administration and the Veterans Health Administration

I. Background

The Veterans Health Administration (VHA) and the Food and Drug Administration (FDA) share a critical reliance on high quality, up-to-date medication information and information systems. Terminology is an essential infrastructure for information systems, and as a result medication terminology is "mission critical" for both agencies. For example, FDA has invested in the development and ongoing maintenance of the drug listing database, and is planning an electronic labeling system. VHA computer systems use medication terminology to safety-check and fill drug orders nationwide (57 million outpatient prescriptions yearly).

The missions of the FDA and VHA intersect in the area of medication knowledge. FDA collects, verifies, and distributes medication knowledge that benefits patients, providers, researchers, the private sector, and others worldwide. VHA uses FDA-generated medication knowledge for patient care, research, and education. In turn, VHA creates medication knowledge through well-established research and academic programs.

High quality medical terminology and other medication information contained in package inserts, is a shared and critical need for FDA and VHA. Fortunately, collaboration can increase terminology quality and reduce its costs. The agencies have begun to develop a history of informal and formal collaboration on terminology and drug information projects via collaboration on the FDA's electronic labeling project and VA's National Drug File Reference Terminology (NDFRT) project.

II. Purpose

The purpose of this Memorandum of Understanding (MOU) is to extend an existing formal collaboration between FDA and VHA for the purpose of developing and implementing terminology standards for medication information.

III. Applicability

VHA and FDA will share information concerning terminology in medication information and will collaborate on projects related to this area including the electronic labeling information processing system, HL7 structured product labeling specification, and VHA NDFRT project.

IV. Scope of Work and Responsibilities

Based on common needs and a history of cooperation, this MOU establishes a formal mechanism for the Food and Drug Administration and VHA to collaborate on mutually beneficial terminology and drug information projects. Its scope includes collaboration in all

areas of terminology and knowledge management, such as terminology development, evaluation, implementation, and maintenance. The agreement anticipates that a variety of resources could be shared within the limits of applicable laws and regulations to benefit agency stakeholders. Examples of resources that could be shared under this agreement include human, facility and financial assets, contracting vehicles, software, and data.

V. Amendment of Agreement

This agreement shall become effective on the date both parties have signed their approval below. Any amendments and modifications as may be necessary shall be developed jointly between representatives of each department. Such amendments and modifications shall become effective by the signature approval of the parties signatory to the agreement or by their respective official successors.

VI. Duration of Agreement

This agreement becomes effective upon the signature of both parties and will remain in effect until September 30, 2006, unless extended by mutual consent of both parties. Either party, upon 60 days notice in writing, may accomplish termination of this agreement.

VII. Disputes

Disputes concerning the interpretation of this agreement shall be resolved by majority vote of a three-person dispute resolution committee. The committee shall consist of one VA representative, one Food and Drug Administration representative and one neutral representative agreed upon by both VA and FDA.

VIII. Project Officers

For VHA:

Steven H. Brown M.D
Director, CPEP and
Enterprise Architecture Group, VA Office of Information
1310 24th Avenue South
Nashville, TN 37212
Tel: 615-321-6335

For FDA:

Randy Levin MD
Director for Health and Regulatory Data Standards
Food and Drug Administration
Health and Human Services
5600 Fishers Lane
Rockville, MD 20857
Tel: 301-594-5411

IX. Acceptance By Both Parties To The Agreement

FOR THE DEPARTMENT OF VETERANS AFFAIRS, VHA	FOR HEALTH AND HUMAN SERVICES, FOOD AND DRUG ADMINISTRATION
By (Signature) Robert M Kolodner	By (Signature) Jaret Woodcock MD
Name Robert M. Kolodner, M.D.	Name
Title Acting VHA Chief Health Informatics Officer	Title Acting Deputy Commissioner for Operations
Date 6/13/2005	Date 6/28/05

[FR Doc. 05–18513 Filed 9–16–05; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0340]

Draft Guidance for Industry on Acne Vulgaris: Developing Drugs for Treatment; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Acne Vulgaris: Developing Drugs for Treatment." This document has been developed to provide guidance on the development of drug products for the treatment of acne vulgaris other than nodulocystic acne.

DATES: Submit written or electronic comments on the draft guidance by December 19, 2005. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Frank Cross, Center for Drug Evaluation and Research (HFD–540), Food and Drug Administration, 9201 Corporate Blvd., Rockville, MD 20850, 301–827–2020.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Acne Vulgaris: Developing Drugs for Treatment." This document has been developed to provide guidance on the development of drug products for the treatment of acne vulgaris other than nodulocystic acne. The information presented may help applicants plan clinical studies, design clinical protocols, implement and appropriately monitor the conduct of clinical trials, collect relevant data for analysis, and perform appropriate types of analyses of study data.

The recommendations in the draft guidance are based on careful assessment of important issues raised in the review of clinical trials for acne vulgaris. These recommendations represent the agency's current thinking regarding design of clinical trials intended to support the approval of drug products for the treatment of acne vulgaris. Applicants are encouraged to discuss development plans with the agency review division before embarking on a study, to ensure that the

clinical trial design and analysis plan meet defined objectives.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in this guidance has been approved under OMB control number 0910–0001 (expires May 31, 2008).

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: September 8, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–18512 Filed 9–16–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002D–0018] (formerly 02D–0018)

Guidance for Industry on the Collection of Race and Ethnicity Data in Clinical Trials; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Collection of Race and Ethnicity Data in Clinical Trials." This guidance provides recommendations on a standardized approach for collecting and reporting race and ethnicity information in clinical trials conducted in the United States and abroad for certain FDA regulated products. This document provides guidance on meeting the requirements in the 1998 final rule on Investigational New Drug Applications and New Drug Applications (Demographic Rule) (63 FR 6854, February 11, 1998).

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Katherine Hollinger, Office of Women's Health, Office of Science and Health Communication (HF–8), 5600 Fishers Lane, Rockville, MD 20857, 301–827–0935, or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), 1401 Rockville Pike, Rockville, MD 20852, 301–827–6210, or

Investigational Device Exemption Staff (HFV–403), Center for Devices and Radiological Health, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Collection of Race and Ethnicity Data in Clinical Trials." A draft of this guidance was issued on January 30, 2003 (68 FR 4788). Based on comments received on the draft and the refinement of agency thinking on this topic, FDA has revised the draft guidance and is now issuing a guidance. This guidance is intended to assist sponsors in the collection of race and ethnicity information in clinical trials conducted in the United States and abroad for certain FDA regulated products using a standardized approach. The standardized approach was developed by the Office of Management and Budget (OMB). FDA believes that the use of the OMB approach will facilitate comparisons across clinical studies analyzed by FDA and data collected by other Federal agencies. Although FDA has long requested the racial and ethnic ancestral origins of subjects in certain clinical trials, the agency is now making recommendations on the methods and categories to use when collecting and reporting data. The Department of Health and Human Services (HHS) issued a 1999 report entitled "Improving the Collection and Use of Racial and Ethnic Data in HHS," in which HHS announced the adoption of OMB Directive 15 as part of its policy on collecting and reporting data on racial and ethnic ancestral origins.

FDA received several comments in response to the January 2003 draft guidance and has made some clarifying changes in the final version of the guidance. Specifically, we have:

1. Added reference to 21 CFR 314.50(d)(5)(v) to include studies for efficacy.

2. Clarified the traceability/mapping between more granular characterizations for racial and ethnic ancestral origins: "When more detailed characterizations are desired, the use of Race and Ethnicity vocabulary tables located within Health Level Seven's Reference Information Model Structural Vocabulary Tables is recommended. These tables provide the five and two OMB characterizations traceable to more detailed characterizations and concept

ID code sets and this will ensure that traceability is consistent."

3. Added text to address gaps in the characterization of race and ethnicity: "Where gaps exist in the representation of race or ethnicity categories, sponsors are encouraged to discuss the race or ethnicity issue with the appropriate review division."

4. Added text to allow omission of characterization of Hispanic or Latino ethnicity for international clinical trials: "the ethnicity question can be omitted for studies conducted abroad."

5. Changed the characterization of "Black, of African heritage," to "Black" for studies conducted abroad.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on collection of race and ethnicity data in clinical trials. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of any comments are to be submitted, 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. The guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the documentat *http://www.fda.gov/cder/guidance/index.htm*,*http://www.fda.gov/cber/guidelines.htm* or*http://www.fda.gov/ohrms/dockets/default.htm.*

Dated: September 8, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–18595 Filed 9–16–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Interferon-Alpha in Type 1 Diabetes.

Date: October 4, 2005.

Time: 1 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, 3256, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Mercy R. PrabhuDas, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2615, *mp457n@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Center For AIDS Research: D–CFAR, CFAR.

Date: October 6–7, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Barney Duane Price, PhD, Scientific Review Administrator, Scientific Review Program, DHHS/NIH/NIAID/DEA, Room 3265, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2592, *pricebd@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel STD Prevention Study.

Date: October 11, 2005.

Time: 12 p.m. to 2 p.m.

Agenda: To provide concept review of proposed grant applications.

Place: National Institutes of Health, Building 16, 16 Center Drive, Bethesda, MD 20892.

Contact Person: John A. Bogdan, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *jbogdan@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 12, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18600 Filed 9–16–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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: Allergy, Immunology, and Transplantation Research Committee Allergy, Immunology and Transplantation Research Committee

Date: October 17, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Quirijn Vos, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC, 7616, Bethesda, MD 20892–7616, (301) 451–2666, *qvos@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 12, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18601 Filed 9–16–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in 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: Biomedical Library and Informatics Review Committee.

Date: November 9–10, 2005.

Time: November 9, 2005, 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Second Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Time: November 10, 2005, 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Second Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Arthur A. Petrosian, PhD, Scientific Review Administrator, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–496–4253, *petrosia@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: September 12, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18599 Filed 9–16–05; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 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, Intercellular Interactions.

Date: September 29–30, 2005.

Time: 8:30 am. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Raya Mandler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, (301) 402–8228, *rayman@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, Mechanism of Nrf2 and Chemoprevention.

Date: October 10, 2005.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Morris I. Kelsey, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–1718, *kelseym@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Genetic Variation and Evolution Study Section.

Date: October 13–14, 2005.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892, (301) 435–1038, *remondid@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group, Development—1 Study Section.

Date: October 13–14, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7843, Bethesda, MD 20892, (301) 435–1021. *duperes@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, New Developments in Dental, Oral and Craniofacial Research.

Date: October 14, 2005.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Tamizchelvi Thyagarajan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016K, MSC 7814, Bethesda, MD 20892, (301) 451–1327. *tthyagar@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Biomarkers Study Section.

Date: October 16–18, 2005.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mary Bell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7804, Bethesda, MD 20892, (301) 451–8754. *bellmar@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurobiology of Motivated Behavior Study Section.

Date: October 17–18, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018. *debbasg@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Vascular Cell and Molecular Biology Study Section.

Date: October 17–18, 2005.

Time: 8 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Clarion Park Bethesda Hotel, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210. *chaudhaa@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Motor Function, Speech and Rehabilitation Study Section.

Date: October 17–18, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.

Contact Person: Biao Tian, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892. 301–402–4411. *tianb@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurotoxicology and Alcohol Study Section.

Date: October 17–18, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892. 301–435–2212. *josephru@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Somatosensory and Chemosensory Systems Study Section.

Date: October 17–18, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892. 301–435–1255. *kenshalod@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Pregnancy and Neonatology Study Section.

Date: October 17–18, 2005.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluation grant application.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892. (301) 435–1046. *knechtm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Bioengineering and Physiology.

Date: October 17–18, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Pushpa Tandon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7854, Bethesda, MD 20892. 301–435–2397. *tandonp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Retina Biology and Pathology.

Date: October 17, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Raya Mandler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, (301) 402–8228. *rayam@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Neurological, Aging and Musculoskeletal Epidemiology.

Date: October 17–18, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: May Ann Guadagno, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7770, Bethesda, MD 20892. (301) 451–8011. *guadagma@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Molecular Genetics A Study Section.

Date: October 17–18, 2005.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Michael M. Sveda, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892. 301–435–3565. *svedam@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Clinical Neuroscience and Disease Study Section.

Date: October 17–18, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892. (301) 435–1246. *etcheber@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Central Visual Processing Study Section.

Date: October 17–18, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael A. Steinmetz, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892. 301–435–1247. *steinmem@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Molecular and Cellular Endocrinology Study Section.

Date: October 17–18, 2005.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro, Bethesda, MD 20814.

Contact Person: Syed M. Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7892, Bethesda, MD 20892, (301) 435–1043. *amirs@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Tumor Microenvironment Study Section.

Date: October 17–18, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Eun Ah Cho, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–4467. *choe@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Social Psychology, Personality and Interpersonal Processes Study Section.

Date: October 17–18, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Anna L. Riley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, (301) 435–2889. *rileyann@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neurogenesis and Cell Fate Study Section.

Date: October 17–18, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Lawrence Baizer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7850, Bethesda, MD 20892, (301) 435–1257. *baizerl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Neuroscience and Disease.

Date: October 17–18, 2005.

Time: 11 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavillion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Seetha Bhagavan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3022D, MSC 7846, Bethesda, MD 20892, (301) 435–1121. *bhagavas@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Genomics, Computational Biology and Technology Study Section.

Date: October 17–18, 2005.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 480 King Street, Alexandria, VA 22314.

Contact Person: Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7890, Bethesda, MD 20892, (301) 435–1037. *dayc@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: September 12, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18598 Filed 9–16–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Request for Public Comment

Notice is hereby given that the Blue Ribbon Panel (BRP) on the Future of the National Institute of Dental and Craniofacial Research (NIDCR) Intramural Program (IRP) is soliciting input from interested parties.

This Panel was established by the Institute as a follow-up to a similar Panel established in 1992 in response to a recommendation from the then National Advisory Dental Research Council (NADRC) to provide advice to the Director, NIDCR. Subsequently, the External Advisory Committee (EAC) on the Intramural Research Program of the National Institutes of Health (NIH) recommended that individual reviews of each intramural program be conducted. In addition to addressing issues unique to each Institute, panels are asked to review the following trans-NIH issues:

- Innovation/impact of research
- Basic organization of the intramural program (laboratory and branch structure)
- Effectiveness of the Board of Scientific Counselors (BSC) review process
- Optimal balance between clinical and lab-based research
- Funding balance between intramural and extramural
- Quality of post-doctoral training (Career development)
- Recruitment issues (Under-represented individuals and missing areas of expertise)
- Interactions with the Office of the Director, other Institutes, central services (Office of Research Services, Clinical Center, Center for Information Technology)—special problems or opportunities

In response to the recommendation of the EAC, the NIDCR has selected a Panel composed of 10 members who are expert in a variety of relevant specialities within biomedical research. The Panel will report its findings and recommendations to the National Advisory Dental and Craniofacial Research Council for deliberation. To assure input from the public and other stakeholders, the Panel encourages written public testimony to be submitted no later than the close of business on December 30, 2005. Written input, limited to no more than 5 double-spaced pages using 12 point font and no less than 1½ inch margins, should be restricted to the questions before the Panel and should be addressed to Dr. Norman S. Braveman, Assistant to the Director, NIDCR, Building 31, Room 5B55, 31 Center Drive, Bethesda, Maryland 20892. While e-mail submissions are acceptable, they must also be accompanied by signed hard-copy submissions which must arrive no later than close of business on December 30, 2005.

Background

The NIDCR IRP, now in its 57th year, is recognized as one of the premier dental research institutions in the world. Research conducted in the IRP is unique insofar as it provides scientists the opportunity to work on high-risk innovative projects in a world class multi-disciplinary environment. At the same time, research conducted within the IRP is not intended to mirror research supported by the Institute in the extramural community. Basic and clinical research carried out in the IRP forms the basis for new directions in oral, dental and craniofacial sciences. Specific information about the organization of, and research conducted by, the IRP can be found at *http://www.nidcr.nih.gov/Research/Intramural/default.htm.* It conducts research in a wide range of basic and clinical science and is currently organized around seven units including: Craniofacial and skeletal diseases branch; craniofacial developmental biology and regeneration branch; gene therapy and therapeutics branch; laboratory of oral sensory biology; oral and pharyngeal cancer branch; oral infection and immunity branch; pain and neurosensory mechanisms branch. Using the latest techniques in biomedical science researchers currently investigate the molecular mechanisms of taste; the biochemistry, structure, function and development of bone, teeth, salivary glands and connective tissues; interactions between pathogens and oral tissues that cause infectious and inflammatory diseases; genetic disorders and tumors of the oral cavity; the cause and treatment of acute and chronic pain; and the development of new and improved methods to diagnose and treat oral disease.

Rationale for Establishing a Blue Ribbon Panel

While the science conducted within each laboratory of the NIDCR IRP is assessed on a four-year cycle by the Board of Scientific Counselors (BSC) it has been approximately 12 years since the overall structure and function of the entire IRP has been examined. BSC reviews are focused mainly on the quality of science conducted during the previous four-year period by a given laboratory or branch and, as such, insure that the Institute is supporting only the most meritorious research. These reviews, however, do not address the overall direction of the IRP, since they are focused on individual laboratories or branches.

While the Institute has been able to capitalize on the advice provided as the result of the previous BRP, during the past several years the face of science has changed more rapidly than in any other era. Advances in bioinformatics, genomics, molecular and developmental biology have provided us with tools to ask new and important questions that will inevitably lead to advances in prevention, diagnosis and treatment of

oral, dental and craniofacial diseases. In this context it is important for the Institute to insure that the future configuration of the IRP will maximize progress toward the goals that have been set for the IRP in the new era of biomedical research.

Charge to the Panel

Since the Panel is charged with assessing the future opportunities and challenges for the IRP within broad goals that have already been set, the focus of the BRP will be to provide recommendations for an efficient and effective alignment of the IRP with directions and opportunities and resources available within the broader framework of NIH intramural research programs and the interest of the Institute complementing, rather than duplicating research already supported through the extramural research program of the Institute. To accomplish this, the BRP will address challenges to the IRP in the context of its mission, its relationship with the overall mission of the Institute, its position within the larger NIH intramural environment, and its relationship to the extramural program supported by the NIDCR. The Panel will be asked to provide advice about how to best position the IRP, using both current and to-be-developed resources, in a way that will maximize its contributions to current, emerging and future research questions about prevention, diagnosis and treatment of dental, oral and craniofacial diseases.

Questions to the Panel

The specific questions to be addressed by the Panel and written public comment are drawn from the list of topics suggested by the EAC:

- Innovation/impact of research on the broader field including the extent to which research conducted in NIDCR IRP laboratories influences research conducted throughout the world
- Basic organization of the intramural program (laboratory and branch structure) including the optimal use of resources and opportunities unique to NIH-based scientists as well as the extent to which the organization facilitates partnerships and collaborations within the IRP and with other research entities (*e.g.*, those supported by NIDCR extramural research grants, other NIH IRP scientists, industry) conducting research
- Effectiveness of the BSC review process in identifying world-class innovative research and in providing guidance for future research directions
- Optimal balance and connection between clinical and lab-based research
- Balance between intramural and extramural research programs including funding levels and scientific topics covered by each
- Quality of post-doctoral training (career development) including preparation for independent research funded by government and non-government sources
- Recruitment issues (under-represented individuals and missing areas of expertise) including specific areas to redress gaps
- Interactions with the Office of the Director, other Institutes, central services (Office of Research Services, Clinical Center, Center for Information Technology) including special problems or opportunities that may affect the mission and directions of the IRP

Members of the public interested in providing their views to the Panel are asked to restrict their comments to the specific areas outlined above.

Further Information

For further information, please contact: Dr. Norman S. Braveman, Assistant to the Director, NIDCR, Building 31, Room 5B55, 31 Center Drive, Bethesda, Maryland 20892; telephone (301) 594–2089; fax (301) 480–0964.

Dated: September 12, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18602 Filed 9–16–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Potential Privatization of the Journal "Environmental Health Perspectives;" Request for Comment

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH), Department of Health and Human Services (DHHS).

ACTION: Request for Comment.

SUMMARY: For several decades, NIEHS has published Environmental Health Perspectives (EHP), a leading biomedical publication in the field of environmental health science, to provide a forum for research in environmental health science. EHP has well fulfilled this purpose, but NIEHS is now considering new channels to inform scientists, clinicians, patients, families, and the general public about environmental health research findings. NIEHS is exploring web-based and other methods to disseminate such information and anticipates development of a new system to communicate important recent findings in a timely and efficient manner.

NIEHS conducts ongoing review of all its research, training, and communications programs and has recently determined that it is now appropriate to consider phasing out Institute sponsorship of this journal. NIEHS has not reached a final decision about potential privatization of EHP nor has an implementation plan for carrying out such a decision been developed. Should such a decision be reached, it is our goal to implement it in a manner that will be least disruptive to the field and to authors, reviewers, editorial board, staff, and subscribers. The current request for comment poses a series of questions around core elements that may comprise an implementation plan for privatization of EHP. These elements include: (1) Feasibility of privatizing EHP, (2) a business plan for continuation of the journal, (3) a timeline and plan for transfer of responsibility, (4) an editorial policy plan, and (5) continued online access.

DATES: Comments must be received by October 28, 2005.

ADDRESSES: Comments should be submitted at *http://www.niehs.nih.gov/external/ehp/home.htm.*

FOR FURTHER INFORMATION CONTACT: *EHPfeedback@niehs.nih.gov.*

SUPPLEMENTARY INFORMATION:

Background Information on EHP

EHP's mission is to disseminate credible environmental and occupational health information around the world. An overarching goal is to raise global awareness of the connectivity between the environment and human health. EHP is read in nearly every country of the world. EHP has an impact factor of 3.93 and an Immediacy Index of 1.20, ranking the journal second of 132 environmental sciences journals and fifth of 90 public, environmental, and occupational health journals. As a full open-access journal, EHP provides XML-formatted content to the digital archive Pubmed Central. EHP also has partnerships with Medscape and JSTOR.org (an organization that maintains an archive of scholarly journal) to facilitate access and distribution of EHP's content.

Electronic submission and review are the norm for the 1,200 manuscripts that EHP receives annually, and the rejection rate is about 80%. EHP publishes all articles within 24 hours of acceptance on its Web site (*http://*

ehp.niehs.nih.gov/) as EHP-in-Press articles. These articles are completely citable using CrossRef's Digital Object Identifier system. The Web site is visited by approximately 150,000 unique visitors every month. The time-to-print after publication on the website is about 3 months. The EHP Web site (*http://ehp.niehs.nih.gov/*) contains all current issues, all archival issues, foreign language articles, and the Student Edition plus teacher lesson plans and has a search-by-topic feature.

The journal publishes monthly issues with sections devoted to environmental news, environmental medicine, and children's environmental health. On a periodic basis, an issue may contain a mini-monograph (a group of up to six papers that address a single topic). EHP also publishes one or two special topical issues each year. In total, this full-color journal publishes approximately 3,000 pages annually.

The journal's Environews section provides balanced and objective analyses of topical issues. These articles take the form of long, investigative features (Focus articles) or brief reports (Forum articles). Other articles provide balanced analyses of legal, regulatory, public policy, and social aspects of environmental health (Spheres of Influence) and new discoveries or approaches in environmental health research, remediation, monitoring, and public health policy (Innovations). Science Selection articles summarize selected research articles appearing in the same issue, putting current EHP research findings into perspective. Other services include book reviews of important current publications, a calendar of events, position announcements, and updates on the latest news from the NIEHS grants division. EHP also publishes a highly successful monthly Student Edition and sponsors development of teacher lesson plans based on environmental news articles published within the Student Edition. These materials are available in print (currently, approximately 5,000 copies distributed) and on the EHP Web site (*http://ehp.niehs.nih.gov/*).

EHP's global health initiatives are ongoing on four continents (Africa, Asia, North America, and South America). These programs include providing complimentary print subscriptions to readers in developing countries, publishing a quarterly Chinese-language edition (35,000 distribution), and translating the "In This Issue" section of EHP (which encapsulates each issue's news and research content) into five languages: Chinese, French, Japanese, Russian, and Spanish. EHP cooperates with non-English language journals for translation and publication of EHP news content in EHP sections within their journals. The journal works with the University of Iowa to provide EHP journal content to their eGranary Digital Library WiderNet Project. EHP and the Journal of Environmental and Occupational Medicine have an agreement to co-publish selected research articles both in English and Chinese. EHP also hosts the website for the francophone journal, Mali Medical.

Request for Comment

The NIEHS invites public input on the issue of potential privatization of EHP. Please note that the NIEHS has not reached a final decision about potential privatization of EHP. If the Institute decides to move forward with privatization, then an implementation plan would need to be developed. This implementation plan will need to address several core topics listed below. The NIEHS seeks public input on the questions identified for each topic to facilitate reaching a decision on potential privatization and, if appropriate, development of an implementation plan. The NIEHS is interested in maintaining and enhancing the capacity of EHP to be a significant resource for researchers, clinicians, patients, family members, and the general public. We similarly seek to maintain and enhance EHP's reputation, credibility, accessibility, and value to the scientific and lay communities interested in environmental health and disease.

1. Feasibility of privatizing EHP.

Q1a. Are there likely to be private sector commercial or noncommercial entities interested in publishing EHP?

Q1b. Are there any difficulties that would be created by transferring publication of EHP from a government agency to the private sector? If so, please elaborate.

2. A business plan for continuation of the journal.

Q2. What issues should NIEHS consider in developing an implementation plan for privatizing EHP?

3. A timeline and plan for transfer of responsibility.

Q3. Are there ways to ensure an efficient transfer of functions such as editorial oversight, subscriber lists, archives, and digital content?

4. An editorial policy plan.

Q4. How should the scope of EHP's coverage, from news to peer-reviewed research, be considered in executing a potential privatization?

5. Online access.

Q5. How should EHP's current open access policy and commitments to provide content to public archives be addressed in a potential privatization?

6. Other considerations.

Q6. Overall, how would a privatization of EHP be an advantage or disadvantage to the NIEHS and to environmental health science?

Q7. What other suggestions do you have for facilitating communication activities at NIEHS?

Dated: September 8, 2005.

Samuel Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 05–18596 Filed 9–16–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Office for Women's Services; Notice of a Meeting

Pursuant to Public Law 92–463, notice is hereby given of a SAMHSA Advisory Committee for Women's Services meeting to be held in September 2005.

The meeting will be open and include discussions around the activities of SAMHSA's Matrix and women involving women and trauma/violence, and developing short reports as they relate to mental health and substance abuse. Also, there will be updates on SAMHSA's reauthorization and legislation to reauthorize the Violence Against Women Act, as well as, a discussion on SAMHSA's National Registry of Evidenced-based Programs and Practices.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information and a roster of Committee members may be obtained by accessing the SAMHSA Advisory Councils' Web site (*http://www.samhsa.gov*) as soon as possible after the meeting or by communicating with the contact whose name and telephone number are listed below. The transcript for the session will also be available on the SAMHSA Advisory Councils' website as soon as possible after the meeting.

Committee Name: Substance Abuse and Mental Health Services Administration Advisory Committee for Women's Services.

Meeting Dates: Monday, September 26, 2005 9 a.m.–5 p.m. Tuesday, September 27, 2005 9 a.m.–12 Noon.

Place: 1 Choke Cherry Road, Sugarloaf Conference Room, Rockville, MD 20857.

Contact: Carol Watkins, Executive Secretary, 1 Choke Cherry Road, Room 8–1002, Rockville, MD 20857, Telephone: (240) 276–2254, Fax: (240) 276–2252, E-mail: *carol.watkin2@samhsa.hhs.gov.*

Dated: September 12, 2005.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 05–18531 Filed 9–16–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, 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 a proposed continuing information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the adequacy of two forms FEMA uses to gather certain information about the floodplain management activities of communities that participate in the National Flood Insurance Program (NFIP). The Community Contact Report form and the Community Visit Report form are used to gather information about a community's floodplain management regulations, administrative and enforcement procedures, Flood Insurance Studies, and basic information pertaining to names, addresses, and phone numbers of individuals responsible for a community's floodplain management program.

SUPPLEMENTARY INFORMATION: The information gathered on the subject forms pertain to a community's participation in the NFIP. The NFIP was established by the National Flood Insurance Act of 1968. Section 1315 of the Act requires the adoption of permanent land use and control measures which are consistent with the comprehensive criteria of land management and use under Section 1361. 44 CFR part 59.24 establishes requirements for continued eligibility to participate in the NFIP based upon implementing an adequate community based floodplain management program. The information gathered with the subject forms is used to evaluate the adequacy of a community's floodplain management program as it relates to continued participation in the NFIP.

Collection of Information:

Title: Effectiveness of a Community's Implementation of the NFIP Community Assistance Program CAC and CAV Reports.

Type of Information Collection: Extension of Currently Approved Collection.

OMB Number: 1660–0023.

Form Numbers: Form 81–68 (Community Visit Report); Form 81–69 (Community Contact Report).

Abstract: The information obtained is to provide basic information about a community's floodplain management program and contact information such as names, addresses, and phone numbers pertaining to a NFIP participating community. FEMA Regional Office staff and staff of an NFIP State Coordinating Agency, acting on behalf of FEMA, use the forms to record information gathered about a community following contact and discussion with community officials.

Affected Public: State, Local, Tribal and Federal Governments.

Estimated Total Annual Burden Hours: 4,000 hours.

FEMA forms	No. of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A x B x C)
FF 81–68	1,000	1	2	2,000
FF 81–69	2,000	1	1	2,000
Total	3,000	1		4,000

Estimated Cost: $95, 434 all respondents combined with average cost per respondent of $47.66 per response.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Chief, Records Management Section, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact William Lesser, Lead Program Specialist at 202–646–2807 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: September 9, 2005.

Darcy Bingham,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–18557 Filed 9–16–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1605–DR]

Alabama; Amendment No. 2 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 Alabama (FEMA–1605–DR), dated August 29, 2005, and related determinations.

EFFECTIVE DATE: September 8, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 29, 2005:

Greene and Pickens Counties for Individual Assistance.

Hale and Tuscaloosa Counties for Individual Assistance and Public Assistance.

Jefferson and Marengo Counties for Public Assistance.

Choctaw, Clarke, and Sumter Counties for Individual Assistance and Public Assistance [Categories C–G] (already designated for debris removal and emergency protective measures [Categories A and B] under the Public Assistance program, including direct Federal assistance.)

Baldwin, Mobile, and Washington Counties for Public Assistance [Categories C–G] (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B] under the Public Assistance program, including direct Federal assistance.)

(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. 05–18553 Filed 9–16–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1605–DR]

Alabama; Amendment No. 3 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 Alabama (FEMA–1605–DR), dated August 29, 2005, and related determinations.

EFFECTIVE DATE: September 10, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 29, 2005:

Bibb, Colbert, Cullman, Lamar, Lauderdale, Marion, Monroe, Perry, Wilcox, and Winston Counties for Public Assistance.

Greene and Pickens Counties for Public Assistance (already designated for Individual Assistance.)

(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. 05–18554 Filed 9–16–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1602–DR]

Florida; Amendment No. 4 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 for the State of Florida (FEMA–1602–DR), dated August 28, 2005, and related determinations.

EFFECTIVE DATE: September 6, 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 the incident period for this disaster is closed effective September 6, 2005.

(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. 05–18552 Filed 9–16–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1604–DR]

Mississippi; Amendment No. 3 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 Mississippi (FEMA–1604–DR), dated August 29, 2005, and related determinations.

EFFECTIVE DATE: September 11, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include Categories C through G under the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 29, 2005:

Adams, Amite, Claiborne, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Lowndes, Madison, Marion, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Perry, Pike, Rankin, Scott, Simpson, Smith, Stone, Walthall, Wayne, Wilkinson, and Winston Counties for Public Assistance [Categories C–G] (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B] under the Public Assistance program, including direct Federal assistance.)

(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. 05–18551 Filed 9–16–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Fee Schedule for Processing Requests for Map Changes, for Flood Insurance Study Backup Data, and for National Flood Insurance Program Map and Insurance Products

AGENCY: Federal Emergency Management Agency (FEMA) Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice contains the revised fee schedules for processing certain types of requests for changes to National Flood Insurance Program (NFIP) maps, for processing requests for Flood Insurance Study (FIS) technical and administrative support data, and for processing requests for particular NFIP map and insurance products. The changes in the fee schedules will allow FEMA to further reduce the expenses to the NFIP by recovering more fully the costs associated with processing conditional and final map change requests; retrieving, reproducing, and distributing technical and administrative support data related to FIS analyses and mapping; and producing, retrieving, and distributing particular NFIP map and insurance products.

DATES: The revised fee schedules are effective for all requests dated October 30, 2005, or later.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street SW., Washington, DC 20472; by telephone at (202) 646–2903 or by facsimile at (202) 646–4596 (not toll-free); or by e-mail at *doug.bellomo@dhs.gov.*

SUPPLEMENTARY INFORMATION: This notice contains the revised fee schedules for processing certain types of requests for changes to NFIP maps, requests for FIS technical and administrative support data, and requests for particular NFIP map and insurance products.

Effective Dates. The revised fee schedule for map changes is effective for all requests dated October 30, 2005, or later. The revised fee schedule supersedes the current fee schedule, which was established on September 1, 2002.

The revised fee schedule for requests for FIS backup data also is effective for all requests dated October 30, 2005, or later. The revised fee schedule supersedes the current fee schedule, which was established on September 1, 2002.

The revised fee schedule for requests for particular NFIP map and insurance products, which are available through the FEMA Map Service Center (MSC) is effective for all written requests, on-line Internet requests made through the FEMA Flood Map Store, and all telephone requests received on or after October 30, 2005. The revised fee schedule supersedes the current fee schedule, which was established on August 1, 2003.

Evaluations Performed. To develop the revised fee schedule for conditional and final map change requests, FEMA evaluated the actual costs of reviewing and processing requests for Conditional Letters of Map Amendment (CLOMAs), Conditional Letters of Map Revision Based on Fill (CLOMR–Fs), Conditional Letters of Map Revision (CLOMRs), Letters of Map Revision Based on Fill (LOMR–Fs), Letters of Map Revision (LOMRs), and Physical Map Revisions (PMRs).

To develop the revised fee schedule requests for FIS technical and administrative support data, FEMA evaluated the actual costs of reviewing, reproducing, and distributing archived data in seven categories. These categories are discussed in more detail below.

To develop the revised fee schedule for requests for particular NFIP map and insurance products, FEMA: (1) Evaluated the actual costs incurred at the MSC for producing, retrieving, and distributing those products; (2) analyzed historical sales, cost data, and product unit cost for unusual trends or anomalies; and (3) analyzed the effect of program changes, new products, technology investments, and other factors on future sales and product costs. The products covered by this notice are discussed in detail below.

Periodic Evaluations of Fees. A primary component of the fees is the prevailing private-sector rates charged to FEMA for labor and materials. Because these rates and the actual review and processing costs may vary

from year to year, FEMA will evaluate the fees periodically and publish revised fee schedules, when needed, as notices in the **Federal Register**.

Fee Schedule for Requests for Conditional Letters of Map Amendment and Conditional and Final Letters of Map Revision Based on Fill

Based on a review of actual cost data for Fiscal Year 2004 and portion of Fiscal Year 2005, FEMA established the following review and processing fees, which are to be submitted with all requests:

Request for single-lot/single-structure CLOMA and CLOMR–F: $500.

Request for single-lot/single-structure LOMR–F: $425.

Request for single-lot/single-structure LOMR–F based on as-built information CLOMR–F previously issued by FEMA): $325.

Request for multiple-lot/multiple-structure CLOMA: $700.

Request for multiple-lot/multiple-structure CLOMR–F and LOMR–F: $800.

Request for multiple-lot/multiple-structure LOMR–F based on as-built information (CLOMR–F previously issued by FEMA): $700.

Fee Schedule for Requests for Conditional Map Revisions

Based on a review of actual cost data for Fiscal Year 2004 and portion of Fiscal Year 2005, FEMA established the following review and processing fees, which are to be submitted with all (CLOMR) requests that are not otherwise exempted under 44 CFR 72.5:

Request based on new hydrology, bridge, culvert, channel, or combination thereof: $4,400.

Request based on levee, berm, or other structural measure: $5,000.

Fee Schedule for Requests for Map Revisions

Based on a review of actual cost data for Fiscal Year 2004 and portion of Fiscal Year 2005, FEMA established the following review and processing fees, which are to be submitted with all requests that are not otherwise exempted under 44 CFR 72.5, requesters must submit the review and processing fees shown below with requests for LOMRs and PMRs dated October 30, 2005, or later that are not based on structural measures on alluvial fans.

Request based on bridge, culvert, channel, hydrology, or combination thereof: $4,400.

Request based on levee, berm, or other structural measure: $6,000.

Request based on as-built information submitted as followup to CLOMR: $4,000.

Fees for Conditional and Final Map Revisions Based on Structural Measures on Alluvial Fans

Based on a review of actual cost data for Fiscal Year 2004 and portion of Fiscal Year 2005, FEMA has revised the initial review and processing fee for requests for PMRs, LOMRs and CLOMRs based on structural measures on alluvial fans, from $5,000 to $5,600. FEMA also will continue to recover the remainder of the review and processing costs by invoicing the requester before issuing a determination letter, consistent with current practice. The prevailing private-sector labor rate charged to FEMA ($50 per hour) has been revised to $60 per hour and will continue to be used to calculate the total reimbursable fees.

Fee Schedule for Requests for Flood Insurance Study Backup Data

Non-exempt requesters of FIS technical and administrative support data must submit fees shown below with requests dated October 30, 2005, or later. These fees are based on the complete recovery costs to FEMA for retrieving, reproducing, and distributing the data, as well as maintaining the library archives, and for collecting and depositing fees. Based on a review of actual cost data for Fiscal Year 2004 and portion of Fiscal Year 2005, FEMA has revised the initial non-refundable fee for Categories 1, 2, and 3 from $120 to $135 and Category 6 to include digital Letter of Map Revision (LOMR) attachment files.

All entities except the following will be charged for requests for FIS technical and administrative support data:

- Private architectural-engineering firms under contract to FEMA to perform or evaluate studies and restudies;
- Federal agencies involved in performing studies and restudies for FEMA (*i.e.*, U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resources Conservation Service, and Tennessee Valley Authority);
- Communities that have supplied the Digital Line Graph base to FEMA and request the Digital Line Graph data (Category 6 below);
- Communities that request data during the statutory 90-day appeal period for an initial or revised FIS for that community;
- Mapped participating communities that request data at any time other than during the statutory 90-day appeal period, provided the data are requested for use by the community and not a third-party user; and
- State NFIP Coordinators, provided the data requested are for use by the State NFIP Coordinators and not a third-party user.

FEMA has established seven categories into which requests for FIS backup data are separated. These categories are:

(1) Category 1—Paper copies, microfiche, or diskettes of hydrologic and hydraulic backup data for current or historical FISs;

(2) Category 2—Paper or mylar copies of topographic mapping developed during FIS process;

(3) Category 3—Paper copies or microfiche of survey notes developed during FIS process;

(4) Category 4—Paper copies of individual Letters of Map Change (LOMCs);

(5) Category 5—Paper copies of Preliminary Flood Insurance Rate Map or Flood Boundary and Floodway Map panels;

(6) Category 6—Computer tapes or CD–ROMs of Digital Line Graph files, Digital Flood Insurance Rate Map files, or Digital LOMR attachment files; and

(7) Category 7—Computer diskettes and user's manuals for FEMA computer programs.

FEMA established the initial non-refundable fee for non-exempt requesters of FIS technical and administrative support data pay a non-refundable fee of $135 to initiate their request under Categories 1, 2, and 3 above. This fee covers the preliminary costs of research and retrieval. If the data requested are available and the request is not cancelled, the final fee due is calculated as a sum of standard per-product charge plus a per-case surcharge of $93, designed to recover the cost of library maintenance and archiving. The total costs of processing requests in Categories 1, 2, and 3 will vary based on the complexity of the research involved in retrieving the data and the volume and medium of data to be reproduced and distributed. The initial fee will be applied against the total costs to process the request, and FEMA will invoice the requester for the balance plus the per-case surcharge before the data are provided. No data will be provided to a requester until all required fees have been paid.

No initial fee is required to initiate a request for data under Categories 4 through 7. Requesters will be notified by telephone about the availability of the data and the fees associated with requested data.

As with requests for data under Categories 1, 2, and 3, no data will be

provided to requesters until all required fees are paid. A flat user fee for each of these categories of requests, shown below, will continue to be required.

Request Under Category 4 (First Letter): $40.

Request Under Category 4 (Each additional letter): $10.

Request Under Category 5 (First panel): $35.

Request Under Category 5 (Each additional panel): $2.

Request Under Category 6 (per county/digital LOMR attachment shapefiles): $150.

Request Under Category 7 (per copy): $25.

Fee Schedule for Requests for Map and Insurance Products

The MSC distributes a variety of NFIP map and insurance products to a broad range of customers, including Federal, State, and local government officials; real estate professionals; insurance providers; appraisers; builders; land developers; design engineers; surveyors; lenders; homeowners; and other private citizens. The MSC distributes the following products:

- Paper (printed) copies of Conversion Letters;
- Paper (printed) copies of Flood Hazard Boundary Maps (FHBMs);
- Paper (printed) copies of Flood Insurance Rate Maps (FIRMs);
- Paper (printed) copies of Digital Flood Insurance Rate Maps (DFIRMs);
- Printed copies of Flood Insurance Studies (FISs), including the narrative report, tables, Flood Profiles, and other graphics;
- Paper (printed) copies of Flood Boundary and Floodway Maps (FBFMs), when they are included as an exhibit in the FIS;
- Digital Q3 Flood Data files, which FEMA developed by scanning the published FIRM and vectorizing a thematic overlay of flood risks;
- Digital Q3 Flood Data files for Coastal Barrier Resource Areas (CBRA Q3 Flood Data files);
- Community Status Book, which is a report generated by FEMA's Community Information System database that provides pertinent map status information for all identified communities;
- Flood Map Status Information Service (FMSIS), through which FEMA provides status information for effective NFIP maps;
- Letter of Map Change (LOMC) Subscription Service, through which FEMA makes certain types of LOMCs available biweekly on CD–ROM;
- Paper (printed) and CD copies of NFIP Insurance Manual (Full Manual), which provides vital NFIP information for insurance agents nationwide;
- Paper (printed) copies of NFIP Insurance Manual (Producer's Edition), which is used for reference and training purposes;
- Community Map Action List (CMAL), which is a semimonthly list of communities and their NFIP status codes;
- Digital copies of Conversion Letters, downloadable from the Web;
- Digital copies of Flood maps, available on CD–ROM and downloadable from the Web; which can be purchased by panel or in community, county or state kits;
- Digital copies of FISs and FBFMs (where applicable), including the narrative report, tables, Flood Profiles, and other graphics, on CD–ROM and downloadable from the Web;
- DFIRM Database (DB), with and without orthographic photos, on CD–ROM and downloadable from the Web;
- FIRMette, a user-defined "cut-out" section of a flood map at 100% map scale designed for printing on a standard office printer;
- F–MIT Basic Version 1.0, which is a view tool map images, on CD–ROM and downloadable from the Web;
- DFIRM CD Viewer (formerly F–MIT Pro), which is a view tool map images, on CD–ROM;
- FEMA's Guidelines and Specifications for Flood Hazard Mapping Partners on CD–ROM; and
- MHIP—Multi-Hazard Implementation Plan on CD–ROM.

For more information on the map and insurance products available from the MSC, interested parties are invited to visit the MSC Web site at *http://store.msc.fema.gov*.

Based on a review of actual cost data and future trends, FEMA has revised the fee schedule for the map and insurance products that are available from the MSC. For requests for paper copies of conversion letters, FHBMs, FIRMs, DFIRMs, FBFMs, and FISs, FEMA has increased both the processing fee and the shipping cost; for digital copies of FHBMs, FIRMs, DFIRMs, FBFMs, and FISs on CD–ROM, FEMA has increased the processing fee and decreased the shipping cost; for digital copies of conversion letters, FHBMs, FIRMs, DFIRMs, FBFMs, and FISs downloadable from the web, FEMA has increased the processing fee; for DFIRM DBs(with and without orthographic photos), Q3 Flood Data Files, CBRA Flood Data Files, FMSIS, LOMC Subscription Service, FEMA's Guidelines and Specifications for Flood Hazard Mapping Partners, MHIP, DFIRM CD Viewer, Community Status Book, FEMA has changed the shipping cost on the first four CDs but increased the cost of the additional CDs. Federal, State, and local governments continue to be exempt from paying fees for the map products. The revised fee schedule for the current and new products are shown in the table below.

Product	Current fee	Shipping
Paper:		
Letters	$3.00 per letter	$.037 per panel for first 10 plus $0.04 letter for each additional panel.
Maps	$3.00 per panel	$.037 per panel for first 10 plus $0.04 for each additional panel.
Floodways (as part of studies)	$3.00 per panel	$.037 per panel for first 10 plus $0.04 for each additional panel.
Studies	$6.00 per study	$4.50 per study plus $.45 for each additional study.
Hurry Charge (added to regular charge)	$33.00	N/A.
Internet Products:		
FIRMettes	Free	N/A.
Letters	$2.50 per letter	N/A.
Downloadable Maps	$2.50 per panel	N/A.
Downloadable Floodways	$2.50 per panel	N/A.
Downloadable Studies	$5.00 per study	N/A.
DFIRM Database (DB)	$10.00 per DB	N/A.
CD ROM:		

Product	Current fee	Shipping
CD Maps	$3.00 per panel	$1.50 for first 4 CDs and $0.25 for each additional CD.
CD Floodways	$3.00 per panel	$1.50 for first 4 CDs and $0.25 for each additional CD.
CD Studies	$6.00 per study	$1.50 for first 4 CDs and $0.25 for each additional CD.
DFIRM DB	$10.00 per database	$1.50 for first 4 CDs and $0.25 for each additional CD.
DFIRM w/Orthos	$10.00 per database	$1.50 for first 4 CDs and $0.25 for each additional CD.
Q3 on CD	$50.00 per CD–ROM	$1.50 for first 4 CDs and $0.25 for each additional CD.
CBRA Q3 on CD	$50.00 per CD–ROM or $200 for all 5 Q3 CDs.	$1.50 for first 4 CDs and $0.25 for each additional CD.
FMSIS (Individual Orders)	$13.00 per State or $38.00 for entire USA	$1.50 for first 4 CDs and $0.25 for each additional CD.
FMSIS (Annual Subscription)	$148.00 per state or $419.00 for entire USA	N/A.
LOMC Subscription Service (Individual Orders).	$85.00 per issue	$1.50 for first 4 CDs and $0.25 for each additional CD.
LOMC Subscription Service (Annual Subscriptions).	$2,000 per year	N/A.
FEMA's Guidelines and Specifications for Flood Hazard Mapping Partners on CD.	$2.60	$1.50 for first 4 CDs and $0.25 for each additional CD.
MHIP—Multi-Hazard Implementation Plan	$2.60	$1.50 for first 4 CDs and $0.25 for each additional CD.
View Tool:		
F–MIT Light on Web	Free	N/A.
F–MIT Light on CD	Free	N/A.
DFIRM CD Viewer (formerly F–MIT Pro)	$30.00 per Viewer	$1.50 for first 4 CDs and $0.25 for each additional CD.
Manuals:		
NFIP Insurance Manual (Full Manual)	$25.00 per subscription for two years	N/A.
NFIP Insurance Manual (Producer's Edition)	$15.00 per subscription for two years	N/A.
NFIP Insurance Manual (Full Manual) on CD	$25.00 per subscription for two years	N/A.
Other:		
Community Status Book (CSB)—Individual Orders.	$2.50 per State or $20.50 for entire USA	$1.10 per State or $5.00 for the entire USA.
Community Status Book (CSB)—Annual Subscription.	$50.00 per State or $250.00 for entire USA	$1.10 per State or $5.00 for the entire USA.
Community Map Action List (CMAL)	Free	N/A.

Payment Submission Requirements

Fee payments for non-exempt requests must be made in advance of services being rendered. These payments shall be made in the form of a check, money order, or by credit card payment. Checks and money orders must be made payable, in U.S. funds, to the National Flood Insurance Program.

FEMA will deposit all fees collected to the National Flood Insurance Fund, which is the source of funding for providing these services.

Dated: September 7, 2005.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 05–18555 Filed 9–16–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

DATES: Written data, comments or requests must be received by October 19, 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: Harvard University, Museum of Comparative Zoology, Cambridge, Massachusetts, PRT–090287.

The applicant requests a permit to export and re-import museum specimens of endangered and

threatened species previously accessioned into the applicant=s collection for scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Timothy L. Nolan, Marion, WI, PRT–107719.

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: Robert B. Fay, Jr., Allison Park, PA, PRT–107181

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Clarence M. Bielat, Hillsdale, MI, PRT–107189.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Michael L. Gill, Bakersfield, CA, PRT–109700.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Viscount Melville Sound polar bear population in Canada for personal, noncommercial use.

Applicant: William M. Lauer, Alden, NY, PRT–106839.

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: September 2, 2005.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–18589 Filed 9–16–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Scientific Earthquake Studies Advisory Committee

AGENCY: Geological Survey.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Act 106–503, the Scientific Earthquake Studies Advisory Committee (SESAC) will hold its eleventh meeting. The meeting location is the Courtyard Seattle Downtown /Lake Union, 925 Westlake Avenue North, Seattle, Washington 98109. The Committee is comprised of members from academia, industry, and State government. The Committee shall advise the Director of the U.S. Geological Survey (USGS) on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program.

The Committee will review the overall direction of the U.S. Geological Survey's Earthquake Hazards Program in the current and next fiscal years with particular focus on the Program's activities in the Pacific Northwest.

Meetings of the Scientific Earthquake Studies Advisory Committee are open to the public.

DATES: September 27, 2005, commencing at 9 a.m. and adjourning at 12 p.m. on September 29, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. David Applegate, U.S. Geological Survey, MS 905, 12201 Sunrise Valley Drive, Reston, Virginia 29192, (703) 648 6714.

Dated: September 12, 2005.

Linda Gundersen,

Acting Associate Director for Geology.

[FR Doc. 05–18517 Filed 9–16–05; 8:45am]

BILLING CODE 4310 Y7 M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–050–1232–MF–WY05]

Notice of Closure of Public Lands to Motorized Vehicle Use

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure of certain public lands located in Fremont County, Wyoming, to all types of motor vehicle use.

SUMMARY: Pursuant to 43 Code of Federal Regulations (CFR) Subpart 8341.2(a), the Bureau of Land Management (BLM) announces the closure of certain BLM-administered public lands to all types of motor vehicle use to protect the National Historic Trails (NHT), which includes the Oregon, Mormon Pioneer, California, and Pony Express Trails.

This closure affects public lands located within Fremont County on the NHTs in the area known as Rocky Ridge. The closure area extends for approximately 2 miles from near the Lower Monument over Rocky Ridge to the western edge of the BLM-administered public land in Section 28, T29N, R97W.

DATES: This closure will be effective June 20, 2005, in accordance with the Environmental Assessment and Decision Record (March 28, 2005).

FOR FURTHER INFORMATION CONTACT: Ray Hanson, Outdoor Recreation Planner, Bureau of Land Management, 1335 Main Street, P.O. Box 589, Lander, Wyoming 82520. Mr. Hanson may also be contacted by telephone: 307–332–8420.

SUPPLEMENTARY INFORMATION: The BLM Lander Field Office is responsible for management of public lands within Fremont, Natrona, Carbon, Sweetwater, and Hot Springs Counties. The management of these lands is addressed in the Lander Resource Management Plan (RMP) Record of Decision (ROD), which was signed in June 1987. In the Finding of No Significant Impact and Decision Record, based upon Environmental Assessment, WY050–EA4–047, for the Proposed Special Recreation Permit to Conduct Handcart Treks on Bureau of Land Management Administered Public Lands Between Sixth Crossing and Rock Creek Hollow (March 28, 2005), a decision to issue an Off-Highway Vehicle closure was included to mitigate the impacts caused by motorized vehicle use to the cultural, historic, and natural resources on approximately 2 miles of the NHTs on Rocky Ridge.

The following BLM-administered lands are included in this closure:

- Approximately 2 miles of NHT from the Lower Monument over Rocky Ridge to the western edge of BLM-administered public land in Section 28, T29N, R97W.
- The closure will include both the main NHTs route and the approximately ½ mile NHT variant from the top of Rocky Ridge west to its return to the NHTs near the public/private land boundary.

A map of these areas will be posted with this notice at key locations near the closure area, as well as at the BLM's Lander Field Office, 1335 Main Street, Lander, Wyoming 82520.

Closure orders may be implemented as provided in 43 CFR, subparts 8341.2(a) and 8364.1(a, b, c, and d). Violations of this closure are punishable by a fine not to exceed $1000 and/or imprisonment not to exceed 12 months.

Persons who are administratively exempt from this closure include: any Federal, State, local officer, or employee acting within the scope of their duties, members of any organized rescue or fire-fighting force in performance of an official duty, and any person holding written authorization from the Bureau of Land Management.

Dated: July 6, 2005.

Robert A. Bennett,

State Director.

[FR Doc. 05–18606 Filed 9–16–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection Activities; Proposed Revisions to a Currently Approved Information Collection; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal of a currently approved collection (OMB No. 1006–0001).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Bureau of Reclamation (we, our, or us) intends to submit a request for renewal of an existing approved information collection to the Office of Management and Budget (OMB): Crop Acreage and Yields and Water Distribution (Water User Crop Census Report [Form 7–332], and Crop and Water Data [Form 7–2045]), OMB Control Number: 1006–0001. We request your comments on the proposed forms and specific aspects of this information collection.

DATES: Your written comments must be received on or before November 18, 2005.

ADDRESSES: You may send written comments to the Bureau of Reclamation, Attention: D–5300, PO Box 25007, Denver, CO 80225–0007. You may request copies of the proposed forms by writing to the above address or by contacting Stephanie McPhee at: (303) 445–2897.

FOR FURTHER INFORMATION CONTACT: Stephanie McPhee at: (303) 445–2897.

SUPPLEMENTARY INFORMATION: We are currently in the process of collaborating with the U.S. Department of Agriculture (USDA) to develop a way to utilize USDA's existing information collection(s) to gather the data required for our purposes. However, this collaboration effort will not be completed before the expiration of the crop census forms in this information collection. Consequently, this information collection is being renewed as an interim measure to ensure a means exists for collection of the crop data necessary to perform our functions. We anticipate that the collaboration process with the USDA will be complete before further renewal of this information collection is required.

Title: Crop Acreage and Yields and Water Distribution.

Abstract: The annual crop census is taken on certain Reclamation projects primarily for use as a tool in administering, managing, and evaluating various aspects of the Federal reclamation program. The census is used to assist in the administration of repayment and water service contracts, which are used to repay the irrigators' obligation to the Federal government. The census will provide data to facilitate the required 5-year review of ability-to-pay analysis, which is being incorporated into new repayment and water service contracts. The basis for these reviews is an audit by the Office of the Inspector General, Department of the Interior.

Data from the census are utilized to determine class 1 equivalency computation; *i.e.*, determining the number of acres of class 2 and class 3 land that are required to be equivalent in productivity to class 1 land.

In recent years, the census has provided data which are used to administer international trade agreements, such as the North American Free Trade Agreement. Data from the census are also used by the Office of the Inspector General, Government Accountability Office, and the Congressional Research Service to independently evaluate our program and to estimate the impacts of proposed legislation. These data are supplied to other Federal and State agencies to evaluate the program and provide data for research.

Frequency: Annually.

Respondents: Irrigators and water user entities in the 17 Western states who receive irrigation water service from Bureau of Reclamation facilities. Also included are entities who receive other water services, such as municipal and industrial water through Bureau of Reclamation facilities.

Estimated Total Number of Respondents: 1,325.

Estimated Number of Responses per Respondent: 1.0.

Estimated Total Number of Annual Responses: 1,325.

Estimated Total Annual Burden on Respondents: 2,075 hours.

Estimate of Burden for Each Form:

Form No.	Burden estimate per form (in hours)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
Water User Crop Census Report (Form 7–332)	0.25	1,100	1,100	275
Crop and Water Data (Form 7–2045)	8.00	225	225	1,800
TOTAL	8.25	1,325	1,325	2,075

Comments.

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents.

We will summarize all comments received regarding this notice. We will publish that summary in the **Federal Register** when the information collection request is submitted to OMB for review and approval.

Department of the Interior practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. 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 disclosure in their entirety.

Dated: August 29, 2005.

Roseann Gonzales,

Director, Office of Program and Policy Services, Denver Office.

[FR Doc. 05–18536 Filed 9–16–05; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–442–443 and 731–TA–1095–1097 (Preliminary)]

Certain Lined Paper School Supplies From China, India, and Indonesia

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping and countervailing duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–443–443 and 731–TA–1095–1097 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from India and Indonesia of certain lined paper school supplies, provided for in subheadings 4810.22.50, 4811.90.90, and 4820.10.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Governments of India and Indonesia, and by reason of imports from China, India, and Indonesia of certain lined paper school supplies that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) or seciton 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) and 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by October 24, 2005. The Commission's views are due to the Department of Commerce within five business days thereafter, or by October 31, 2005.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: September 9, 2005.

FOR FURTHER INFORMATION CONTACT: Jai Motwane (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impariments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic document information system (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on September 9, 2005, by MeadWestvaco Corp. of Dayton, OH; Norcom, Inc., of Norcross, GA; and Top Flight, Inc., of Chattanooga, TN (collectively, the Association of American School Paper Suppliers).

Participation in the investigations and public service list. Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the commission, as provided in §§ 2011.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference. The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on September 30, 2005, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jai Motwane (202–205–3176) not later than September 28, 2005, to arrange for their appearance. Parties in support of the imposition of antidumping and countervailing duties in these investigations and parties in opposition

to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 5, 2005, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (Nov. 8, 2002).

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: September 14, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–18575 Filed 9–16–05; 8:45 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–506]

In the Matter of Certain Optical Disk Controller Chips and Chipsets and Products Containing Same, Including DVD Players and PC Optical Storage Devices; Notice of Commission Determination To Extend the Target Date for Completion of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend the target date for completion of the above-captioned investigation by approximately two weeks, or until September 27, 2005.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Copies of all nonconfidential documents filed in connection with this investigation are or will be 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., Washington, DC 20436, telephone 202–205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 14, 2004, based on a complaint filed by Zoran Corporation and Oak Technology, Inc. both of Sunnyvale, CA. 69 FR 19876 (2004).

The previous target date for completion of this investigation was September 14, 2005. The Commission determined that the target date for completion of the investigation should be extended by approximately two weeks, or until September 27, 2005, due to the complexity of the issues under review.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.51(a) of the Commission's Rules of Practice and Procedure (19 CFR 210.51(a)).

Issued: September 13, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–18497 Filed 9–16–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–401 and 731–TA–853–854 (Review)]

Structural Steel Beams From Japan and Korea

AGENCY: International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the countervailing duty order on structural steel beams from Korea and the antidumping duty orders on structural steel beams from Japan and Korea.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty order on structural steel beams from Korea and the antidumping duty orders on structural steel beams from Japan and Korea would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: September 9, 2005.

FOR FURTHER INFORMATION CONTACT: Joann Tortorice (202–205–3032), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the

Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On August 5, 2005, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (70 FR 48440, August 17, 2005). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to these reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on December 19, 2005, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with these reviews beginning at 9:30 a.m. on January 12, 2006, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 4, 2006. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 6, 2006, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is December 30, 2005. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is January 23, 2006; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before January 23, 2006. On February 14, 2006, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 16, 2006, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: September 13, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–18496 Filed 9–16–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 29, 2005.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 29, 2005.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 7th day of September 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 08/01/2005 and 08/12/2005]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
57,651	Cerwin—Vega (State)	Chatsworth, CA	08/01/2005	07/27/2005
57,652	Fibrelume U.S. (Comp)	New Bedford, MA	08/01/2005	07/29/2005
57,653	Northwest Automatic Products, Inc. (State)	Minneapolis, MN	08/01/2005	08/01/2005
57,654	Oriental Accent, Inc. (Comp)	Farmers Branch, TX	08/01/2005	08/01/2005
57,655	Interforest Corp. (8/1/20)	Darlington, PA	08/01/2005	07/21/2005
57,656	Sun's Manufacturing, Inc. (Wkrs)	Lansford, PA	08/01/2005	07/23/2005
57,657	Midas International Corporation (USWA)	Hartford, WI	08/01/2005	07/30/2005
57,658	Kellwood Company (Comp)	Calhoun City, MS	08/02/2005	07/28/2005
57,659	V.F. Intimates L.P. (Comp)	McAllen, TX	08/02/2005	08/01/2005
57,660	Coto Div. of Keamey-National, Inc. (Comp)	Providence, RI	08/02/2005	08/01/2005
57,661	B and K Acquisition Co., Inc. (Comp)	Murrysville, PA	08/03/2005	07/25/2005
57,662	Eagle Ottawa, LLC (Comp)	Rochester Hills, MI	08/03/2005	07/01/2005
57,663	Kyocera Tycom Corp. (Comp)	Owego, NY	08/03/2005	07/28/2005
57,664	Flow Controls (Comp)	St. Louis, MO	08/03/2005	07/29/2005
57,665	American Outpost, LLC (Wkrs)	Zelienople, PA	08/03/2005	07/25/2005
57,666A	Philips Semiconductors (NPC)	San Jose, CA	08/03/2005	07/25/2005
57,666	Philips Semiconductors (NPC)	Longmont, CO	08/03/2005	07/25/2005
57,667	Morrison Products, Inc. (State)	Tempe, AZ	08/03/2005	08/02/2005
57,668	Culp, Inc. (Wkrs)	Shelby, NC	08/03/2005	08/02/2005
57,669	Taymar Industries, Inc. (Wkrs)	Indio, CA	08/04/2005	07/25/2005
57,670	Henkel Corporation (Comp)	Olean, NY	08/04/2005	07/14/2005
57,671	Kellogg's Snack Division (Wkrs)	Macon, GA	08/04/2005	07/19/2005
57,672	Cambridge Lee Industry (USWA)	Reading, PA	08/04/2005	08/04/2005
57,673	Venture Industries (Wkrs)	Hopkinsville, KY	08/04/2005	08/04/2005
57,674	Interlake Material Handling, Inc. (UAW)	Pontiac, IL	08/05/2005	08/03/2005
57,675	Lincoln Brass Works (Comp)	Waynesboro, TN	08/05/2005	08/03/2005
57,676	Clayson Knitting Co. (Wkrs)	Red Springs, NC	08/05/2005	08/01/2005
57,677	Brackett Trucking Co., Inc. (Comp)	Bostic, NC	08/05/2005	08/01/2005
57,678	B.A.G. Corp (Comp)	Pennington Gap, VA	08/05/2005	08/04/2005
57,679	Eastern Tool and Stamping Co., Inc. (Wkrs)	Saugus, MA	08/05/2005	07/25/2005
57,680	Joan Fabrics Corporation (Comp)	Newton, NC	08/05/2005	08/05/2005
57,681	Roaring Spring Blank Book Co. (USWA)	Roaring Spring, PA	08/05/2005	08/05/2005
57,682	Best: Artex, LLC (Wkrs)	Westpoint, MS	08/05/2005	07/20/2005
57,683	National Spinning Co., LLC (Comp)	Burlington, NC	08/05/2005	07/15/2005
57,684	Rittal Corporation (Wkrs)	Springfield, OH	08/05/2005	07/27/2005
57,685	Tiro Industries, LLC (Wkrs)	Fridley, MN	08/05/2005	07/22/2005
57,686	Raybestos Automotive Componenets (UAW)	Sterling Heights MI	08/05/2005	08/02/2005
57,687	IBM Global Services (State)	Phoenix, AZ	08/08/2005	08/01/2005
57,688	O'Sullivan Industries, Inc. (Comp)	Lamar, MO	08/08/2005	08/02/2005
57,689	Sony Electronics, Inc. (Wkrs)	Mt. Pleasant, PA	08/08/2005	08/08/2005
57,690	Keys Health and Fitness, LP (State)	Tyler, TX	08/08/2005	08/05/2005
57,691	Falcon Products (Comp)	Morristown, TN	08/08/2005	08/08/2005
57,692	CML Innovative Technologies (Wkrs)	Hackensack, NJ	08/08/2005	08/05/2005
57,693	Ironees Company (The) (Wkrs)	Philadelphia, PA	08/08/2005	07/25/2005
57,694	Cequent Consumer Products (Comp)	Sheffield, PA	08/08/2005	08/03/2005
57,695	Gerome Manufacturing (State)	Newberg, OR	08/09/2005	08/08/2005
57,696	ICU Medical (State)	Salt Lake City, UT	08/09/2005	08/05/2005
57,697	Dorr-Oliver Eimco (Comp)	Salt Lake City, UT	08/09/2005	08/08/2005
57,698	Action Staffing—Seneca Office (State)	Clemson, SC	08/09/2005	08/09/2005
57,699	Rockwell Collins (Wkrs)	Kirkland, WA	08/09/2005	08/08/2005
57,700	Joy Mining Machinery (IBB)	Mt. Vernon, IL	08/09/2005	08/02/2005
57,701	Old Pro Cover Company (Comp)	Holly Hill, SC	08/09/2005	08/08/2005
57,702	Plastic Dress-Up Co. (State)	El Monte, CA	08/09/2005	08/09/2005
57,703	DPS Enterprises, Inc. (Comp)	Macon, GA	08/10/2005	07/27/2005
57,704	Sanmina-SCI (Comp)	Clinton, NC	08/10/2005	08/04/2005
57,705	Components Manufacturing Co. (Comp)	Trenton, SC	08/10/2005	08/01/2005
57,706	Martin Crafting Co., Inc. (Comp)	McMinnville, Tn	08/10/2005	07/20/2005
57,707	Guardian Manufacturing (USW)	Willard, OH	08/10/2005	07/28/2005

APPENDIX—Continued

[Petitions instituted between 08/01/2005 and 08/12/2005]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
57,708	Milwaukee Sign (State)	Grafton, WI	08/11/2005	08/10/2005
57,709	AMI Doduco (Works)	Reidsville, NC	08/11/2005	08/05/2005
57,710	Braden Mfg., LLC (Wkrs)	Tulsa, OK	08/11/2005	08/05/2005
57,711	Baxter (Comp)	Deerfield, IL	08/11/2005	08/08/2005
57,712	G and L Motion Control, Inc. (Comp)	Fond du Lac, WI	08/11/2005	08/09/2005
57,713	L.A. T Sportswear, LLC (Comp)	Ball Ground, GA	08/11/2005	08/08/2005
57,714	U.S. Button Corporation (State)	Putnam, CT	08/11/2005	08/08/2005
57,715	Sanmina-SCI Corporation (Comp)	Fountain, CO	08/11/2005	08/09/2005
57,716	Daimler Chrysler Commercial Bus (Comp)	Greensboro, NC	08/11/2005	08/04/2005
57,717	Hooker Furniture Corporation (Comp) Garden, NC	Pleasant Garden, NC	08/11/2005	08/08/2005
57,718	Flextronics International USA (Comp)	Norwood, MA	08/11/2005	08/04/2005
57,719	Swan Dying and Printing Corp. (State)	Fall River, MA	08/11/2005	08/08/2005
57,720	Northwest Hardwood (State)	Little Rock, AR	08/11/2005	08/10/2005
57,721	Sony (Wkrs)	Mt. Pleasant, PA	08/11/2005	08/05/2005
57,722	Janesville Sacknee Group (IBT)	Janesville, WI	08/11/2005	08/10/2005
57,723	Carlisle Engineered Products, Inc. (Wkrs)	Lake City, PA	08/11/2005	08/05/2005
57,724	Dan River, Inc. (Comp)	Danville, VA	08/11/2005	08/10/2005
57,725	Hill-Rom Co., Inc. (Wkrs)	Batesville, IN	08/11/2005	08/10/2005
57,726	General Electric (Comp)	Tell City, IN	08/11/2005	08/10/2005
57,727	Old Mother Hubbard (State)	Chelmsford, MA	08/11/2005	08/11/2005
57,728	J.E. Morgan Knitting Mills (Sara Lee) (Comp)	Tamaqua, PA	08/12/2005	08/12/2005
57,729	Teleflex Medical (Comp)	RTP, NC	08/12/2005	08/12/2005
57,730	Garan Mfg. (Comp)	Starkville, MS	08/12/2005	08/11/2005
57,731	Teepak, LLC (Comp)	Danville, IL	08/12/2005	08/11/2005
57,732	Microtek Medical, Inc. (Wkrs)	Columbus, MS	08/12/2005	08/12/2005
57,733	HBC Barge, LLC (Comp)	Brownsville, PA	08/12/2005	08/12/2005
57,734	Focus Enhancements (State)	Campbell, CA	08/12/2005	08/05/2005
57,735	Kamashian Engineering (State)	Bellflower, CA	08/12/2005	08/04/2005
57,736	Owensboro Manufacturing, LLC (Comp)	Owensboro, KY	08/12/2005	08/02/2005
57,737	Caribou Ltd. (State)	Hicksville, NY	08/12/2005	07/29/2005
57,738	Vander-Bend Mfg., LLC (Comp)	Sunnyvale, CA	08/12/2005	08/01/2005
57,739	Bon Worth, Inc. (Comp)	Hendersonville, NC	08/12/2005	08/04/2005

[FR Doc. 05–18547 Filed 9–16–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,468]

Milwaukee Electric Tool Corporation Brookfield Plant Brookfield, WI; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated August 24, 2005, a State of Wisconsin agency representative requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The determination was signed on July 18, 2005, and published in the **Federal Register** on August 26, 2005 (70 FR 50411).

The determination stated that electric power tool accessory production at the subject facility ceased in December 2004, that production shifted to other domestic locations, that the subject company imported during 2003 and 2004, and that subject company customers did not import during the relevant period.

The State agent requested reconsideration to clarify the basis for the negative determination.

Upon careful review of the request for reconsideration, the Department has determined that there is basis to conduct further investigation to determine whether the subject workers are eligible to apply for worker adjustment assistance.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC. this 12th day of September 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 05–18544 Filed 9–16–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,469 and TA–W–57,469A]

NABCO, Inc., a Subsidiary of Remy International, Kaleva, MI, and Marion MI; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at NABCO, Inc., a subsidiary of Remy International, Kaleva, Michigan and Marion, Michigan. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–57,469; NABCO, Inc., a subsidiary of Remy International, Kaleva, Michigan and TA–W–57,469A; Marion, Michigan (September 7, 2005)

Signed at Washington, DC, this 9th day of September 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 05–18545 Filed 9–16–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,366]

Office Depot, Inc. Torrance, CA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Office Depot, Inc., Torrance, California. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–57,366; Office Depot, Inc. Torrance, California (September 1, 2005)

Signed at Washington, DC this 9th day of September 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 05–18543 Filed 9–16–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,788]

Pentair, Inc., Wicor, Inc., Water, Spa and Bath Division, Including On-Site Leased Workers of Volt, Personnel Plus and Apple One South El Monte, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility To Apply for Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974, (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and a Negative Determination Regarding Eligibility to Apply for Alternative Trade Adjustment Assistance on April 27, 2005, applicable to workers of Pentair, Inc., Water, Spa and Bath Division, including on-site leased workers of VOLT, Personnel Plus and Apple One, South El Monte, California. The notice was published in the **Federal Register** on May 6, 2005 (70 FR 25861).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm.

New information shows that Pentair purchased Wicor, Inc. in August 2004 that all workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Wicor, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Pentair, Inc., Water, Spa and Bath Division, including on-site leased workers of VOLT, Personnel Plus and Apple One, South El Monte, California who were adversely affected by a shift in production to China and Mexico.

The amended notice applicable to TA–W–56,788 is hereby issued as follows:

All workers of Pentair, Inc., Wicor, Inc., including on-site leased workers of VOLT, Personnel Plus, and Apple One, South El Monte, California, who became totally or partially separated from employment on or after March 21, 2004, through April 27, 2007, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

I further determine that all workers of Pentair, Inc., Water Spa and Bath Division, including on-site leased workers of VOLT, Personnel Plus and Apple One, South Monte, California, are denied eligibility to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC this 12th day of September 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 05–18539 Filed 9–16–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,945,TA–W–56,945A]

Pentair, Inc., Wicor, Inc., Including Leased Workers of Workforce Personnel and Personnel Plus, Long Beach, CA, Pentair, Inc., Wicor, Inc., Including Leased Workers of Kimco, Adecco, Kelly Services and Appleone, Murrieta, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974, (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on May 13, 2005, applicable to workers of Pentair, Inc., including leased workers of Workforce Personnel and Personnel Plus, Long Beach, California and Pentair, Inc., including leased workers of Kimco, Adecco, Kelly Services and Appleone, Murrieta, California. The notice was published in the **Federal Register** on June 13, 2005 (70 FR 34155).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm.

New information shows that Pentair purchased Wicor, Inc. in August 2004 that all workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Wicor, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Pentair, Inc., including leased workers of Workforce Personnel and Personnel Plus, Long Beach, California and Pentair, Inc., including leased workers of Kemco, Adecco, Kelly Services and Appleone, Murrieta, California who were adversely affected by a shift in production to Mexico and China.

The amended notice applicable to TA–W–56,945 and TA–W–56,945A are hereby issued as follows:

All workers of Pentair, Inc., Wicor, Inc., including leased workers of Workforce Personnel and Personnel Plus, Long Beach, California and Pentair, Inc., Wicor, Inc., including leased workers of Kimco, Adecco, Kelly Services and Appleone Murrieta, California, who became totally or partially

separated from employment on or after April 5, 2004, through May 13, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 9th day of September 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 05–18540 Filed 9–16–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,016]

Smurfit-Stone Container, Container Division, Statesville, NC; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Smurfit-Stone Container, Container Division, Statesville, North Carolina. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–57,016; Smurfit-Stone Container, Container Division, Statesville, NC (September 7, 2005)

Signed at Washington, DC this 9th day of September 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 05–18541 Filed 9–16–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,269]

Temple Inland, Antioch Division, Antioch, CA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Temple Inland, Antioch Division, Antioch, California. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–57,269; Temple Inland, Antioch Division Antioch, California (September 8, 2005).

Signed at Washington, DC this 9th day of September 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 05–18542 Filed 9–16–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 29, 2005.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 29, 2005.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 7th day of September 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 08/22/2005 and 08/26/2005]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
57,807	TRW (Comp)	Danville, PA	08/22/2005	08/22/2005
57,808	Nomaco (Wkrs)	Tarboro, NC	08/22/2005	08/17/2005
57,809	R.J. Reynolds Tobacco Company (Comp)	Richmond, VA	08/22/2005	08/08/2005
57,810	Stone International, LLC (Comp)	Columbia, SC	08/22/2005	08/19/2005
57,811	Telemarketing Concepts, Inc. (NPC)	Yorktown Height, NY	08/22/2005	08/18/2005
57,812	Sanford North America (Comp)	Santa Monica, CA	08/22/2005	08/15/2005
57,813	R.J. Reynolds Tobacco Company (Comp)	Macon, GA	08/22/2005	08/08/2005
57,814	Leviton Manufacturing (Comp)	Morganton, NC	08/23/2005	08/17/2005
57,815	Swift and Company (Comp)	Nampa, ID	08/23/2005	08/18/2005
57,816	Nidec America Corporation (State)	Torrington, CT	08/23/2005	08/22/2005
57,817	Datacolor (State)	Lawrenceville, NJ	08/23/2005	08/23/2005
57,818	Trim Masters, Inc. (Wkrs)	Harrodsburg, KY	08/23/2005	08/10/2005
57,819	Ceramic Magnetics, Inc. (State)	Fairfield, NJ	08/23/2005	08/23/2005
57,820	Paper Converting Machine Company (UAW)	Green Bay, WI	08/23/2005	08/22/2005
57,821	Mayflower Vehicle Systems (UAW)	South Charleston, WV	08/24/2005	08/17/2005
57,822	Rubber Maid (State)	Goodyear, AZ	08/24/2005	08/19/2005

APPENDIX—Continued

[Petitions instituted between 08/22/2005 and 08/26/2005]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
57,823	Ingram Micro, Inc. (Wkrs)	Williamsville, NY	08/24/2005	07/24/2005
57,824	Hapag-Lloyd (Comp)	Norfolk, VA	08/24/2005	08/15/2005
57,825	Vectron (Wkrs)	Norwalk, CT	08/24/2005	08/15/2005
57,826	Ultra-Pak (State)	Greer, SC	08/24/2005	08/17/2005
57,827	Excellence Manufacturing, Inc. (Wkrs)	Grand Rapids, MI	08/24/2005	08/22/2005
57,828	Hold-E-Zee, Ltd. (Wkrs)	Meadville, PA	08/24/2005	08/22/2005
57,829	Daimler-Chrysler Indianapolis Foundry (Comp)	Indianapolis, IN	08/24/2005	08/22/2005
57,830	Mallory AC Capacitor, LLC (Wkrs)	Glasgow, KY	08/24/2005	08/23/2005
57,831	DSM Nutritional Products, Inc. (State)	Belvidere, NJ	08/24/2005	08/24/2005
57,832	C-Line Products, Inc. (Comp)	Mt. Prospect, IL	08/24/2005	08/15/2005
57,833	A.O. Smith Corporation (Comp)	Upper Sandusky, OH	08/24/2005	08/15/2005
57,834	Ashley Furniture Ind. (Wkrs)	Ecru, MS	08/24/2005	08/15/2005
57,835	Laneko Engineering Co. (IAM)	Fort Washington, PA	08/24/2005	08/18/2005
57,836	Ruskin (Comp)	Clayton, OH	08/24/2005	08/04/2005
57,837	Peters Manufacturing Co. (Wkrs)	Vassar, MI	08/24/2005	08/11/2005
57,838	Texstyle, Inc. (Comp)	Manchester, KY	08/25/2005	08/16/2005
57,839	American Glove Company, Inc. (State)	Lyerly, GA	08/25/2005	08/24/2005
57,840	Lear Corporation (Wkrs)	Winchester, VA	08/25/2005	08/22/2005
57,841	Panasonic Services Company (Wkrs)	Langhorne, PA	08/26/2005	08/25/2005
57,842	Carolina Graphic Arts (State)	Greenville, SC	08/26/2005	08/25/2005
57,843	Sierra Pine (Wkrs)	Medford, OR	08/26/2005	08/22/2005
57,844	Borg Warner Transmission System (Wkrs)	Frankfort, IL	08/26/2005	07/29/2005
57,845	Eaton Corporation (PACE)	Saginaw, MI	08/26/2005	08/16/2005
57,846	UBE Automotive (UAW)	Mason, OH	08/26/2005	08/22/2005

[FR Doc. 05–18548 Filed 9–16–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,470]

Wilson Sporting Goods Company, Golf Division, a Division of Amer of Finland, Humboldt, TN; Notice of Revised Determination on Reconsideration

By letter dated August 30, 2005, a company official requested administrative reconsideration of the Department's negative determination for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) for workers of the subject facility. Workers produce golf balls.

The denial was based on the finding of no separations, actual or threatened, during the relevant period. The denial was issued on August 1, 2005 and published in the **Federal Register** on August 26, 2005 (70 FR 50411).

The investigation revealed that January through May 2005 employment levels increased from January through May 2004 levels, that production levels declined during January through May 2005 from January through May 2004 levels, and that a shift of production abroad was followed by increased company imports.

In the request for reconsideration, the company official stated that workers were separated in June 2005. Subsequent conversations confirmed the statement and established that additional separations are scheduled to occur in October 2005.

The investigation also revealed that all alternative trade adjustment assistance criteria have been met. A significant number or proportion of the worker group are age fifty years or over and workers possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of golf balls contributed importantly to worker separations at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Wilson Sporting Goods Company, Golf Division, A Division of Amer of Finland, Humboldt, Tennessee, who became totally or partially separated from employment on or after June 27, 2004, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 7th day of September, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 05–18546 Filed 9–16–05; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. Law 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 19, 2005. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

Permit Application No. 2206–021

1. *Applicant:* Mahion C. Kennicutt II, Director of Sustainable Development, Office of the Vice President for Research, 1112 Texas A&M University, College Station, TX 77843–1112.

Activity for Which Permit is Requested: Enter Antarctic specially Protected Areas. The applicant proposes to enter the following protected sites: Cape Evans (ASPA #154), and Arrival Heights (ASPA #122) to collect soil samples and permafrost measurements. These sites are specifically targeted because of the nature of their geology, climatic influences, and topography. One site, Cape Evans, has been chosen as a reference control area for the study of temporal and spatial scales of various types of disturbances in and around McMurdo Station. Arrival Heights has been sampled in past field seasons and is slated to be sampled as part of the ongoing environmental monitoring program.

Location: Cape Evans (ASPA #154) and Arrival Heights (ASPA #122).

Dates: November 21, 2005 to December 31, 2005.

Permit Application No. 2002–007 Mod. 1

Applicant: Rennie S. Holt, Director, U.S. AMLR Program, Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, CA 92038.

Activity for Which Permit is Requested: Take and Import into the U.S. The applicant proposes to inject doubly labeled water (DLW) into 15 female adult Fur seals and 30 pups annually and collect blood samples to measure the maternal energy expenditure during the perinatal period and measure milk intake in pups throughout the attendance period. Studies of the energetics of lactating Antarctic fur seals and their pups will provide a better understanding of their role in the coastal marine ecosystems of South Shetland Islands and the potential impact of commercial krill fisheries.

The applicant also proposes to salvage dead specimens from pinniped and cetacean species found opportunistically on the beaches or washed ashore. All specimens will be inventoried with the AMLR Program in La Jolla, California.

Location: South Shetland Islands vicinity. Cape Shirreff, Livingston Island (including San Telmo Islands).

Date: November 15, 2005 to June 1, 2007.

Permit Application No. 2006–022

3. *Applicant:* Molly F. Miller, Department of Earth/Environmental Sciences, 35–0117, Vanderbilt University, 2301 Vanderbilt Place, Nashville, TN 37235.

Activity for which Permit is Requested: Enter Antarctic Specially Protected Area. The applicant proposes to enter just inside the boundaries of the Barwick Valley Antarctic Specially Protected Area (ASPA #123) to search for *in situ* fossils and use them and characteristics of the surrounding sedimentary rocks to constrain the environmental and climate conditions. The project plans to test models of climate change during the Permian-Triassic and evaluate the effects of the climate change on diverse components of the ecosystem.

Location: Barwick and Balham Valleys (ASPA #123).

Dates: October 1, 2005 to February 28, 2007.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 05–18572 Filed 9–16–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Request Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification request received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a request to modify a permit issued to conduct activities regulated under the Antarctic Conservation Act of 1978 (Pub. L. 95–541; Code of Federal Regulations Title 45, Part 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996.

DATES: Interested parties are invited to submit written data, comments, or views with respect to the permit modification by October 19, 2005. The permit modification request may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Dr. Polly A. Penhale or Nadene G. Kennedy at the above address or (703) 292–8030.

Description of Permit Modification Requested: On November 1, 2001, the National Science Foundation issued a Waste Management Permit (2002 WM–002) to Rennie S. Holt, Director, U.S. Antarctic Marine Living Resources (AMLR) Program, for the operation of a remote field camp at Cape Shirreff, Livingston Island, Antarctica. The permit holder wishes to modify this permit to include the use of doubly labeled water (tritiated and oxygen-18) to measure energetics in Antarctic fur seal pups. These radioisotopes will be added to the list of designated pollutants covered under the existing permit.

Approval of the modification requested will still ensure that waste management and regulatory requirements are met while providing a streamlined approach to waste management. The duration of the requested modification is coincident with the current permit which expires on April 30, 2006.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 05–18573 Filed 9–16–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

DATES: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On July 27, 2005, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued on August 31, 2005 to:

Rebecca J. Gast, Permit No. 2006–019.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 05–18574 Filed 9–16–05; 8:45 am]

BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of September 19, 2005:

An Open Meeting will be held on Wednesday, September 21, 2005, at 10 a.m. in Room L–002, the Auditorium, and a Closed Meeting will be held on Thursday, September 22, 2005 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Glassman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the Open Meeting scheduled for Wednesday, September 21, 2005 will be:

1. The Commission will consider whether to extend the date by which companies that are not accelerated filers must comply with certain amendments to Rules 13a–15 and 15d–15 under the Securities Exchange Act of 1934, Items 308(a) and (b) of Regulations S–K and S–B, Item 15 of Form 20–F, and General Instruction B of Form 40–F. These amendments require companies, other than registered investment companies, to include in their annual reports a report of management and an accompanying auditor's report on the company's internal control over financial reporting. The amendments also require a company's management to evaluate as of the end of each fiscal period any change in the company's internal control over financial reporting that occurred during the period that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting. If approved, a company that is not an accelerated filer would have to comply with the internal control over financial reporting requirements for its first fiscal year ending on or after July 15, 2007.

For further information, please contact Sean Harrison, Special Counsel, Division of Corporation Finance, at (202) 551–3430.

2. The Commission will consider whether to propose amendments to the "accelerated filer" definition in Rule 12b–2 of the Securities Exchange Act of 1934 to:

a. Create a new category of accelerated filer that would include reporting companies with a public float of $700 million or more; and

b. Ease some of the current restrictions on the exit of companies from accelerated filer status.

The proposed amendments also would amend the final phase-in of the Form 10–K and Form 10–Q accelerated filing deadlines that is scheduled to take effect next year. Accelerated filers currently are scheduled to become subject to a 60-day filing deadline for their Form 10–K annual reports filed for fiscal years ending on or after December 15, 2005, and a 35–day deadline for the three subsequently filed quarterly reports on Form 10–Q.

For further information, please contact Katherine Hsu, Special Counsel, Division of Corporation Finance, at (202) 551–3430.

The subject matters of the Closed Meeting scheduled for Thursday, September 22, 2005, will be:

Formal orders of investigations;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: September 14, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–18665 Filed 9–15–05; 10:59 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–28028]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

September 12, 2005.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 7, 2005, to the Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 7, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy, Inc., et al. (70–10330)

Allegheny Energy, Inc. ("Allegheny"), a registered holding company, and its wholly-owned public utility company subsidiary, Monongahela Power Company ("Monongahela" and, together with Allegheny, the "Applicants"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, have filed an

application-declaration ("Application") under sections 12(c) and 12(d) of the Act and rules 44, 46, and 54 under the Act.

The Applicants request authorizations in connection with Monongahela's proposal to sell its utility assets located in Ohio, except certain excluded assets, to Columbus Southern Power Company ("CSP").[1] The sale is the result of a series of developments in connection with the restructuring of the electric utility industry in Ohio. In response to 1999 Ohio legislation that required Monongahela to provide its Ohio retail electric customers the right to choose their electric generation supplier beginning January 1, 2001, the Public Utilities Commission of Ohio ("PUCO") approved a settlement of Monongahela's transition plan, which included a transfer of its Ohio generation assets to an affiliate at book value and under which Monongahela guaranteed that its large commercial and industrial customers would be provided capped rates through 2003 and its other retail customers would be provided capped rates through 2005 should they elect not to choose an alternative supplier.

Monongahela and CSP have entered into an Asset Purchase Agreement ("APA") under which Monongahela has agreed to sell, assign, convey, transfer and deliver to CSP all of Monongahela's right, title, and interest in assets used by Monongahela in its Ohio transmission and distribution business, with the exception of certain excluded assets. These assets include, 59 miles of transmission lines, related substations and associated property, and approximately 1,167 miles of distribution facilities that are located in Ohio and that constitute utility assets under the Act. The associated property includes the easements and/or real property interests on which the lines and related substations are located and other physical property required for transmission and distribution service. In addition, Monongahela will transfer to CSP other assets, such as contracts, books, records, accounts, inventories, machinery, tools, furniture, and other personal property.

The purchase price for these assets will be the net book value at the time the Transaction closes of the assets identified as Acquired Assets in Section 2.1 of the APA, plus $10,000,000, less Monongahela's share of property taxes as specified in the APA. The net book value of the utility assets to be sold to CSP was approximately $46.6 million at March 31, 2005. The consideration for the utility assets to be sold in the Transaction was the product of arm's-length bargaining between unaffiliated parties. In addition, the Transaction is being undertaken at the behest, and under the review of, the PUCO. Applicants submit that for these reasons, the consideration Monongahela will receive reflects carrying value for the assets that the CSP will acquire in the Transaction and, therefore, will satisfy the requirements of section 12(d). Applicants submit that the authorizations requested in this Application are in their best interest and are appropriate for the protection of investors and consumers.

Applicants seek authority for Monongahela to dividend to Allegheny out of unearned surplus the proceeds received from the sale of those assets. The proceeds would be used by Allegheny to reduce debt and for other lawful corporate purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5093 Filed 9–16–05; 8:45 am]

BILLING CODE 8010–01–P

[1] CSP is an electric utility company and a subsidiary company of American Electric Power Company, Inc., a registered holding company.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52408; File No. SR–Amex–2005–024]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment No. 1 Thereto To Establish a Process for the Waiver, Deferral, or Rebate of Listing Fees for Certain Closed-End Funds

September 12, 2005.

I. Introduction

On February 17, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") 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 provide a process for the waiver, deferral, or rebate of listing fees for certain closed-end funds. On July 27, 2005, Amex amended the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on August 11, 2005.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Description of the Proposal

The Exchange is proposing to amend Section 140 of the Amex Company Guide to provide that the Amex Board of Governors or its designee may, in its discretion, waive, defer, or rebate all or any part of the initial listing fee applicable to a closed-end fund that transfers to Amex from another marketplace. The Exchange currently has the authority to waive, defer, or rebate initial listing fees applicable to stocks, bonds, and warrants. To enable it to respond to specific competitive situations, the Exchange believes it is appropriate to have the authority to waive, defer, or rebate all or any part of the listing fees applicable to closed-end funds that transfer to Amex from another marketplace. Such authority could be exercised only by the Amex Board of Governors or its designee. The Amex Board of Governors has delegated this authority to a staff committee, comprised of management representatives from the Office of the Chairman and the ETF Marketplace, Finance and Listing Qualifications Departments. In addition, an attorney from the Office of the General Counsel would provide legal counsel to the committee.

III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act,[5] which requires, among other things, that the Exchange's rules provide for the equitable allocation of reasonable dues, fees, and other charges among issuers and other persons using its facilities. This proposal gives Amex similar authority with respect to listing fees for closed-end funds as it already possesses with respect to listing fees for stocks, bonds, and warrants.[6] In addition, the Commission notes that it

[3] *See* Securities Exchange Act Release No. 52216 (August 5, 2005), 70 FR 46896.

[4] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(4).

[6] *See* Securities Exchange Act Release No. 50270 (August 26, 2004), 69 FR 53750 (September 2, 2004) (SR–Amex–2004–70).

has previously approved a similar proposal by another self-regulatory organization.[7]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–Amex–2005–024) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–18550 Filed 9–16–05; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement Number PS–ACE100–2005–10038]

Policy on Bonded Joints and Structures—Technical Issues and Certification Considerations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of policy statement.

SUMMARY: This notice announces the issuance of a Federal Aviation Administration (FAA) policy for certification of bonded structures. This notice is necessary to advise the public, especially manufacturers of normal, and acrobatic category airplanes, and commuter category airplanes and their suppliers, that the FAA has adopted a policy on bonded joints and structures.

DATES: Policy statement PS–ACE100–2005–10038 was issued by the Manager of the Small Airplane Directorate on September 2, 2005.

How to Obtain Copies: A paper copy of policy statement may be obtained by writing to the following: Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 901 Locust Street, Room 301, Kansas City, MO 64106. The policy statement will also be available on the Internet at the following address *http://www.faa.gov/regulations_policies/.*

FOR FURTHER INFORMATION CONTACT: Lester Cheng, Federal Aviation Administration, Small Airplane Directorate, Regulations & Policy, ACE–111, 901 Locust Street, Room 301, Kansas City, Missouri 64106; telephone: (316) 946–4111; fax: 816–4090; e-mail: *lester.cheng@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

We announced the availability of the policy statement on May 27, 2005 (70 FR 30829). We revised the policy in response to the comments, and the policy has been adopted.

Issued in Kansas City, Missouri on September 12, 2005.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18504 Filed 9–16–05; 8:45am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–05–21436]

Highway Safety Programs; Conforming Products List of Screening Devices to Measure Alcohol in Bodily Fluids

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This Notice amends and updates the list of devices that conform to the Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

EFFECTIVE DATE: September 19, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. James F. Frank, Office of Research and Technology, Behavioral Research Division (NTI–131), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; Telephone: (202) 366–5593.

SUPPLEMENTARY INFORMATION: On August 2, 1994, NHTSA published Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids (59 FR 39382). These specifications established performance criteria and methods for testing alcohol screening devices to measure alcohol content. The specifications support State laws that target youthful offenders (e.g., "zero tolerance" laws) and the Department of Transportation's workplace alcohol testing program. NHTSA published its first Conforming Products List (CPL) for screening devices on December 2, 1994 (59 FR 61923, with corrections on December 16, 1994 in 59 FR 65128), identifying the devices that meet NHTSA's Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids. Five (5) devices appeared on that first list. Thereafter, NHTSA amended the CPL on August 15, 1995 (60 FR 42214) and on May 4, 2001 (66 FR 22639), adding seven (7) devices to the CPL in those two (2) actions.

Since the publication of the last CPL, NHTSA has evaluated additional devices at the Volpe National Transportation Systems Center (VNTSC) in Cambridge, Massachusetts, resulting in the following changes to the CPL.

(1) AK Solutions, Inc. of Palisades Park, New Jersey submitted seven (7) different electronic screening devices for testing, all of which use a semi-conductor sensor. Their trade names are: (a) "Alcoscan AL–2500"; (b) "AlcoChecker"; (c) "AlcoKey"; (d) "AlcoMate"; (e) "AlcoMate Pro"; (f) "Alcoscan AL–5000"; and (g) Alcoscan AL–6000. All of these devices meet the NHTSA Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

(2) Guth Laboratories, Inc. of Harrisburg, Pennsylvania submitted for testing the "Alcotector WAT89EC–1" screening device, an electronic device that uses a fuel cell sensor and has a digital display. This device meets the NHTSA Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

(3) Q–3 Innovations, Inc. of Independence, Iowa submitted for testing the "Alcohawk® Precision," an electronic screening device that uses a semiconductor sensor and has a digital display. This device meets the NHTSA Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

(4) Q–3 Innovations, Inc. certified that it also sells the "Alcohawk® Elite," which is the same technical device as the "Alcohawk® Precision," and has only cosmetic differences not related to the alcohol-measuring capability of the device. Hence, the "Alcohawk® Elite" will also be listed on the CPL. Q–3 Innovations, Inc. also sells the "Alcohawk® ABI", which is the same device as the "ABI" manufactured by Han International Co., Ltd. of Seoul, Korea. As the Han "ABI" already appears on the CPL, and Han International has certified that the "Alcohawk® ABI" is the same device, the "Alcohawk® ABI" will also be listed on the CPL. Finally, Q–3 Innovations sells the "Alcohawk® PRO", also manufactured by Han International. This device was previously submitted by AK Solutions, Inc. and approved for inclusion on the CPL. While Han International continues to manufacture the device, it is now sold as the "Alcohawk® PRO" by Q–3 Innovations,

[7] *See* Securities Exchange Act Release No. 28731 (January 2, 1991), 56 FR 906 (January 9, 1991) (SR–NASD–90–61).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

Inc. Hence, the "Alcohawk® PRO" will also be added to the CPL.

(5) Seju Co., of Korea submitted the "Safe-Slim" handheld, electronic screening device that uses a semi-conductor sensor. It meets the NHTSA Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

All of the above devices are being added to the CPL with this publication.

(6) When NHTSA published the CPL on May 4, 2001, it added the "Alcohol √" manufactured by Akers Laboratories, Inc. After that date, Akers Laboratories, Inc. changed its name to Akers Biosciences, Inc. and continued distributing a device that NHTSA understood to be the same device tested and approved for listing on the CPL in May, 2001. The Akers device listed on the CPL is no longer manufactured. Accordingly, the "Alcohol √" is being removed from the CPL with this publication. No other Akers device currently is approved for inclusion on the CPL.

In addition to the above changes, NHTSA is making the following housekeeping changes to the CPL:

(7) OraSure Technologies, Inc. of Bethlehem, Pennsylvania continues to manufacture the Q.E.D. A150 Saliva Alcohol Test. On the previous CPL, NHTSA listed STC Technologies, Inc. as a manufacturer of the same device. STC Technologies, Inc. changed its name to OraSure Technologies, Inc. OraSure Technologies, Inc. has certified that no unexpired devices called the Q.E.D. A150 Saliva Alcohol Test and sold under the STC Technologies, Inc label exist in the marketplace. Hence, NHTSA is removing the name STC Technologies, Inc. from the CPL.

(8) Alco Check International, Inc. of Hudsonville, Michigan has certified that the "Alco Screen 3000" is no longer in service, was sold under a private label for only a very brief period of time, and none has been serviced for at least five years. Accordingly, the manufacturer concurs with the removal of the device from the CPL.

(9) Sound Off, Inc. of Hudsonville, Michigan has certified that the "Alco Screen 1000" is no longer in service, was sold under a private label for only a very brief period of time, and none has been serviced for at least five years. Accordingly, the manufacturer concurs with the removal of the device from the CPL.

(10) PAS Systems International, Inc. of Fredericksburg, Virginia has certified that the "PAS IIIa" device has not been manufactured for more than five years, and no instruments have been returned for service or calibration during the past five years. Accordingly, the manufacturer concurs with the removal of the device from the CPL.

(11) Varian Inc. of Lake Forest, California acquired the "On-Site Alcohol" saliva-alcohol screening device previously owned by Roche Diagnostics Systems. Varian, Inc. has certified that the "On-Site Alcohol" device they are selling is identical to the device previously sold by Roche. Accordingly, this CPL will list the Varian, Inc. "On-Site Alcohol" saliva-alcohol screening device. The Roche Diagnostics device will be removed from the CPL. The Roche device had a shelf-life of one year, and Varian began selling the device more than one year ago. Therefore, any of these devices that might exist in the marketplace has expired, warranting removal of the Roche Diagnostics device from the CPL.

Consistent with paragraphs (1) through (11) above, NHTSA amends the Conforming Products List of Screening Devices to Measure Alcohol in Bodily Fluids to read as follows:

Conforming Products List of Alcohol Screening Devices

Manufacturer	Device(s)
AK Solutions, Inc., Palisades Park, NJ [1]	Alcoscan AL–2500.
	AlcoChecker.
	AlcoKey.
	EAlcoMate.
	AlcoMate Pro.
	Alcoscan AL–5000.
	Alcoscan AL–6000.
Alco Check International, Hudsonville, MI	Alco Check 3000 D.O.T.
	Alco Check 9000.
Chematics, Inc., North Webster, IN	ALCO-SCREEN 02™. [2]
Guth Laboratories, Inc., Harrisburg, PA	Alco Tector Mark X.
	Mark X Alcohol Checker.
	Alcotector WAT89EC–1.
Han International Co., Ltd., Seoul, Korea [3]	A.B.I. (Alcohol Breath Indicator).
OraSure Technologies, Inc., Bethlehem, PA	Q.E.D. A150 Saliva Alcohol Test.
PAS Systems International, Inc., Fredericksburg, VA	PAS Vr.
Q3 Innovations, Inc., Independence, IA [4]	Alcohawk® Precision.
	Alcohawk® Elite.
	Alcohawk® ABI.
	Alcohawk® PRO.
Repco Marketing, Inc., Raleigh, NC	Alco Tec III.
Seju Co. of Taejeon, Korea	Safe-Slim.
Sound Off, Inc., Hudsonville, MI	Digitox D.O.T.
Varian, Inc., Lake Forest, CA	Q.E.D. A150 Saliva Alcohol Test. [5]

The devices manufactured by Chematics, Inc., OraSure Technologies, Inc., and Varian, Inc. are all single-use, disposable saliva alcohol test devices. All of the other devices listed on the CPL are electronic breath testers. The device called the "Alcotector WAT89EC–1" manufactured by Guth Laboratories, Inc. and the PAS Vr device manufactured by PAS Systems International, Inc. use fuel-cell sensors, whereas all other electronic devices listed on the CPL use semi-conductor sensors.

[1] The AlcoMate was manufactured by Han International of Seoul, Korea, but marketed and sold in the U.S. by AK Solutions.

[2] While the ALCO-SCREEN 02™ saliva-alcohol screening device manufactured by Chematics, Inc. passed the requirements of the Model Specifications when tested at 40 °C (104 °F), the manufacturer has indicated that the device cannot exceed storage temperatures of 27 ° (80 °F). Instructions to this effect are stated on all packaging accompanying the device. Accordingly, the device should not be stored at temperatures above 27 °C (80 °F). If the device is stored at or below 27 °C (80 °F) and used at higher temperatures (*i.e.*, within a minute), the device meets the Model Specifications and the results persist for 10–15 minutes. If the device is stored at or below 27 °C (80 °F) and equilibrated at 40 °C (104 °F) for an hour prior to sample application, the device fails to meet the Model Specifications. Storage at temperatures above 27 °C (80 °F), for even brief periods of time, may result in false negative readings.

[3] Han International does not market or sell devices directly in the U. S. market. Other devices manufactured by Han International are listed under AK Solutions, Inc. and Q–3 Innovations, Inc.

[4] The AlcoHawk ABI is the same device as that listed under Han International as the "ABI" and is manufactured for Q–3 Innovations by Han International. The Alcohawk PRO is the same device as the AlcoMate marketed and sold by AK Solutions, and also manufactured by Han International.

[5] While this device passed all of the requirements of the Model Specifications, readings should be taken only after the time specified by the manufacturer. For valid readings, the user should follow the manufacturer's instructions. Readings should be taken one (1) minute after a sample is introduced at or above 30 °C (86 °F); readings should be taken after two (2) minutes at 18 °C–29 °C (64.4 °–84.2 °F); and readings should be taken after five (5) minutes when testing at temperatures at or below 17 °C (62.6 °F). If the reading is taken before five (5) minutes has elapsed under the cold conditions, the user is likely to obtain a reading that underestimates the actual saliva-alcohol level.

Issued on: September 13, 2005.

Marilena Amoni,

Associate Administrator for Program Development and Delivery.

[FR Doc. 05–18501 Filed 9–16–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Baker & Miller PLLC on behalf of the Kansas City Southern Railway Company (WB595–3—9/6/2005) for permission to use certain data from the Board's 2002–2004 Carload Waybill Samples. A copy of the requests may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. 05–18568 Filed 9–16–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34732]

Union Pacific Railroad Company—Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF), pursuant to a modified written trackage rights agreement entered into between BNSF and Union Pacific Railroad Company (UP), submits this verified notice for an exemption of the modified written trackage rights agreement governing UP's existing overhead trackage rights over BNSF's line of railroad between MP 365.85 at UP Jct., WA, and MP 365.14 at Fish Lake, WA, approximately 0.70 miles, on BNSF's Spokane Subdivision (the Joint Trackage).[1] The modification of trackage rights relates to UP's assumption of maintenance functions for a particular segment of the Joint Trackage, except for signal maintenance which will continue to be the responsibility of BNSF. UP will continue to have rights to use the Joint Trackage as provided in the Agreement.

The transaction was scheduled to be consummated on September 6, 2005, and operations under this exemption were planned to begin on that date.

The purpose of this transaction is to modify the Agreement to change the maintenance obligations in order to promote operating and maintenance efficiencies and better align the parties' maintenance obligations relative to usage.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34732, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Sarah W. Bailiff, BNSF RAILWAY COMPANY, 2500 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–18413 Filed 9–16–05; 8:45 am]

BILLING CODE 4915–01–P

[1] UP acquired the nonexclusive right to use the Joint Trackage under an agreement dated January 27, 1972, by and between the Oregon-Washington Railroad & Navigation Company, and its lessees, UP and Burlington Northern Inc. (BNSF's predecessor in interest), as amended by a supplemental agreement dated May 6, 1982 (collectively, the Agreement).

DEPARTMENT OF THE TREASURY

Submission to OMB for Approval and Request for Comment for Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE, Form 1040A and Schedules 1, 2, and 3, Form 1040EZ, Form 1040X, and All Attachments to These Forms

SUMMARY: The Department of the Treasury has submitted the public information collections described in this notice to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13.

DATES: Written comments should be received on or before October 19, 2005, to be assured of consideration.

ADDRESSES: Copies of the submission may be obtained by contacting the Internal Revenue Service by e-mail (*Glenn.P.Kirkland@irs.gov*) or by calling (202) 622–3428 (not a toll-free call).

Comments regarding this information collection should be addressed to OMB by e-mail (*Alexander_T._Hunt@omb.eop.gov*) or by paper mail to Desk Officer for the

Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503 and to the Treasury Department by e-mail (*Michael.Robinson@do.treas.gov*) or by paper mail to Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The Department of the Treasury and the Internal Revenue Service, as part of our continuing efforts to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). This notice requests comments on all forms used by individual taxpayers: Form 1040, U.S. Individual Income Tax Return, and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE; Form 1040A and Schedules 1, 2, and 3; Form 1040EZ; Form 1040X; and all attachments to these forms (see the Appendix to this notice). With this notice, the IRS is again announcing significant changes to (1) the manner in which tax forms used by individual taxpayers will be approved under the PRA and (2) its method of estimating the paperwork burden imposed on individual taxpayers.

Change in PRA Approval of Forms Used by Individual Taxpayers

Under the PRA, OMB assigns a control number to each "collection of information" that it reviews and approves for use by an agency. A single information collection may consist of one or more forms, recordkeeping requirements, and/or third-party disclosure requirements. Under the PRA and OMB regulations, agencies have the discretion to seek separate OMB approvals for individual forms, recordkeeping requirements, and third-party reporting requirements or to combine any number of forms, recordkeeping requirements, and/or third-party disclosure requirements (usually related in subject matter) under one OMB Control Number. Agency decisions on whether to group individual requirements under a single OMB Control Number or to disaggregate them and request separate OMB Control Numbers are based largely on considerations of administrative practicality.

The PRA also requires agencies to estimate the burden for each collection of information. Accordingly, each OMB Control Number has an associated burden estimate. The burden estimates for each control number are displayed in (1) the PRA notices that accompany collections of information, (2) **Federal Register** notices such as this one, and (3) in OMB's database of approved information collections. If more than one form, recordkeeping requirement, and/or third-party disclosure requirement is approved under a single control number, then the burden estimate for that control number reflects the burden associated with all of the approved forms, recordkeeping requirements, and/or third-party disclosure requirements.

As described below under the heading "New Burden Model," the IRS' new Individual Taxpayer Burden Model (ITBM) estimates of taxpayer burden are based on taxpayer characteristics and activities, taking into account, among other things, the forms and schedules generally used by those groups of individual taxpayers and the recordkeeping and other activities needed to complete those forms. The ITBM represents the first phase of a long-term effort to improve the ability of IRS to measure the burden imposed on various groups of taxpayers by the Federal tax system. While the new methodology provides a more accurate and comprehensive description of individual taxpayer burden, it does not estimate burden on a form-by-form basis, as has been done under the previous methodology. When the prior model was developed in the mid-1980s, almost all tax returns were prepared manually, either by the taxpayer or a paid provider. In this context, it was determined that estimating burden on a form-by-form basis was an appropriate methodology. Today, about 85 percent of all individual tax returns are prepared utilizing computer software (either by the taxpayer or a paid provider), and about 15 percent are prepared manually. In this environment, in which many taxpayers' activities are no longer as directly associated with particular forms, estimating burden on a form-by-form basis is not an appropriate measurement of taxpayer burden. The new model, which takes into account broader and more comprehensive taxpayer characteristics and activities, provides a much more accurate and useful estimate of taxpayer burden.

Currently, there are 195 forms used by individual taxpayers. These include Forms 1040, 1040A, 1040 EZ, and their schedules and all the forms individual taxpayers attach to their tax returns (see the Appendix to this notice). For most of these forms, IRS has in the past obtained separate OMB approvals under unique OMB Control Numbers and separate burden estimates.

Since the ITBM does not estimate burden on a form-by-form basis, IRS is no longer able to provide burden estimates for each tax form used by individuals. The ITBM estimates the aggregate burden imposed on individual taxpayers, based upon their tax-related characteristics and activities. IRS therefore will seek OMB approval of all 195 individual tax forms as a single "collection of information." The aggregate burden of these tax forms will be accounted for under OMB Control Number 1545–0074, which is currently assigned to Form 1040 and its schedules. OMB Control Number 1545–0074 will be displayed on all individual tax forms and other information collections.

As a result of this change, burden estimates for individual taxpayers will now be displayed differently in PRA Notices on tax forms and other information collections, and in **Federal Register** notices. This new way of displaying burden is presented below under the heading "PRA Submission to OMB." Since a number of forms used by individual taxpayers are also used by corporations, partnerships, and other kinds of taxpayers, there will be a transition period during which IRS will report different burden estimates for individual taxpayers and for other taxpayers using the same forms. For those forms used by both individual and other taxpayers, IRS will display two OMB Control Numbers (1545–0074 and the OMB Control Numbers currently assigned to these forms) and provide two burden estimates. The burden estimates for individual taxpayers will be reported and accounted for as described in this notice. The burden estimates for other users of these forms will be reported under the existing methodology, which is based on form length and complexity.[1]

New Burden Model

Data from the new ITBM revises the estimates of the levels of burden experienced by individual taxpayers when complying with the Federal tax laws. It replaces the earlier burden measurement developed in the mid-1980s. Since that time, improved technology and modeling sophistication have enabled the IRS to improve the

[1] As IRS continues to develop the new burden model, the new method of estimating burden will be expanded to cover other groups of taxpayers (corporations, partnerships, tax-exempt entities, etc.).

burden estimates. The new model provides taxpayers and the IRS with a more comprehensive understanding of the current levels of taxpayer burden. It reflects major changes over the past two decades in the way taxpayers prepare and file their returns. The new ITBM also represents a substantial step forward in the IRS' ability to assess likely impacts of administrative and legislative changes on individual taxpayers.

The ITBM's approach to measuring burden focuses on the characteristics and activities of individual taxpayers rather than the forms they use. Key determinants of taxpayer burden in the model are the way the taxpayer prepares the return (e.g. with software or paid preparer) and the taxpayer's activities, such as recordkeeping and tax planning. In contrast, the previous estimates primarily focused on the length and complexity of each tax form. The changes between the old and new burden estimates are due to the improved ability of the new methodology to measure burden and the expanded scope of what is measured. These changes create a one-time shift in the estimate of burden levels that reflects the better measurement of the new model. The differences in estimates between the models do not reflect any change in the actual burden experienced by taxpayers. Comparisons should not be made between these and the earlier published estimates, because the models measure burden in different ways.

Methodology

Burden is defined as the time and out-of-pocket costs incurred by taxpayers to comply with the Federal tax system. For the first time, the time expended and the out-of-pocket costs are estimated separately. The new methodology distinguishes among preparation methods, taxpayer activities, types of individual taxpayer. filing methods, and income levels. Indicators of complexity in tax laws as reflected in tax forms and instructions are incorporated in the model. The new model follows IRS' classification of taxpayer types: individual taxpayers are taxpayers who file any type of Form 1040. "Self-Employed" taxpayers are individual taxpayers who file a Form 1040 and a Schedule C, C–EZ, E, or F, or Form 2106. All other individual taxpayers using a Form 1040 are "Wage and Investment" taxpayers.

The taxpayer's choice of preparation method is identified as a major factor influencing burden levels. The preparation methods are:

- Self-prepared without software
- Self-prepared with software
- Used a paid tax preparer

The separate types of taxpayer activities measured in the model are:

- Recordkeeping
- Form completion
- Form submission (electronic and paper)
- Tax planning
- Use of services (IRS and paid professional)
- Gathering tax materials

Taxpayer Burden Estimates

Tables 1, 2, and 3 show the burden model estimates. In tax year 2003 the burden of all individual taxpayers filing Forms 1040, 1040A or 1040EZ averaged about 23 hours per return filed, or a total of more than 3 billion hours. Similarly, the average out-of-pocket taxpayer costs were estimated to be $179 per return filed or a total of $23.4 billion. Including associated forms and schedules, taxpayers filing Form 1040 had an average burden of about 30 hours, taxpayers filing Form 1040A averaged about 9 hours, and those filing 1040 EZ averaged about 7 hours.

The data shown are the best estimates from tax returns filed for 2003 currently available as of June 27, 2005. The estimates are subject to change as new forms and data become available. Estimates for combinations of major forms and schedules commonly used will be available and the most up-to-date estimates and supplementary information can be found on the IRS Web site: *http://www.irs.gov.*

PRA Submission to OMB

Title: U.S. Individual Income Tax Return.

OMB Number: 1545–0074.

Type of Review: Extension; Revision; New Collection.

Form Numbers: Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE; Form 1040A and Schedules 1, 2 and 3; Form 1040EZ; Form 1040X; and all attachments to these forms (see the Appendix to this notice).

Abstract: These forms are used by individuals to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistics use.

Current Actions: Changes are being made to the forms and the method of burden computation; several new forms are included in the submission.

Type of Review: Extension or revision of currently approved collections; new collections.

Affected Public: Individuals or households.

Estimated Number of Respondents: 130,200,000.

Total Estimated Time: 3.0 billion hours.

Estimated Average Time Per Respondent: 23.3 hours.

Total Estimated Out-of-Pocket Costs: $23.4 billion.

Estimated Average Out-of-Pocket Cost Per Respondent: $179.

TABLE 1.—TAXPAYER BURDEN FOR INDIVIDUAL TAXPAYERS WHO FILED FORM 1040, BY PREPARATION METHOD

Major form filed or type of taxpayer	Number of returns (millions)	Average burden							
		Average for all preparation methods		Self-prepared without tax software		Self-prepared with tax software		Prepared by paid professional	
		Hours	Costs	Hours	Costs	Hours	Costs	Hours	Costs
All Taxpayers Filing Form 1040, 1040A and 1040EZ	130.2	23.3	$179	16.4	$17	27.9	$44	22.9	$268
Major Form Filed:									
Taxpayers Filing Form 1040 (and associated forms)	88.2	30.5	242	26.9	21	36.6	52	28.7	338
Taxpayers Filing Form 1040A (and associated forms)	23.3	9.1	62	10.8	29	11.5	44	7.4	82
Taxpayers Filing Form 1040EZ	18.7	7.2	29	7.0		110.1	9	5.5	60
Type of Taxpayer*:									
Wage and Investment	94.6	11.8	93	11.5	14	17.8	35	9.0	142

TABLE 1.—TAXPAYER BURDEN FOR INDIVIDUAL TAXPAYERS WHO FILED FORM 1040, BY PREPARATION METHOD—Continued

Major form filed or type of taxpayer	Number of returns (millions)	Average burden							
		Average for all preparation methods		Self-prepared without tax software		Self-prepared with tax software		Prepared by paid professional	
		Hours	Costs	Hours	Costs	Hours	Costs	Hours	Costs
Self-Employed	35.6	53.9	410	48.5	31	68.4	81	53.9	522

Note: Detail may not add to total due to rounding.
*You are a "Wage and Investment" taxpayer (as defined by IRS) if you did not file a Schedule C, Schedule C–EZ, Schedule E, Schedule F, or Form 2106. If you filed a Schedule C, Schedule C–EZ, E, or F, or Form 2106, you are a "Self-Employed" taxpayer.

TABLE 2.—TAXPAYER BURDEN FOR TAXPAYERS WHO FILED FORM 1040, BY PREPARATION METHOD AND COMBINATION OF FORMS FILED

Type of taxpayer* and common combination of forms filed	Average burden							
	Average for all preparation methods		Self-prepared without tax software		Self-prepared with tax software		Prepared by paid professional	
	Hours	Costs	Hours	Costs	Hours	Costs	Hours	Costs
Common Filing Combinations of Wage & Investment Taxpayers								
Wage and Investment Taxpayers	11.8	$93	11.5	$14	17.8	$35	9.0	$142
Form 1040 and other forms and schedules, but not Schedules A and D	9.2	88	12.2	17	15.8	34	6.6	118
Form 1040 and Schedule A and other forms and schedules, but not Schedule D	16.3	126	19.2	17	22.6	41	11.9	198
Form 1040 and Schedule D and other forms and schedules, but not Schedule A	17.6	159	22.5	14	27.3	48	12.9	223
Form 1040 and Schedules A and D and other forms and schedules	24.6	239	32.8	13	35.4	44	18.1	365
Common Filing Combinations of Self -Employed Taxpayers								
Self-Employed Taxpayers	53.9	410	48.5	31	68.4	81	53.9	522
Form 1040 and Schedule C and other forms and schedules, but not Schedules E or F or Form 2106	59.4	245	51.4	24	74.6	63	56.1	323
Form 1040 and Schedule E and other forms and schedules, but not Schedules C or F or Form 2106	44.7	591	37.5	43	57.7	100	42.8	717
Form 1040 and Schedule F and other forms and schedules, but not Schedules C or E or Form 2106	34.8	238	38.1	37	49.7	81	34.8	238
Form 1040 and Form 2106 and other forms and schedules but not Schedules C, E, or F	55.4	242	42.0	32	62.5	80	55.8	283
Form 1040 and forms and schedules including more than one of the SE forms (Schedules C, E, or F or Form 2106)	69.4	618	72.0	40	88.3	99	65.7	746

* You are a "Wage and Investment" taxpayer (as defined by IRS) if you did not file a Schedule C, Schedule C–EZ, Schedule E, Schedule F, or Form 2106. If you filed a Schedule C, Schedule C–EZ, E, or F, or Form 2106, you are a "Self-Employed" taxpayer.

TABLE 3.—TAXPAYER BURDEN FOR TAXPAYERS WHO FILED FORM 1040, BY ACTIVITY

Form or schedule	Percent of returns files	Average time burden of taxpayer activities (hours per return)					Average cost per return
		Total time	Record-keeping	Tax plan-ning	Form completion	All other activities	
All Taxpayers	100	23.3	14.1	3.2	3.2	2.8	$179
Form 1040	68	30.5	19.1	4.2	3.8	3.5	242
Form 1040A	18	9.1	4.3	1.1	1.9	1.8	63
Form 1040EZ	14	7.2	2.5	1.5	2.1	1.2	29
Type of Taxpayer*	100						
Wage and Investment	73	11.8	5.0	2.3	2.7	1.8	93
Self-Employed	27	53.9	38.1	5.8	4.4	1.2	410

Note: Detail may not add to total due to rounding.
*You are a "Wage and Investment" taxpayer (as defined by IRS) if you did not file a Schedule C, Schedule C–EZ, Schedule E, Schedule F, or Form 2106. If you filed a Schedule C, Schedule C–EZ, E, or F, or Form 2106, you are a "Self-Employed taxpayer."

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB Control Number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments should be submitted to OMB and the Treasury Department as indicated above. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. All comments will become a matter of public record.

Dated: September 13, 2005.

Michael A. Robinson,

Treasury Department Clearance Officer.

APPENDIX

OMB	Form	Title
0074	1040	U.S. Individual Income Tax Return.
0085	1040 A	U.S. Individual Income Tax Return.
0675	1040 EZ	Income Tax Return for Single and Joint Filers With No Dependents.
0091	1040X	Amended U.S. Individual Income Tax Return.
0089	1040NR	U.S. Nonresident Alien Income Tax Return.
1468	1040 NR–EZ	U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents.
0026	926	Return by a U.S.Transferor of Property to a Foreign Corporation.
0042	970	Application To Use LIFO Inventory Method.
0134	1128	Application to Adopt, Change, or Retain a Tax Year.
0145	2439	Notice to Shareholder of Undistributed Long-Term Capital Gains.
0152	3115	Application for Change in Accounting Method.
0155	3468	Investment Credit.
0159	3520	Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.
0895	3800	General Business Credit.
0166	4255	Recapture of Investment Credit.
0172	4562	Depreciation and Amortization.
0184	4797	Sales of Business Property.
0704	5471	Information Return of U.S. Persons With Respect To Certain Foreign Corporations.
0216	5713	International Boycott Report.
0219	5884	Work Opportunity Credit.
0231	6478	Credit for Alcohol Used as Fuel.
0619	6765	Credit for Increasing Research Activities.
0790	8082	Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).
0881	8271	Investor Reporting of Tax Shelter Registration Number.
0984	8586	Low-Income Housing Credit.
1021	8594	Asset Acquisition Statement.
0988	8609 SCH A	Annual Statement.
1035	8611	Recapture of Low-Income Housing Credit.
1002	8621	Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
1031	8697	Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.
1505	8820	Orphan Drug Credit.
1205	8826	Disabled Access Credit.
1282	8830	Enhanced Oil Recovery Credit.
1362	3835	Renewable Electricity and Refined Coal Production Credit.

APPENDIX—Continued

OMB	Form	Title
1444	8844	Empowerment Zone and Renewal Community Employment Credit.
1417	8845	Indian Employment Credit.
1414	8846	Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.
1416	8847	Credit for Contributions to Selected Community Development Corporations.
1910	8858	Information Return of U.S. Persons With Respect to Foreign Disregarded Entities.
1606	8860	Qualified Zone Academy Bond Credit.
1569	8861	Welfare-to-Work Credit.
1924	8864	Biodiesel Fuels Credit.
1668	8865	Return of U.S. Persons With Respect To Certain Foreign Partnerships.
1622	8866	Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.
1722	8873	Extraterritorial Income Exclusion.
1804	8874	New Markets Credit.
1810	8881	Credit for Small Employer Pension Plan Startup Costs.
1809	8882	Credit for Employer-Provided Childcare Facilities and Services.
1800	8886	Reportable Transaction Disclosure Statement.
1914	8896	Low Sulfur Diesel Fuel Production Credit.
NEW	8900	Qualified Railroad Track Maintenance Credit.
NEW	8903	Domestic Production Activities Deduction.
0007	T (Timber)	Forest Activities Schedules.
0043	972	Consent of Shareholder To Include Specific Amount in Gross Income.
0704	5471 SCH J	Accumulated Earnings and Profits (E&P) of Controlled Foreign Corporation.
0704	5471 SCH M	Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons.
0704	5471 SCH N	Return of Officers, Directors, and 10%-or-More Shareholders of a Foreign Person Holding Company.
0704	5471 SCH O	Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of Its Stock.
0216	5713 SCH A	International Boycott Factor (Section 999(c)(1)).
0216	5713 SCH B	Specifically Attributable Taxes and Income (Section 999(c)(2)).
0216	5713 SCH C	Tax Effect of the International Boycott Provisions.
NEW	8621 A	Return by a Shareholder Making Certain Late Elections to End Treatment as a Passive Foreign Investment Company.
1029	8693	Low-Income Housing Credit Disposition Bond.
1516	8832	Entity Classification Election.
1395	8838	Consent To Extend the Time To Assess Tax Under Section 367—Gain Recognition Statement.
1910	8858 SCH M	Transactions Between Controlled Foreign Disregarded Entity and Filer or Other Related Entities.
1668	8865 SCH K–1	Partner's Share of Income, Credits, Deductions, etc.
1668	8865 SCH O	Transfer of Property to a Foreign Partnership.
1668	8865 SCH P	Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership.
0074	1040 SCH A	Itemized Deductions.
0074	1040 SCH B	Interest and Ordinary Dividends.
0074	1040 SCH C	Profit or Loss From Business.
0074	1040 SCH C–EZ	Net Profit From Business.
0074	1040 SCH D	Capital Gains and Losses.
0074	1040 SCH D–1	Continuation Sheet for Schedule D.
0074	1040 SCH E	Supplemental Income and Loss.
0074	1040 SCH EIC	Earned Income Credit.
0074	1040 SCH F	Profit or Loss From Farming.
0074	1040 SCH H	Household Employment Taxes.
0074	1040 SCH J	Income Averaging for Farmers and Fishermen.
0074	1040 SCH R	Credit for the Elderly or the Disabled.
0074	1040 SCH SE	Self-Employment Tax.
0121	1116	Foreign Tax Credit.
0073	1310	Statement of Person Claiming Refund Due a Deceased Taxpayer.
1441	2106 EZ	Unreimbursed Employee Business Expenses.
0139	2106	Employee Business Expenses.
0071	2120	Multiple Support Declaration.
0140	2210 F	Underpayment of Estimated Tax by Farmers and Fishermen.
0140	2210	Underpayment of Estimated Tax by Individuals, Estates, and Trusts.
0070	2350	Application for Extension of Time To File U.S. Income Tax Return.
0068	2441	Child and Dependent Care Expenses.
1326	2555 EZ	Foreign Earned Income Exclusion.
0067	2555	Foreign Earned Income.
0062	3903	Moving Expenses.
0059	4137	Social Security and Medicare Tax on Unreported Tip Income.
0173	4563	Exclusion of Income for Bona Fide Residents of American Samoa.
0177	4684	Casualties and Thefts.
0187	4835	Farm Rental Income and Expenses.
0191	4952	Investment Interest Expense Deduction.

APPENDIX—Continued

OMB	Form	Title
0193	4972	Tax on Lump-Sum Distributions.
0803	5074	Allocation of Individual Income Tax To Guam or the Commonwealth of the Northern Mariana Islands (CNMI).
0203	5329	Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts.
0712	6198	At-Risk Limitations.
0227	6251	Alternative Minimum Tax—Individuals.
0228	6252	Installment Sale Income.
0644	6781	Gains and Losses From Section 1256 Contracts and Straddles.
0889	8275 R	Regulation Disclosure Statement.
0889	8275	Disclosure Statement.
0908	8283	Noncash Charitable Contributions.
0915	8332	Release of Claim to Exemption for Child of Divorced or Separated Parents.
1210	8379	Injured Spouse Claim and Allocation.
0930	8396	Mortgage Interest Credit.
1034	8582 CR	Passive Activity Credit Limitations.
1008	8582	Passive Activity Loss Limitations.
1007	8606	Nondeductible IRAs.
0998	8615	Tax for Children Under Age 14 With Investment Income of More Than $1,600.
1032	8689	Allocation of Individual Income Tax To the Virgin Islands.
1073	8801	Credit for Prior Year Minimum Tax—Individuals, Estates, and Trusts.
1620	8812	Additional Child Tax Credit.
1128	8814	Parents' Election To Report Child's Interest and Dividends.
1173	8815	Exclusion of Interest From Series EE and I U.S. Savings Bonds Issued After 1989.
1190	8824	Like-Kind Exchanges.
1288	8828	Recapture of Federal Mortgage Subsidy.
1266	8829	Expenses for Business Use of Your Home.
1374	8834	Qualified Electric Vehicle Credit.
1829	8836	Qualifying Children Residency Statement
1552	8839	Qualified Adoption Expenses.
1410	8840	Closer Connection Exception Statement for Aliens.
1411	8843	Statement for Exempt Individuals and Individuals With a Medical Condition.
1561	8853	Archer MSAs and Long-Term Care Insurance Contracts.
1567	8854	Initial and Annual Expatriation Information Statement.
1584	8859	District of Columbia First-Time Homebuyer Credit.
1619	8862	Information to Claim Earned Income Credit After Disallowance.
1618	8863	Education Credits.
1805	8880	Credit for Qualified Retirement Savings Contributions.
1807	8885	Health Coverage Tax Credit.
1911	8889	Health Savings Accounts (HSAs).
1928	8891	U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans.
NEW	8898	Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possesion.
0666	673	Statement for Claiming Exemption From Withholding on Foreign Earned Income Eligible for the Exclusion(s).
0054	1000	Ownership Certificate.
0085	1040 A–SCH 1	Interest and Ordinary Dividends for Form 1040A Filers.
0085	1040 A–SCH 2	Child and Dependent Care Expenses for Form 1040A Filers.
0085	1040 A–SCH 3	Credit for the Elderly or the Disabled+F66 for Form 1040A Filers.
0087	1040 ES–E	Estimated Tax for Individuals.
0087	1040 ES–OCR	Estimated Tax for Individuals (Optical Character Recognition Without Form 1040V).
0087	1040 ES–OCR–V	Payment Voucher.
0087	1040 ES–OTC	Estimated Tax for Individuals.
0087	1040 ES/VOCR	Estimated Tax for Individuals (Optical Character Recognition With Form 1040V).
0074	1040 V	Payment Voucher.
0074	1040 V–OCR	Payment Voucher.
0074	1040 V–OCR–ES	Payment Voucher.
0098	1045	Application for Tentative Refund.
0065	4070 A	Employee's Daily Record of Tips.
0065	4070	Employee's Report of Tips to Employer.
0168	4361	Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders, and Christian Science Practitioners.
0188	4868	Application for Automatic Extension of Time To File Individual U.S. Income Tax Return.
0195	5213	Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.
1397	8453 OL	U.S. Individual Income Tax Declaration for an IRS e-file Online Return.
0936	8453	U.S. Individual Income Tax Declaration for an IRS e-file Return.
1151	8818	Optional Form To Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989.
1163	8822	Change of Address.
1354	8833	Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).
1829	8836 SCH A	Third Party Affidavit.
1829	8836 SCH B	Third Party Affidavit.
1755	8878	IRS e-file Signature Authorization for Application for Extension of Time to File.

APPENDIX—Continued

OMB	Form	Title
1758	8879	IRS e-file Signature Authorization.
NEW	8901	Information on Qualifying Children Who Are Not Dependents (For Child Tax Credit Only).
1350	9465	Installment Agreement Request.
1547	W–7 A	Application for Taxpayer Identification Number for Pending U.S. Adoptions.
1483	W–7	Application for IRS Individual Taxpayer Identification Number.
0046	982	Reduction of Tax Attributes Due To Discharge of Indebtedness (and Section 1082 Basis Adjustment.
0162	4136	Credit for Federal Tax Paid On Fuels.
0192	4970	Tax on Accumulation Distribution of Trusts.
0150	2848	Power of Attorney and Declaration of Representative.
0064	4029	Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.
0458	4852	Substitute for Form W–2 or Form 1099–R.
0239	5754	Statement by Person(s) Receiving Gambling Winnings.
1165	8821	Tax Information Authorization.
1829	8836 SP	Comprobante de Residencia para los Hijos(as) Calificados(as).
1829	8836 SP–SCH A	Declaracion Jurada del Tercero A.
1829	8836 SP–SCH B	Declaracion Jurada del Tercero B.
1755	8878 SP	Autorizacion de firma para presentar por medio del IRS e-file—Solicitud de prorroga del plazo.
1758	8879 SP	Autorizacion de firma para presentar por medio del IRS e-file.
1350	9465 SP	Peticion para un Plan de Pagos a Plazos.
0003	SS–4	Application for Employer Identification Number.
0004	SS–8	Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding.
0415	W–4P	Withholding Certificate for Pension or Annuity Payments.
0717	W–4S	Request for Federal Income Tax Withholding From Sick Pay.
0010	W–4 SP	Certificado de descuentos del(la) empleado(a) para la retencion.
1501	W–4 V	Voluntary Withholding Request.
0010	W–4	Employee's Withholding Allowance Certificate.
1342	W–5 SP	Certificado del pago por adelantado del Credito por Ingreso del Trabajo.
1342	W–5	Earned Income Credit Advance Payment Certificate.
1483	W–7 SP	Solicitud de Numero de Identicacion Personal del Contribuyente el Servicio de Impuestos Internos.

[FR Doc. 05–18505 Filed 9–16–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Departmental Offices Open Meeting of the Financial Literacy and Education Commission

AGENCY: Treasury Department.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the meeting of the Financial Literacy and Education Commission, established by the Financial Literacy and Education Improvement Act (Title V of the Fair and Accurate Credit Transactions Act of 2003).

DATES: The sixth meeting of the Financial Literacy and Education Commission will be held on Tuesday, September 20, 2005, beginning at 8 a.m.

ADDRESSES: The Financial Literacy and Education Commission meeting will be held at the American Institute of Architects, located at 1735 New York Ave., Washington, DC. Attendees are not required to RSVP.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Tom Kurek by e-mail at: *Thomas.kurek@do.treas.gov* or by telephone at (202) 622–5770 (not a toll free number). Additional information regarding the Financial Literacy and Education Commission and the Department of the Treasury's Office of Financial Education may be obtained through the Office of Financial Education's Web site at: *http://www.treas.gov/financialeducation.*

SUPPLEMENTARY INFORMATION: The Financial Literacy and Education Improvement Act, which is Title V of the Fair and Accurate Credit Transactions Act of 2003 (the "FACT Act") (Public Law 108–159), established the Financial Literacy and Education Commission (the "Commission") to improve financial literacy and education of persons in the United States. The Commission is composed of the Secretary of the Treasury and the head of the Office of the Comptroller of the Currency; the Office of Thrift Supervision; the Federal Reserve; the Federal Deposit Insurance Corporation; the National Credit Union Administration; the Securities and Exchange Commission; the Departments of Education, Agriculture, Defense, Health, and Human Services, Housing and Urban Development, Labor, and Veterans Affairs; the Federal Trade Commission; the General Services Administration; the Small Business Administration; the Social Security Administration; the Commodity Futures Trading Commission; and the Office of Personnel Management. The Commission is required to hold meetings that are open to the public every four months, with its first meeting occurring within 60 days of the enactment of the FACT Act. The FACT Act was enacted on December 4, 2003.

The sixth meeting of the Commission, which will be open to the public, will be held at the American Institute of Architects, located at 1735 New York Ave., NW., Washington, DC. The room will accommodate 80 members of the public. Seating is available on a first-come basis. Participation in the discussion at the meeting will be limited to Commission members, their staffs, and special guest presenters.

Dated: September 20, 2005.

Dán Iannicola, Jr.,

Deputy Assistant Secretary for Financial Education.

[FR Doc. 05–18507 Filed 9–16–05; 8:45 am]

BILLING CODE 4811–33–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The OCC, 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 a proposed information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comments concerning an information collection titled "Bank Secrecy Act/Money Laundering Risk Assessment."

DATES: Written comments should be submitted by November 18, 2005.

ADDRESSES: Direct all written comments to the Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0231, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to *REGS.COMMENTS@OCC.TREAS.GOV*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Additionally, you should send a copy of your comments to Mark Menchik, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503. Electronic mail address is *mmenchik@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend for three years the approval for the following information collection:

Title: Bank Secrecy Act/Anti-Money Laundering Risk Assessment.

OMB Number: 1557–0231.

Form Number: N/A.

Abstract: The Risk Assessment will enhance the ability of examiners and bank management to identify and evaluate any Bank Secrecy Act/Anti-Money Laundering risks associated with the banks' products, services, customers, and locations. As new products and services are introduced, existing products and services change, and the banks expand through mergers and acquisitions, management's evaluation of money laundering and terrorist financing risks must evolve as well. Absent appropriate controls, such as this risk assessment, these lines of business, products, or entities could elevate Bank Secrecy Act/Anti-Money Laundering risks.

Type of Review: Extension of approval for three years.

Affected Public: Businesses or other for-profit.

Number of Respondents: 2,042.

Total Annual Responses: 2,042.

Frequency of Response: Annually.

Total Annual Burden Hours: 21,364.

All comments will be considered in formulating the subsequent submission and become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 12, 2005.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 05–18558 Filed 9–16–05; 8:45 am]

BILLING CODE 4810–33–P

Federal Register

Monday,
September 19, 2005

Part II

Department of Housing and Urban Development

24 CFR Part 990
Revisions to the Public Housing Operating Fund Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR–4874–F–08]

RIN 2577–AC51

Revisions to the Public Housing Operating Fund Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule amends the regulations of the Public Housing Operating Fund Program (Operating Fund Program) to provide a new formula for distributing operating subsidy to public housing agencies (PHAs) and to establish requirements for PHAs to convert to asset management. HUD developed the final rule with the active participation of PHAs, public housing residents, and other relevant parties using the procedures of the Negotiated Rulemaking Act of 1990. These regulatory changes improve and clarify the current regulations governing the Operating Fund Program and take into consideration the recommendations of the congressionally funded study by the Harvard University Graduate School of Design on the cost of operating well-run public housing. The final rule follows publication of an April 14, 2005, proposed rule, and takes into consideration the public comments received.

DATES: *Effective Date:* November 18, 2005.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hanson, Public Housing Financial Management Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410; telephone (202) 475–7949 (this telephone number is not toll-free). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 519 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998) amended section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act). As amended, section 9 of the 1937 Act established an Operating Fund to make assistance available to PHAs to operate and manage public housing. Section 9 of the 1937 Act also required that the amount of the assistance to be made available to a PHA from that fund be determined using a formula developed through negotiated rulemaking procedures as provided in subchapter III of chapter 5 of title 5, United States Code, commonly referred to as the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561 *et seq.*).

Negotiated rulemaking on the Operating Fund Program was initiated in March 1999, and the negotiated rulemaking committee consisted of 25 members representing PHAs, tenant organizations, community-based organizations, and the three national organizations representing PHAs—the Public Housing Authorities Directors Association (PHADA), Council of Large Public Housing Authorities (CLPHA), and National Association of Housing and Redevelopment Officials (NAHRO). Based on the recommendations made by the negotiated rulemaking committee, HUD published a proposed rule on July 10, 2000 (65 FR 42488), which was followed by an interim rule published on March 29, 2001 (66 FR 17276). The March 29, 2001, interim rule established the Operating Fund Program regulations that are currently in effect. These regulations are located in part 990 of HUD's regulations in title 24 of the Code of Federal Regulations.

During the negotiated rulemaking for the Operating Fund Formula, Congress directed that HUD contract with the Harvard University Graduate School of Design (Harvard GSD) to conduct a study on the costs incurred in operating well-run public housing (Cost Study). This congressional direction was contained in the Conference Report (H.R. Rep. No. 106–379 at 91 (1999)) accompanying HUD's Fiscal Year (FY) 2000 Appropriations Act (Pub. L. 106–74, approved October 20, 1999). Congress further directed that HUD make the results of the Cost Study available to the negotiated rulemaking committee and appropriate congressional committees.

The Harvard GSD performed extensive research on the question of what the expense level of managing well-run public housing should be. HUD, consistent with congressional direction, made the results of the Cost Study available to the members of the negotiated rulemaking committee who developed the current Operating Fund Program regulations, and also invited the committee members to be active participants in the Harvard GSD's research for and development of the Cost Study. The Harvard GSD also conducted several public meetings to allow for an exchange of views and expectations with the public housing industry, beyond those industry members who were part of the negotiated rulemaking committee. The Cost Study was completed and officially released in July 2003.

II. The Negotiated Rulemaking Advisory Committee on the Operating Fund

The FY 2004 Consolidated Appropriations Act (Pub. L. 108–199, approved January 23, 2004) required HUD to undertake further negotiated rulemaking to make changes to the Operating Fund formula.

In response to this statutory language, HUD convened a negotiated rulemaking advisory committee (Committee) for the purposes of developing possible changes to the Operating Fund Program in response to the Cost Study. The Committee consisted of 28 members, including representatives of PHAs, public housing tenant organizations, public housing advocacy groups, the three national PHA organizations (CLPHA, NAHRO, and PHADA), the National Organization of African Americans in Housing (NOAAH), multifamily housing providers, and HUD. The Committee held four meetings. The meetings were held on March 30-April 1, 2004, in Washington, DC; April 13–15, 2004, also in Washington, DC; May 11–12, 2004, in Atlanta, Georgia; and June 8–9, 2004, in Potomac, Maryland. Committee sessions were announced in the **Federal Register** and were open to the public. Members of the public were permitted to make statements during the meetings at designated times and to file written statements with the Committee for its consideration.

The Committee developed a report containing several recommendations for revising the current Operating Fund Program regulations (Committee Recommendations). HUD developed a draft proposed rule based on these recommendations. Consistent with HUD's obligations under Executive Order 12866 (entitled "Regulatory Planning and Review") and other rulemaking authorities, the draft rule underwent further HUD and executive branch review prior to publication.

On April 14, 2005 (70 FR 19858), HUD published its proposed rule to revise the Operating Fund Program in the **Federal Register**. As a result of the pre-publication review processes, ten substantive modifications were made to the Committee Recommendations. Specifically, the April 14, 2005, proposed rule did not include seven of

the changes recommended by the Committee. In addition, the proposed rule contained three modifications to the Operating Fund Program that were not part of the Committee Recommendations. Additional information regarding the proposed regulatory changes to the Operating Fund Program, and the modifications made to the Committee Recommendations, can be found in the preamble to the April 14, 2005, proposed rule.

III. Differences Between This Final Rule and the April 14, 2005, Proposed Rule

This final rule follows publication of the April 14, 2005, proposed rule and takes into consideration the public comments received on the proposed rule. Sections IV, V, and VI of this preamble provide a summary of the significant issues raised by the public commenters on the proposed rule and HUD's responses to the comments. After reviewing the public comments, HUD has made the following changes to the April 14, 2005, proposed rule.

Adoption of Five Committee Recommendations

HUD has adopted five of the seven Committee Recommendations that were omitted from the April 14, 2005, proposed rule. These are:

1. The ten percent non-profit coefficient.

2. The three percent vacancy allowance.

3. The phase-in of operating subsidy gains over two years.

4. The provision regarding the discontinuation of subsidy reduction through demonstration of successful conversion to asset management (*i.e.*, "stop-loss provision").

5. The language requiring use of an advisory committee to review the Project Expense Level (PEL) methodology and utility benchmarking, convened in accordance with the Federal Advisory Committee Act (FACA).

With respect to the remaining two Committee Recommendations not adopted in the April 14, 2005, proposed rule (*i.e.*, the change in methodology for inflating PELs and the elimination of the $2 per unit per month public entity fee), the final rule remains unchanged.

Removal of Provisions Not Contained in the Committee Recommendations

Additionally, HUD has removed the three proposed rule provisions that were not part of the Committee Recommendations. These are:

1. The adjustment in § 990.190(i) based on the Committee Recommendations for certain PHAs.

2. The two-year limit on a higher subsidy for vacant units due to changing market conditions, and the related requirements that PHAs requesting such subsidy submit a plan for ending the higher subsidy within the two-year period.

3. The provision authorizing sanctions on PHAs that fail to comply with the asset management requirements or that do not submit accurate and timely data.

Energy Loan Amortization Expenses

In response to comments, HUD has also added language relating to the eligible expenses that can be funded under the "add-on" for energy loan amortization. This language was included in the Committee Recommendations, but was inadvertently omitted in the April 14, 2005, proposed rule.

Technical Non-Substantive Changes

In addition to the changes described above, HUD has also made several technical non-substantive corrections to the April 14, 2005, proposed rule, such as correcting cross-references and making other grammatical and editorial changes.

IV. Public Comments Received on the April 14, 2005, Proposed Rule

The public comment period for the proposed rule closed on June 13, 2005. The proposed rule was of significant interest to the public. HUD received 573 public comments on the April 14, 2005, proposed rule. Comments were submitted by PHAs, PHA industry groups, resident organizations, advocates for low-income housing, housing experts, and other organizations and individuals. Many of the comments were part of a letter-writing campaign consisting of several form letters that were similar in substance. In some instances, individual commenters submitted multiple comments consisting of different form letters. In general, the comments objected to the modifications made to the Committee Recommendations and urged that HUD issue a rule adopting the recommendations.

The next two sections of the preamble present a summary of the significant issues raised by the public comments, and HUD's responses to the comments. Comments are organized in two categories. Section V of the preamble discusses the public comments regarding the changes to the Committee Recommendations. Section VI of the preamble discusses additional topics that were raised by the commenters. Within each category of comments, the headings present the issue or question, followed by a brief description of the comment and HUD's response to the comment.

V. Public Comments Regarding the Changes to Committee Recommendations

General Comments

Comment: Support for proposed rule. Four commenters supported implementation of the April 14, 2005, proposed rule. The commenters wrote that although the proposed rule contained changes to the Committee Recommendations and did not fulfill every resident's and PHA's needs, the rule maintained "some of the more prevailing themes of the negotiated rulemaking agreement," such as the conversion to the PEL, which will "lead to more efficient property-based management." The commenters wrote that with the resulting increase in subsidy, PHAs will be able to provide additional services to their residents and urged HUD to quickly implement the April 14, 2005, proposed rule.

HUD Response. HUD agrees that this final rule will result in better-managed PHAs and improved services to residents.

Comment: HUD should fully implement the Committee Recommendations. As noted above, the majority of the public commenters objected to the changes made to the Committee Recommendations and urged that HUD either fully implement the regulatory proposals developed during the negotiated rulemaking process or reconvene the Committee for new negotiations. Several of the commenters expressed concern that the "proposed rule modification of the funding methodology will have a long term negative impact on PHAs in order to achieve a short-term solution for this budget year" and that "budget constraints should more appropriately be handled by prorating the budget based on the level of congressional appropriations."

HUD Response. While it is true that the Committee Recommendations were developed as part of a formal process, the completion of the Committee's work did not conclude the rulemaking process. HUD indicated throughout the negotiated rulemaking sessions that the Committee Recommendations, like all significant rulemakings, would undergo further HUD and Executive Order 12866 review prior to publication and that the recommendations might be revised as a

result of those review processes. The changes made to the Committee Recommendations were designed to further the goals of the Operating Fund program and the Administration policies and budgetary priorities, while also advancing the goals of the Committee to implement an improved and more accurate Operating Fund formula.

HUD recognizes that, as part of a negotiated rulemaking process, concessions were made by all parties to arrive at the proposed regulatory changes recommended by the Committee. In light of the issues raised by the public commenters, HUD has reconsidered the changes to the Committee Recommendations, and this final rule adopts all but two of the provisions recommended by the Committee. HUD believes that the final rule furthers the implementation of the recommendations of the Cost Study, the policy and budgetary goals of the Administration, and the consensus decisions reached during the negotiated rulemaking process.

Comment: HUD should initiate new rulemaking on the Operating Fund. Several commenters wrote that HUD should discard both the April 14, 2005, proposed rule and the Committee Recommendations, and start the rulemaking process again to produce a rule that would be more reflective of the costs associated with well-managed public housing. The commenters wrote that the cuts recommended by the Cost Study would impair the ability of PHAs to carry out necessary functions to maintain decent, safe, and sanitary housing.

HUD Response. While the Committee Recommendations and the April 14, 2005, proposed rule may not meet with the complete satisfaction of all parties, both reflect the results of extensive deliberations based on the sound and thorough Cost Study. As HUD has previously indicated, it believes that the Cost Study's methodology is an interim solution, with the ultimate goal to establish funding levels based on actual and reasonable cost data by property, which is to be achieved with the implementation of asset management. However, HUD has acknowledged that PHAs that face a reduction under the new formula will need some time to align their resources with the new funding. Accordingly, HUD has provided a 5-year transition period.

Comments on Specific Regulatory Provisions

Comment: The non-profit coefficient should be increased to ten percent. The Cost Study and the Committee had recommended a non-profit coefficient of ten percent based on estimated differences in operating costs between for-profit and non-profit entities according to the Federal Housing Administration (FHA) database of properties that was used for the Cost Study. The April 14, 2005, proposed rule reduced the non-profit coefficient from ten percent to four percent, reflecting the belief that the difference in costs between for-profit and non-profit entities represented inefficiencies that should not be supported in the formula.

Many comments objected to HUD's reduction of the non-profit coefficient from ten to four percent on the grounds that it was contrary to the recommendations of both the Committee and the Cost Study, and that it would not provide PHAs with sufficient funding to support their specific non-profit operating functions.

HUD Response. As noted above, HUD has adopted the suggestion made by the commenters and has adopted the non-profit coefficient as contained in the Committee Recommendations.

Comment: Support for a $2 Per Unit Per Month (PUM) Public Entity Fee. The Committee recommended that a public entity fee of $2 PUM be added to the initial PELs. The public entity fee was intended to reimburse PHAs for additional services (above and beyond the non-profit coefficient) that are unique to PHAs as public entities. The April 14, 2005, proposed rule did not adopt this additional fee. HUD's position was that these expenses were addressed through other means in the proposed rule.

Many commenters recommended adoption of the $2 PUM public entity fee. Several of the commenters asked where in the April 14, 2005, proposed rule such expenses were covered, especially given the fact that the non-profit coefficient had been reduced.

HUD Response. HUD has not revised the rule in response to these comments. The FHA portfolio, which was the basis for the new Project Expense Level (PEL) calculation, contains a high percentage of assisted properties, which are also subject to HUD regulations. Thus, the expenses associated with the public entity fee are reflected in the PEL's percent-assisted coefficient and the non-profit coefficient. Furthermore, the final rule adopts the Cost Study's recommendation of a ten percent non-profit coefficient, which HUD believes adequately covers the additional services unique to PHAs.

Comment: Support for the three percent allowance for vacant units. Under the Committee Recommendations, PHAs would receive a subsidy for occupied dwelling units and dwelling units with an approved vacancy. PHAs would also receive an operating subsidy for a limited number of vacancies if the annualized rate is less than or equal to three percent, or for up to five units if the PHA has 100 or fewer units. The April 14, 2005, proposed rule did not adopt these recommendations.

Many commenters recommended that HUD adopt the vacancy allowance, indicating that it would be unrealistic to expect any housing operator to maintain 100 percent occupancy at all times. Several commenters mentioned that the three percent vacancy allowance is the industry standard and that the monthly rent charge in FHA's multifamily housing program also reflects assumptions on occupancy loss.

HUD Response. HUD has revised the rule in response to the suggestion made by the commenters. The final rule adopts the recommendation of the Committee with regard to vacancies. Hence, PHAs will receive an operating subsidy for a limited number of vacancies if the annualized rate is less than or equal to three percent, or for up to five units if the PHA has 100 or fewer units.

Comment: Support for Committee recommendation regarding the PEL inflation factor. The annual inflation factors used to adjust the current Allowable Expense Level (AEL) are based on a 60 percent wage factor and a 40 percent non-wage factor. Under the Committee Recommendations, the weights would have remained the same, but the methodology for calculating the inflation factor would have changed. For the wage component, the factor would have been based on the Employment Cost Index (ECI) instead of the current formula's Bureau of Labor Statistics (BLS) 202 Local Government Wage series. For the non-wage component, this factor would have been based on the Consumer Price Index (CPI) instead of the current formula's Producer Price Index (PPI). The April 14, 2005, proposed rule retained the current formula's inflation factor methodology for adjusting annually the PEL.

Many commenters urged that HUD adopt the methodology recommended by the Committee for calculating the PEL inflation factor. The commenters wrote that the recommended methodology is a more accurate measure of inflation. The commenters wrote that the current wage factor does not keep pace with health care costs, which was addressed by the Committee with the recommended use of the ECI. In

addition, several commenters wrote that because PHAs are not producers, but, instead, purchasers of goods and services, the more appropriate index for non-wage inflation would be the CPI.

HUD Response. HUD has not revised the rule in response to these public comments. During negotiated rulemaking, HUD sought to devise a more accurate and transparent inflation factor methodology than the one used under the current regulations, one that PHAs could calculate by accessing the BLS Web site. After further review, HUD believes that the inflation factors recommended by the Committee are less accurate and no more transparent than the current methodology. Specifically, for the wage component, the current BLS–202 local government wage series is more accurate than the BLS—Employment Cost Index (ECI) contemplated by the Committee for the following reasons:

1. The current methodology measures wages of local government employees, which are more similar to PHAs, whereas the ECI data includes State *and* local government employees.

2. The current methodology includes data that is available at the county level, summed to either state metropolitan and nonmetropolitan level, whereas the methodology recommended by the Committee (*i.e.*, ECI) is available at only a national level and, for private sector wages, at the regional level. Local wage patterns can vary significantly from national averages.

For the non-wage component, the current methodology uses the Producer Price Index (PPI), which excludes the cost of food and energy and measures national average cost changes in finished goods used by businesses. The Committee recommended using the overall CPI, which primarily measures changes in the costs of food, housing, apparel, recreation, transportation, medical expenses, utilities, and other services. HUD believes the PPI is a more appropriate measure of the type of goods and services purchased by PHAs, and that the overall CPI has little relevance to the costs of PHA purchases. In addition, utility costs are covered in the Operating Fund formula under a separate component than the PEL and should be excluded from the PEL inflation factor.

All factors considered, the current methodology for the inflation factor is considerably more appropriate than the methodology recommended by the Committee.

Comment: Support for two-year phase-in of operating subsidy gains. Under the Committee Recommendations, PHAs that experience a gain in their operating subsidy would have those gains phased in over a two-year period. The April 14, 2005, proposed rule would have phased in those gains over a four-year period to more closely align the gains with the five-year phase-in period for those PHAs that would have their subsidy decreased.

Many commenters objected to the change in phase-in for PHAs gaining operating subsidy. The commenters indicated that the four-year phase-in period would be too long and that, for PHAs that have been historically underfunded, increases in subsidy should be distributed expeditiously.

HUD Response. HUD has adopted the suggestion of the commenters to adopt the language of the Committee Recommendations so that gains in subsidy will be phased in over two years.

Comment: Support for adoption of "stop-loss" provision. The Committee Recommendations allowed PHAs to discontinue their subsidy reduction (stop-loss) by demonstrating successful conversion to asset management. The April 14, 2005, proposed rule did not adopt this stop-loss provision on the grounds that the Cost Study's results should be equally applied to all PHAs and that this stop-loss would weaken the implementation of the Cost Study. Further, PHAs that feel that their formula is not correctly calculated have remedies under the appeals provision.

Many commenters supported adoption of the stop-loss provision. The commenters indicated that such a provision is necessary to prevent PHAs from experiencing reductions in their subsidy amounts that impact their staffing and PHA services. In addition, commenters wrote that the stop-loss provision would provide PHAs with an incentive to convert to asset management in order to limit their decrease in subsidy.

HUD Response. HUD has revised the rule in response to these comments. The final rule adopts the stop-loss provision recommended by the Committee, which allows PHAs to discontinue their subsidy reduction by demonstrating successful conversion to asset management.

Comment: Opposition to the adjustment for certain PHAs. The April 14, 2005, proposed rule would have established an "add on" for certain PHAs that would have gained subsidy under the Committee Recommendations, but would have had their subsidy decreased under the proposed rule. These PHAs would receive additional funding at the formula amount recommended by the Committee.

Many of the public commenters objected to this special add-on. Most believed that this adjustment created a special class of agencies and essentially a two-tier, inequitable funding system.

HUD Response. HUD agrees with the public commenters and has removed the adjustment for certain PHAs. All PHAs will be funded under the same Operating Fund formula and provisions.

Comment: Opposition to the two-year time limit and plan requirements on subsidies for vacant units due to changing market conditions. The April 14, 2005, proposed rule included a provision that would have required PHAs that appeal to receive subsidy on vacant units due to changing market conditions. The provision would have required such PHAs to submit, along with their appeal, a plan to lease the units within two years, and imposed a two-year limit on receipt of such subsidy. The Committee Recommendations did not include a similar provision for a plan or a two-year time limit.

Many commenters objected to the two-year time limit on subsidies for units vacant due to changing market conditions and the related requirement for submission of a plan for leasing those units within that time period. Many commenters also noted that HUD's regulations governing the mandatory and voluntary conversion of public housing developments to tenant-based voucher assistance (see 24 CFR part 972) already provide PHAs with guidelines for addressing vacancies based on market conditions.

HUD Response. HUD has adopted the suggestion of the commenters and has removed both the two-year limit on receipt of subsidy and the related plan requirement.

Comment: Opposition to sanctions for failure to convert to asset management and to submit accurate and timely data. The April 14, 2005, proposed rule included two provisions authorizing sanctions, as deemed necessary and otherwise provided by law, for those PHAs not in compliance with asset management by FY 2011 and that fail to submit accurate and timely data as required by the regulations. These sanctions might include the imposition of a daily monetary fine until the PHA converted to asset management.

Many commenters objected to the new sanction provisions. The commenters wrote that the provisions are unnecessary, since HUD already has numerous remedies if PHAs are not in compliance with applicable requirements. In addition, the

commenters wrote that the imposition of a daily monetary fine is inappropriate and will harm the people the program is designed to assist. Some commenters also wrote that the conversion to asset management is a complex task and that, even with good faith and best efforts, a PHA could be subject to fines for noncompliance.

HUD Response. HUD has adopted the suggestion of the commenters and removed the sanction language that was found in proposed §§ 990.200(d) and 990.290(e). HUD agrees with the commenters that it already has the authority to impose a broad range of sanctions for non-compliance with program rules.

Comment: The 2009 review of PEL methodology should be conducted in accordance with the procedures of the Federal Advisory Committee Act (FACA). The Committee Recommendations provided that in 2009, HUD will convene a meeting with representatives of appropriate stakeholders to review the methodology to evaluate the PEL based on actual cost data and to establish utility benchmarking for the PEL. The provision stated that the meetings shall be convened in accordance with FACA procedures. The April 14, 2005, proposed rule modified that language to state that the meetings would be convened in accordance with "FACA or such other authority or protocol determined appropriate."

Several commenters objected to the new FACA language included in the proposed rule. The commenters wrote that the issues to address in 2009 as part of the discussions of the PEL methodology and utility benchmarking are inherently complex and that the April 14, 2005, proposed rule language does not provide sufficient assurances that interested stakeholders will have an official role in the 2009 discussions.

HUD Response. As noted above, HUD has adopted the language recommended by the Committee. Specifically, this final rule provides that HUD will convene a FACA committee to review the methodology to evaluate the PEL based on actual cost data and establish utility benchmarking.

VI. Discussion of Additional Public Comments Received on the April 14, 2005, Proposed Rule

General Comments

This section of the preamble discusses general comments received on the April 14, 2005, proposed rule not related to a specific regulatory provision.

Comment: HUD should provide updated calculations by property and by PHA so that the impact of the rule can be understood. One commenter wrote that, in response to a request during the negotiations, HUD did not provide updated calculations modeling the impact of the rule on individual PHAs. Another commenter wrote that the April 14, 2005, proposed rule does not provide sufficient information for each PHA to determine the extent of the gains or losses under the formula and that HUD should provide this information in an easy to understand way that shows the percent of change and the dollar amount of the change.

HUD Response. HUD agrees that all PHAs should understand the formula for calculating operating subsidy under the final rule. Data was presented to the Committee and later made available to the public housing community on the projected impact of the rule based on the Committee Recommendations. Similarly, HUD provided data modeling on the projected impact of the April 14, 2005, proposed rule on individual PHAs. This data was shared with representatives of the public housing industry groups and other stakeholders. Finally, HUD has posted a complete report showing the operating subsidy amounts for all PHAs and the methodology documents on the HUD Web site at *http://www.hud.gov.*

Comment: HUD should clarify what the rule means when it refers to "fiscal year." Several commenters suggested that HUD clarify in the rule whether references to "fiscal year" mean a PHA's fiscal year or the federal fiscal year.

HUD Response. HUD has revised references to the term "fiscal year" in the regulatory text of this final rule to clarify whether the terms refer to a federal or PHA fiscal year.

Comment: HUD should make permanent Moving to Work Agreements. One commenter suggested that HUD give PHAs participating in the Moving to Work program the option of making their current agreement permanent.

HUD Response. The suggestion made by the commenter is outside the scope of this rulemaking, which is concerned with implementation of the new Operating Fund formula.

Comment: Concerns regarding implementation of future deregulatory changes. One commenter expressed concern about the language in the preamble indicating that HUD and its negotiating partners on the Committee may contemplate additional organizational and regulatory changes beyond those included in the Operating Fund in order to implement asset management. The commenter wrote that this language appears to indicate that HUD seeks deregulation, which is beyond the mandate of the Committee, and that HUD may try to implement significant policy changes by circumventing the normal regulatory process. Another commenter cautioned that HUD should concentrate first on implementing the new formula and, once implemented, then turn to these other regulatory items.

HUD Response. Deregulation was part of the Cost Study's recommendations and, although the subject of deregulation was not directly before the Committee, it is an important aspect of the implementation of asset management. Therefore, the Committee discussed deregulation during the negotiated rulemaking sessions. However, any changes to other HUD regulations would be completed through the appropriate regulatory or administrative processes, which would provide opportunities for public comments, as appropriate. Additionally, HUD is sensitive to the timing of the related changes and will take that into consideration as it proceeds on these other elements.

Comment: Concerns regarding reduced funding for the Operating Fund program. Several commenters wrote that the Operating Fund should be fully funded in order for PHAs that have historically been underfunded to realize the full gains under the new formula. Several commenters wrote that, with the expected decrease in funding for this program in 2006, PHAs would have to cut critical services to residents including anti-crime and job training activities.

HUD Response. The suggestion made by the commenters addresses the annual federal budget process and is outside the scope of this rulemaking, which is concerned with the implementation of the new Operating Fund formula.

Comment: Rule should consider the needs of small PHAs. One commenter wrote that the final rule should consider the needs and issues facing small PHAs.

HUD Response. HUD agrees that there are special considerations for smaller PHAs. The final rule authorizes small PHAs (those with under 250 units) to treat all of their units as one project. Small PHAs are provided the flexibility of either maintaining their current management practices or converting to asset management.

Comment: HUD should provide additional funding for PHAs to transition to asset management if additional regulatory relief is not achieved. One commenter referred to language in § 990.255(b) that provides that "HUD recognizes that appropriate changes in its regulatory and monitoring programs will be needed to support

PHAs" to undertake asset management. The commenter recommended that a provision be added to the rule that would provide additional funding to transition to asset management systems should HUD fail to timely implement needed regulatory and monitoring changes. The commenter also recommended that this transition funding be based on actual costs data presented through the appeal process for higher project cost data under § 990.245(e).

HUD Response. HUD has not adopted the suggestion made by the commenter. Transition costs were discussed by the Committee, but were not part of the Committee Recommendations. The phase-in provisions, as well as the current level of PHA reserves, factored heavily in the decision not to include special transition funding.

Comment: PHA data requirements. One commenter asked what additional data PHAs will be required to maintain, other than the current data, at a property level instead of at a PHA-level.

HUD Response. In general, PHAs will be asked to submit additional data to HUD with respect to asset management and utility data as referenced under § 990.170(f). Further information on the data submission requirements will be provided in subsequent HUD guidance.

Comment: The rule imposes an unfunded mandate on PHAs. Two commenters wrote that the April 14, 2005, proposed rule does not meet the requirements of the Unfunded Mandates Reform Act of 1995 because it fails to take into consideration the significant budgetary impact on PHAs to meet the requirements of the regulation.

HUD Response. HUD, in the development of the proposed rule, reviewed the regulatory proposals for compliance with all legal rulemaking requirements, including the requirements contained in title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA). The UMRA establishes specific thresholds and other requirements for determining whether a rule would impose an unfunded federal mandate. Neither the April 14, 2005, proposed rule, nor this final rule, impose any federal mandates on any State, local, or tribal government, nor on the private sector, within the meaning of the UMRA.

Comments Regarding Subpart A—Purpose, Applicability, Formula, and Definitions

Comment: Disagrees with HUD issuing non-codified guidance. One commenter objected to the language in § 990.110(c), which provides that, for certain secondary elements that will be used in the formula, HUD will provide information in various forms of non-codified guidance HUD deems appropriate. The commenter wrote that, without notice and comment procedures, errors in the guidance cannot be challenged and adjusted except through appeals, which may not fit the appeal categories. The commenter suggested that HUD implement secondary formula elements by interim rulemaking, thereby allowing comments and requests for modification.

HUD Response. HUD has not revised the rule in response to this comment. HUD will use notice and comment rulemaking procedures when such procedures are appropriate or necessary (for example, when a policy change would require the revision of regulatory language codified by this final rule). In other instances, where rulemaking is neither appropriate nor required, but where HUD has determined that clarification of existing regulatory requirements is needed, HUD will issue such guidance through non-regulatory means. Rulemaking can be a time-consuming process and use of such procedures where not required might unnecessarily delay the issuance of needed guidance. Non-regulatory guidance can be amended or updated in a more expeditious manner. In addition, non-codified guidance provides greater flexibility to make changes, if necessary, in a more expeditious manner. As appropriate, HUD will consult with stakeholders and other interested parties in the development of non-regulatory guidance on the Operating Fund.

Comment: HUD should establish a definition for the term "asset repositioning fee." One commenter made this suggestion.

HUD Response. HUD has not added a definition for the term "asset repositioning fee." During the negotiated rulemaking it was agreed that the definitions would be limited to essential terms. Because the asset-repositioning fee is described in detail in § 990.190(h), it has not been added to the definitions section at § 990.115. The asset repositioning fee established in this final rule is the counterpart to the phase-down funding fee in the current part 990 regulations and, in accordance with the provisions in § 990.190, will be paid to PHAs that transition projects or buildings out of their inventory.

Comment: The definition of "rolling base consumption level" should state that the 36-month period ends on June 30th. One commenter made this suggestion.

HUD Response. HUD agrees with this suggestion and has revised the rule accordingly.

Comments Regarding Subpart B—Eligibility for Operating Subsidy

Subpart B of the rule describes the requirements and procedures governing the computation of eligible unit months. A public housing unit may receive operating subsidy for each unit month that it qualifies as an occupied dwelling unit or a dwelling unit with an approved vacancy. The total number of eligible unit months for each PHA will be calculated from July 1st to June 30th prior to the first day of the applicable funding period and will consist of eligible units as defined in this rule. The rule reserves to HUD the right to determine the status of any public housing units based on information in HUD's information systems. In addition, the rule provides for a change in a PHA's formula within each one-year funding period based on the addition and deletion of units in a PHA's inventory.

Comment: HUD should provide operating subsidy for new units. One commenter, citing § 990.150, asked how HUD expects PHAs to operate new units without operating subsidy funds. The commenter wrote that the rule requires PHAs to report new units periodically, but does not provide funding until the next funding cycle.

HUD Response. The commenter has misinterpreted § 990.150, which requires that PHAs report the addition of new units and deletion of units on a quarterly basis. This section goes on to state that once the PHA has reported that the new unit is online, HUD will assume that the unit is fully occupied for the balance of the funding period, and HUD will provide funds from the current funding cycle. However, in the following year, once actual data is available, HUD will make an adjustment to the PHA's funding amount that would take into account the actual occupancy of the new unit(s).

Comment: HUD should clarify the definition of "occupied unit." One commenter, citing § 990.140, requested that HUD clarify when a unit is considered occupied. Two examples provided were: (1) When a tenant is hospitalized and (2) When a PHA refuses to renew a lease for failure to comply with the community service requirements. The commenter suggested that HUD define "occupied" as a unit with an occupant or where the occupant is paying rent.

HUD Response. Consistent with § 990.140 of this final rule, a unit that is under lease to a public housing-eligible family is considered to be occupied.

Comment: Units with approved vacancies under the current regulations should be included in the final rule. Several commenters requested that all of the units for which PHAs may receive subsidy under the current part 990 regulations be included in this final rule, stating that changes would result in decreases in their operating subsidy eligibility. One commenter asked for subsidy for units vacant due to federal and state laws and regulations and another asked for subsidy for units vacant due to HUD approved desegregation plans.

HUD Response. HUD has not made any changes to the rule in response to these comments. The provisions on subsidy eligibility for vacant units, which were discussed extensively during the negotiated rulemaking sessions, have been clarified and streamlined. Under § 990.145, units undergoing modernization and units used for special uses, such as resident services or anticrime activities, are eligible for subsidy. On a project-by-project basis, units that are vacant due to litigation (which includes units vacant due to desegregation plans), disasters, and casualties are eligible for subsidy. PHAs may appeal to HUD to receive operating subsidy for units that are vacant due to changing market conditions. While the final rule no longer expressly provides subsidy eligibility for units vacant due to laws (Federal or State laws of general applicability, or their implementing regulations), the final rule does provide subsidy eligibility for units if they are undergoing modernization, including those undergoing modernization in order to meet construction or habitability standards.

Comment: Add community and management spaces to approved vacancies. One commenter wrote that the final rule should include a vacancy allowance for units converted to community and management spaces and for units that are reconfigured to comply with litigation and legal requirements.

HUD Response. As noted above in this preamble, this final rule has adopted the Committee Recommendation under which PHAs are eligible to receive subsidy for three percent of their vacancies, or up to five units if the PHA has less than 100 units. PHAs also are eligible to receive subsidy for special use units, which are described in § 990.145(b) as units approved and used for resident services, resident organization offices, and related activities such as self sufficiency and anti-crime activities. With regard to unit reconfiguration due to litigation or a legal requirement, if a unit has to be vacant during this reconfiguration, then the unit may be eligible for subsidy under § 990.145(c), which provides subsidy eligibility for units vacant due to litigation.

Comments Regarding Subpart C—PEL

Subpart C describes how formula expenses will be calculated under the revised Operating Fund formula. Specifically, the rule provides a detailed description with respect to the computation of the PEL. The PEL is calculated in terms of PUM costs and represents the costs associated with the project except for utilities and add-ons. HUD will calculate the PEL using the ten variables from the Cost Study and their associated coefficients (*i.e.*, values that are expressed in percentage terms).

Comment: HUD should make further adjustments to the Cost Study methodology for calculating the PEL. Several commenters suggested changes in the Cost Study's methodology for developing the PEL. Suggestions provided by the commenters included: (1) Eliminating ceilings; (2) providing additional funding to take into account costs associated with older properties; (3) removing the four percent reduction for PELs greater than $325; and (4) modifying statistical techniques.

HUD Response. HUD has not adopted the suggestions made by the commenters for changes in the Cost Study methodology for calculating the PEL. All of the suggested changes to the PEL methodology were discussed by the Committee during the negotiated rulemaking sessions. HUD believes that the Cost Study methodology is sound and should be preserved. The final rule provides certain add-ons that went beyond the Cost Study's recommendations (for example, the information technology (IT) fee) and provides additional financial incentives (for example, the freezing of rental income for three years).

Comment: HUD should clarify application of the rule to mixed-finance projects. Referring to § 990.165(g), which grandfathers existing mixed-finance agreements for purposes of funding, one commenter raised technical and implementation issues regarding the applicability of the rule and, in particular, the asset management provisions, including project-based budgeting and accounting, and the calculation of operating subsidy for mixed-finance developments. The commenter asked about the treatment of the development-wide replacement reserves in the determination of the PEL for mixed-finance developments and the use of the non-profit coefficient when determining the PEL for mixed-finance developments. The commenter also inquired about the requirements for project-based budgeting and accounting, as well as about determination of compliance with asset management for mixed-finance developments that are owned and managed by entities other than PHAs and for which the owner and manager handle all management and provide information and financial reports to PHAs for review and monitoring.

HUD Response. HUD views all public housing units under an Annual Contributions Contract (ACC) as public housing assets, regardless of where they are located or whether they are part of a mixed-finance development or a public housing development. As such, the non-profit coefficient will be applied to the PEL for public housing units in mixed-finance developments. However, there will be no separate add-on to cover the cost of replacement reserves that are established in mixed-finance developments, which are not operating costs, *per se.* With regard to how the requirements for project-based budgeting and accounting and how the determination of compliance with asset management will apply to mixed-finance developments, HUD will issue this information in future guidance on these matters.

Comment: Mixed-finance developments should not receive different subsidy amounts. One commenter wrote that § 990.165(g) allows PHAs with certain mixed developments to receive a higher PEL immediately, rather than requiring the higher PEL to be phased in, and that this is contradictory to the provisions of § 990.235.

HUD Response. The provision in § 990.165(g) regarding the level of funding that PHAs would receive for certain mixed-finance projects was included in the regulation for the express purpose of honoring the structure of those mixed-finance agreements. Because the financing and approval in mixed-finance agreements is tied to a specific level of funding, the Committee agreed that future funding should continue at that level, subject to appropriations.

Comments Regarding Subpart C—Utilities

Subpart C describes the Utilities Expense Level (UEL) component of the Operating Fund formula. The UEL includes the computation of the current consumption level and the rolling base consumption level. In addition, a PHA that undertakes energy conservation measures financed by an entity other than HUD may qualify under this rule

for financial incentives with HUD approval.

Comment: HUD should clarify that "other direct costs" are also eligible for additional operating subsidy as part of an energy conservation contract and define what constitutes "direct costs." Several commenters wrote that proposed § 990.185(a)(3) inadvertently omitted language agreed to by the Committee which provided that the PHA is eligible for additional operating subsidy for the cost of amortizing the loan and "other direct costs related to the energy project under the contract." In addition, the commenter suggested that HUD define the type of costs that are eligible for additional operating subsidy.

HUD Response. The language regarding the "other direct costs" was inadvertently omitted from the April 14, 2005, proposed rule. As noted above in this preamble, HUD has adopted the suggestion of the commenters and has inserted the suggested language in § 990.185(a)(3) of this final rule. HUD will provide additional clarification in subsequent guidance as to the types of direct costs that will be eligible for the additional operating subsidy.

Comment: HUD should modify the definition of "utility rate" from "actual average rate" to "actual weighted average." The April 14, 2005, proposed rule at § 990.115 defined "utility rate" as "the actual average rate for any given utility for the most recent 12-month period that ended the June 30th prior to the beginning of the applicable funding period." One commenter requested that the definition be modified to provide for an "actual weighted average" rather than an "actual average weight." The commenter wrote that a simple average may understate the true utility rate because natural gas and heating oil prices tend to be higher during winter when usage is higher, and lower in the summer when usage is reduced. Conversely, electricity prices will tend to be lower in winter and higher in summer. Thus, in order to capture the true rate over a 12-month period, a weighted average would more accurately take into account seasonal usage and rates in use at that time.

HUD Response. HUD has not adopted the suggestion made by the commenters. The Committee discussed various ways to calculate the UEL and it was determined that an actual average rate, not a weighted average, was the most appropriate means to capture utility rates for the past year. The final rule states that funding for utility expenses will be based on the most recent 12-month period, which includes both a heating and cooling season and will include an inflation/deflation factor. Furthermore, by shifting the funding to a calendar cycle and standardizing the rolling base to a July 1st to June 30th cycle, all PHAs will be funded for utilities on the same cycle.

Comment: HUD should not prorate the incentives for energy conservation improvements. One commenter wrote that PHAs may be reluctant to undertake energy conservation measures because the incentives are subject to proration, and PHAs will be unable to realize the full amount of the subsidy associated with the incentives. The commenter suggested that the incentives for energy conservation improvements not be subject to proration.

HUD Response. HUD has not adopted the suggestion made by the commenters. The Department believes that it would be inequitable to the approximately 3,200 PHAs nationwide to provide special treatment for any one component of the formula. Because HUD regards all components of the Operating Fund formula to be of equal importance, HUD believes that it is more equitable when there is a proration to uniformly prorate operating subsidy eligibility based on all components.

Comment: HUD should allow PHAs to substitute "future approved rates" as the basis for calculating a PHA's utility subsidy. One commenter wrote that basing utility subsidy on the "most recent 12-month period that ended the June 30th prior to the beginning of the applicable funding period" may not adequately address near-term changes in utility costs. Specifically, the commenter wrote that rates used in the utility subsidy calculation may be at least nine months old at the time of calculation and over 12 months old at the beginning of the new fiscal year. The commenter suggested that language applicable to the current Operating Fund formula be added. The current formula language allows "future approved rates" to be used as the basis for utility subsidy calculation when these rate changes have been approved and published prior to the due date of the operating subsidy eligibility calculation to HUD.

HUD Response. HUD has not adopted the suggestion made by the commenter. During the negotiated rulemaking sessions, the Committee recognized that the utility subsidy calculation time frame as specified in the rule might not adequately address near-term changes in utility rates. To address this concern, the Committee provided for the inclusion of an inflation/deflation factor in each PHA utility calculation.

Comment: HUD should provide for large utility rate increases. One commenter requested that the PHAs that experience large utility rate increases that are greater than the inflation factor be given consideration in the calculation of the utility subsidy.

HUD Response. In the negotiations, the Committee acknowledged and discussed that utility rate spikes above the rate of inflation have occurred in past fiscal years and could occur again. However, the Committee agreed that since year-end adjustments to the utility funding could no longer be processed due to congressional appropriation language, the new system of funding utilities under this final rule (based on the actual average rate from the last twelve months that ended on June 30 of the year prior to the funding year to be adjusted by an inflation/deflation factor) was the most reasonable and consistent way to fund utilities for all PHAs. If utility rates spike during the course of a PHA's fiscal year, that increase will be picked up in the calculation of the UEL during the next fiscal year.

Comment: Increases in utility costs lower rental income to PHAs with resident-paid utilities. One commenter wrote that when utility costs increase, PHAs with resident-paid utilities must increase utility allowances, thus lowering rental income to the PHA. The commenter wrote that since formula income will be frozen at the 2004 level, the PHA will have no recourse but to request a waiver for an adjustment to rental income.

HUD Response. Section 990.170(e) addresses this issue in providing that, with regard to resident-paid utilities, increases/decreases in tenant utility allowances shall result in a commensurate increase/decrease in operating subsidy. HUD will issue guidance regarding the implementation of this language.

Comment: HUD should provide incentives for PHAs that achieve energy efficiency programs. One commenter made this suggestion.

HUD Response: HUD has retained the current incentives for energy efficiency programs, which are contained in § 990.185.

Comments Regarding Subpart C—Add-ons

Comment: HUD should clarify which "coordinators" are funded under the self-sufficiency add-on. Several commenters asked for clarification as to which program coordinators are included under § 990.190(a) and also whether additional coordinators could be funded.

HUD Response. Section 990.190(a) provides that the self-sufficiency add-on will be "in accordance with HUD's self-

sufficiency program regulations and notices." HUD has issued guidance indicating that the Operating Fund will provide subsidy for elderly and disabled service coordinators for those PHAs that previously received funding under the Resident Opportunities and Self Sufficiency (ROSS) program, and at the levels they received funding under the ROSS program. This guidance may change to reflect program objectives; however, at present, there is no additional funding for these activities.

Comment: HUD should provide PHAs with additional operating subsidy for Family Self-Sufficiency (FSS) coordinators. One commenter wrote that in FY 2004, HUD began to fund the cost of the FSS Coordinator program from the ROSS program, which led to the loss of FSS funding for many PHAs because ROSS is a competitive grant program. To compensate for this loss, the commenter recommended that every PHA with at least 25 public housing FSS slots approved in its FSS action plan receive operating subsidy for the full cost of one coordinator. Costs for other coordinators would fall outside the Operating Fund Program.

HUD Response. At this time, in accordance with recent HUD guidance, funding for FSS coordinators is available only through the ROSS program. However, funding self-sufficiency coordinators is an eligible activity under the Operating Fund and, although no additional funds will be provided, PHAs can spend their operating subsidy on this type of activity.

Comment: HUD should exclude FSS escrow deposits from calculation of formula income. One commenter wrote that under HUD's current procedures, a PHA excludes FSS escrow deposits from the tenant income that are reported to HUD. The commenter expressed concern that under the new formula, which would freeze tenant income based on data from the audited financial statements for the purposes of determining operating subsidy, that FSS escrow deposits would no longer continue to be excluded from the formula income calculation.

HUD Response. The rental income amount collected on PHA's financial statements already excludes amounts from FSS escrow deposits. Thus, HUD will continue to exclude FSS escrow deposits when calculating the formula income component.

Comment: HUD should provide PHAs with operating subsidy for contributions to FSS escrow accounts. One commenter wrote that the cost of contributions to the FSS escrow accounts should be included as an add-on to operating subsidy. The commenter indicated that HUD had in the past paid for the costs of the FSS escrow accounts by allowing PHAs to deduct contributions to the FSS escrow account from the rent roll reported to HUD for calculating operating subsidy.

HUD Response. HUD has not adopted the suggestion made by the commenter to provide an add-on for PHA contributions to the FSS escrow account. HUD does not believe that a separate add-on is needed. As stated above, HUD will continue to exclude the FSS escrow deposits in the calculation of the formula income component.

Comment: Other HUD grant programs for self-sufficiency activities should not be eliminated. One commenter asked if, with implementation of this final rule, other grant programs will be eliminated and whether PHAs will have to request and fund program coordinators through the use of operating subsidy.

HUD Response. This final rule applies only to the Operating Fund Program. The final rule does not establish a new requirement, or remove or alter any existing requirement for the ROSS Program.

Comment: HUD should provide additional funding through the Operating Fund formula to well-managed PHAs for resident services. One commenter made this suggestion.

HUD Response. HUD has not adopted the suggestion of the commenter. While operating subsidy may be used to provide resident services (*i.e.*, that is an eligible use of funds), HUD disagrees that additional funding should be provided outside the add-ons that already exist for self-sufficiency, as described in § 990.190(a), and resident participation, as described in § 990.190(e).

Comment: HUD should clarify whether PHAs will receive the add-on for payment in lieu of taxes (PILOT) in circumstances when the PILOT payment to the local municipality is waived. One commenter posed this question regarding the PILOT add-on described in § 990.190(i).

HUD Response. The final rule provides that the add-on is based on a PHA's "cooperation agreement or latest actual PILOT payment." Providing that a cooperation agreement is in place, HUD will provide funding for PILOT regardless of whether the local government waives payment.

Comment: HUD should clarify which activities can be funded with the add-on for resident participation. One commenter posed this question regarding the add-on described in § 990.190(e).

HUD Response. The final rule provides that the add-on is for the funding of "resident participation activities, including but not limited to those described in 24 CFR part 964." The intent of this language was to allow resident participation funds to be used for a broader range of activities than outlined in 24 CFR part 964, including resident services.

Comment: There may be an error in the example on the repositioning fee in § 990.190(h)(4). One commenter submitted this observation.

HUD Response. The language in § 990.190(h)(4) should have referenced a PHA with a 1,000 unit inventory, not a 1,000 EUM inventory. The language in this rule has been changed accordingly, and the calculation is now correct.

Comment: HUD should provide an add-on to cover the cost of employee benefits. Several commenters wrote that because their PHA is part of the state retirement system and because much of their work force is unionized, the costs associated with employee benefits including retirement, health, and dental benefits have increased dramatically. The commenters wrote that these costs are not reflected in the FHA cost structure or in other PHAs. The commenters suggested that HUD provide an add-on to cover the costs associated with employee benefits.

HUD Response. HUD has not adopted the suggestion made by the commenters. As the commenters acknowledged, their PHAs may be somewhat unique in that they belong to a state pension system, which is not the case for most PHAs. To provide such an add-on would be unfair to other PHAs. The new Operating Fund formula takes a "benchmark" approach. It represents what essentially other non-profit operators would spend on housing in the same market with similar characteristics. The model does not attempt to reimburse PHAs for requirements imposed uniquely on them by state or local governments. Rather, the formula represents a reasonable amount that other housing operators would incur to run the properties.

Comment: HUD should use interim rulemaking to issue procedures for changes in subsidy due to changes in laws, regulations, or the economy. Section 990.190(i) provides that in the event that HUD determines that enactment of a Federal law or revision in HUD or other Federal regulations has caused or will cause a significant change in expenditures of a continuing nature above the PEL and UEL, HUD may, at its sole discretion, decide to prescribe a procedure under which the PHA may apply for or may receive an

adjustment in operating subsidy. One commenter suggested that HUD should use interim rulemaking to establish such procedures. The commenter wrote that this would ensure that the relevant factors have been considered and that adequate procedures are provided.

HUD Response. HUD has not revised the rule in response to this comment. The language referred to by the commenter, which was agreed to by the Committee, grants HUD the necessary authority to determine the process under which PHAs may apply for subsidy adjustments. Where appropriate, HUD will issue an interim rule to establish these procedures. However, interim rulemaking may not be the best choice in all circumstances, and HUD does not believe it would be appropriate to limit the available options as suggested by the commenter.

Comments Regarding Subpart D—Formula Income

Comment: HUD should provide for regulatory review in determining changes to the formula income component after FY 2008. Several commenters objected to the preamble language of the April 14, 2005, proposed rule indicating that HUD, after FY 2008, will determine how PHA income is to be treated through non-regulatory means. The commenter suggested that HUD clarify that the determination of changes to PHA income post-FY 2008 be accomplished through regulatory means so that the public can comment.

HUD Response. HUD has not revised the rule in response to these comments. However, HUD does agree that residents, organizations representing residents, and other interested parties should have an opportunity to submit comments. To that end, the preamble to the April 14, 2005, proposed rule explicitly stated that the public will have an opportunity to comment before HUD makes the post-2008 policy determination on the income component of the formula (*see* 70 FR 19858 at 19862, first column).

Comments Regarding Subpart E—Determination and Payment of Operating Subsidy

Comment: Clarify the phrase "two funding levels." One commenter wrote that it is not clear what is meant by the phrase "two funding levels" in § 990.230(a). The commenter wrote that neither funding level is explained clearly or referenced.

HUD Response. The phrase "two funding levels" refers to the funding level under the current formula and the funding level under the new formula established by this final rule, as explained in § 990.225, which describes how HUD will determine the amount of a PHA's increase or decrease in subsidy.

Comment: The application of the inflation factor each year will result in a higher PEL during the phase-in of subsidy reductions. One commenter wrote that the application of the inflation factor each year will result in an increase in the PEL, thereby changing the dollar amounts of the subsidy reductions that will occur each year during the five-year phase-in of reductions.

HUD Response. As provided in § 990.225, HUD will calculate the amount of a PHA's reduction or gain in operating subsidy only one time after the effective date of the final rule. The calculation will be made in terms of 2004 dollars. The resulting dollar amount of the loss or gain is the amount that all reductions or gains will be built on during the respective phase-in periods. Thus, the inflation factor will not impact the calculation of the PEL each year for purposes of the amount of loss or gain.

Comment: Objection to calendar funding when PHAs have different fiscal year ends. One commenter wrote that HUD should consider the impact that calendar year funding will have on PHAs whose fiscal years are not calendar years. The commenter wrote that, when PHAs receive subsidy from two different federal fiscal years, they would experience operating budget and reporting issues that HUD should address.

HUD Response. Congress directed HUD to change from funding the operating subsidy on a fiscal year basis to funding it on a calendar year basis in HUD's 2005 appropriations. HUD has implemented this change without requiring PHAs to change their fiscal year ends and will issue guidance to assist PHAs in this change in the funding cycle. When completing operating budgets and financial reports, PHAs will use procedures similar to those that they currently use for capital fund, ROSS, and Section 8, which HUD does not fund on a PHA fiscal year basis.

Comments Regarding Subpart F—Transition Policy and Transition Funding

Comment: When calculating transition funding, HUD should take into account changes in a PHA's inventory. One commenter wrote that the rule does not address how transition funding is calculated if a PHA's property inventory changes during the transition period, which would result in a different subsidy calculation. The commenter suggested that this section be rewritten to take into account changes in a PHA's property inventory during the transition period.

HUD Response. HUD has not adopted the suggestion made by the commenter. The Committee addressed this matter during the negotiated rulemaking sessions. The Committee decided that, overall, it would be unnecessarily complicated and administratively burdensome to recalculate the five-year transition funding for "decliners" and two-year transition funding for "gainers" on an annual basis. Instead, the rule provides that the transition funding will be calculated in the first year based on FY 2004 data and is unchanged during the transition funding period. That said, the commenter's suggestion is addressed through the PEL calculation, which provides that as properties leave or enter the PHA's inventory, these changes will be reflected in the annual PEL calculation.

Comment: The reductions in subsidy should be phased in differently. One commenter recommended that the reductions in subsidy be phased in differently, with more of the reductions occurring in the later years. Rather than phasing in reductions over five years at 24 percent the first year, 43 percent the second year, 62 percent the third year, 81 percent the fourth year, and with the full amount of the reduction being realized in the fifth year, the commenter suggested that the reduction would be managed more prudently by PHAs over five years at 18 percent the first year, 37 percent the second year, 56 percent the third year, 76 percent the fourth year, and with the full amount of the reduction being realized in the fifth year.

HUD Response. HUD has not adopted this approach to phasing in the reductions to subsidy. The final rule at § 990.230 retains the five-year phase in schedule that was set forth in the April 14, 2005, proposed rule and agreed to by the Committee. The Committee discussed the phase in of reductions at length and agreed on this schedule as reasonable.

Comments Regarding Subpart G—Appeals

Comment: The Operating Fund formula does not provide adequate funding. A number of commenters wrote that the Operating Fund formula did not provide PHAs with sufficient funding to maintain well-run public housing.

HUD Response. HUD has not revised the rule in response to these comments. Subpart G of the final rule provides five

types of appeals for PHAs that feel that their formula amount is inadequate.

Comment: HUD should allow for appeals of individual property PELs. Two commenters inquired about the permissibility of PHAs appealing on an individual property PEL rather than on a portfolio basis.

HUD Response. HUD has not adopted the suggestion of the commenters. As discussed by the Committee during negotiations, § 990.240(b) provides that appeals must cover an entire portfolio, not single projects, with the exception that the Assistant Secretary for Public and Indian Housing may accept appeals for less than an entire portfolio for PHAs with more than 5,000 public housing units.

Comment: For appeals under § 990.245(e), HUD should accept information other than actual expenses. One commenter stated that other information beyond actual expenses should be accepted as part of an appeal, because actual expenses are constrained by actual funding and, therefore, the costs of a PHA that has been underfunded will be understated.

HUD Response. HUD has not revised the rule in response to this comment. However, HUD will provide subsequent guidance to clarify the type of data that is indicative of actual project costs and that will be accepted as part of an appeal.

Comment: PEL calculation does not reflect the unique circumstances of certain PHAs. Several commenters wrote that the PEL calculations for their PHAs are incorrect. Several commenters wrote that the geographic coefficient applied to their PHA does not take into account the unique geographical location of the PHA and the location of its properties. Higher transportation costs, therefore, translate into higher costs for goods and services.

HUD Response. During the negotiated rulemaking sessions, the Committee recognized that it was important that accurate data be used in the new formula calculations. As a result, the Committee determined that it would be appropriate to provide PHAs with the opportunity to appeal subsidy amounts under five different categories. Therefore, PHAs that believe that an Operating Fund formula component has a "blatant and objective flaw" and/or that the model's predictions are not accurate because of "specific local conditions" can appeal their operating subsidy amount.

Comment: A PHA cannot determine whether there is variance of ten percent or greater without knowing the factors or variables that can vary or be challenged. One commenter requested clarification on the sentence in § 990.245(c) that reads: "To be eligible, the affected PHA must demonstrate a variance of ten percent or greater in its PEL." The commenter wrote that a PHA cannot know if there is a variance of ten percent or more in order to appeal without knowing the factors or variable that can vary or be challenged.

HUD Response. This ground of appeal covers the appeals of specific variables in the formula model that are not reliable for a particular PHA. Thus, any of the ten variables in the PEL calculation may be challenged. While HUD will be issuing more guidance on appeals, an example of an appeal under this paragraph would be when a PHA is physically located in a non-city central metropolitan area, but actually has all of the characteristics of a location in a city central metropolitan area.

Comment: The independent assessors should be familiar with PHAs. One commenter urged that the professional who will conduct the independent assessments for appeals and determinations of compliance with asset management be familiar with PHAs, their mission, and how HUD requirements affect their structure and operations.

HUD Response. The primary purpose of the appeals is to determine if the cost estimate produced by the formula is valid. Because the Harvard Cost Study was based on a benchmark model, so too will the appeals be based on what other non-profit operators of federally subsidized housing would spend to run the subject properties. Similarly, the asset management assessments would be based on basic principles of asset management for owners of subsidized housing.

Comments Regarding Subpart H—Asset Management

Comment: HUD should reconsider the requirement that PHAs with 250 units or more implement project-based budgeting and accounting. A number of commenters submitted comments on the requirement for project-based accounting and project-based accounting. Some of the commenters wrote that the requirement is unnecessary and a financial and administrative burden, particularly on smaller PHAs. Others commenters proposed different thresholds for applicability of the asset management requirements, such as 500 units and 1,249 units. Another commenter wrote that, based on the number of units in its portfolio and their locations, it would be impossible to be an asset manager.

HUD Response. HUD has not adopted the suggestion of the commenters. PHAs with less than 250 units can treat their entire public housing portfolio as one "project." Implementation of project-based budgeting and accounting, as well as project-based management, were fundamental elements of both the Cost Study and the Committee Recommendations. HUD remains committed to their implementation.

Comment: HUD should phase in the implementation of asset management. A number of commenters suggested that, because of the organizational and other changes required of a PHA to move to asset management, there should be a phase-in approach. One commenter suggested that that phase in be based on PHA size.

HUD Response. HUD has not adopted the suggestion of the commenter. The implementation dates in the rule were considered and adopted by the Committee. Different phase-in dates would not only treat different classes of PHAs in a disparate manner, but would also create an administrative burden on HUD and its systems.

Comment: Central office cost centers are unnecessary. Many commenters wrote that the establishment of a central office cost center is an unneeded level of accounting. Several commenters wrote that PHAs should be allowed to develop alternative methods of allocating central office costs, consistent with OMB Circular A–87. One commenter proposed distributing the actual costs between the projects based on size or utility consumption or any other method. Another commenter wrote that the fee-for-service system may work for some functions like centralized maintenance, but it may not work for others where it is difficult to determine a fee. Thus, PHAs should be allowed in some instances to allocate their costs, which will result in less cumbersome recordkeeping systems.

HUD Response. HUD has not revised the rule in response to these comments. The use of a fee-for-service approach for the treatment of overhead and centrally provided services will ensure that such costs are reasonable and that projects are charged only for services received. These procedures are standard in the multifamily housing industry. As necessary, HUD will provide guidance on the use of a fee-for-service approach consistent with the accounting and management practices of the multifamily housing industry.

Comment: The requirement to apportion assets, liabilities, and equity is unrealistic. One commenter wrote that because accounting has previously been maintained only at the "program" level and not at the "property" level, PHAs do not now segregate assets,

liabilities, and equity by project. Hence, efforts to break out these amounts by project will be prone to error. HUD should require only the preparation of project operating statements and therefore not require project balance sheets.

HUD Response. HUD has not revised the rule in response to the commenter. However, HUD recognizes that the transition to a project-based accounting system will raise questions and pose certain challenges for PHAs. To assist PHAs in making the transition, HUD will issue guidance, as necessary, on the apportionment of assets, liabilities, and equity. HUD believes that balance sheets will provide important information on each project's financial position, increase PHAs' access to debt financing, and improve monitoring of property performance.

Comment: The 2007 deadline for implementation of project-based budgeting and accounting should be delayed. Commenters were particularly concerned that guidance has not been provided for PHAs to move forward with the changes they will need to make to their systems as well as other organizational arrangements. One commenter suggested that HUD provide PHAs with a minimum of 24 months to implement project-based systems after the requirement takes effect.

HUD Response. HUD has not revised the rule in response to these comments. HUD believes that the change to project-based accounting is feasible within the FY 2007 time frame. HUD plans to make the changes to project-based accounting through the current Financial Assessment Subsystem (FASS–PH), where PHAs already have had experience submitting PHA-level financial data to HUD. As noted above, HUD intends to issue guidance that will assist PHAs in making the transition to project-based budgeting within the targeted time frames.

Comment: PHAs require financial assistance to implement the new accounting, budgeting, and management changes. Many commenters wrote that HUD should provide PHAs with special transition funds to address the costly changes in technology and other areas required by the rule.

HUD Response. The Committee discussed, but did not adopt in the Committee Recommendations, special transition funds. The final rule contains two operating subsidy add-ons that can be used by PHAs toward converting to and maintaining technology to facilitate asset management. The first is the asset management fee described in § 990.190(f) that provides an additional $4 PUM to PHAs with 250 or more units and a $2 PUM to PHAs with less than 250 units that choose to convert (PHAs can charge an even higher asset management fee, provided that the fee is "reasonable" and if the project generates excess cash flow). The second is the information technology fee described in § 990.190(g) that provides an additional $2 PUM to all PHAs.

Comment: HUD should consult PHAs when establishing guidance. HUD should establish guidance on converting to asset management in an open manner and consult with PHAs in doing so.

HUD Response. As indicated in previous responses to the commenters, HUD will be issuing a variety of guidance and, where appropriate, intends to consult with its constituents in the development of the guidance.

Comment: HUD should provide training on these new asset management requirements. One commenter asked about the type and quality of training that HUD plans to provide for PHAs, auditors, and field staff to transition to asset management.

HUD Response. HUD intends to conduct training shortly following publication of this final rule. This training, in addition to the guidance that will be issued, should assist PHAs, auditors, and field staff in this transition.

Comment: Although other regulatory changes (outside of the Operating Fund Program) are required to complete the conversion to asset management, HUD should take care not to abandon the segment of the population public housing serves. One commenter wrote that, if asset management is to take advantage of cost savings in the private market, then certain regulations unique to public housing should be removed that restrict PHA movement in that direction. However, these changes should not cause PHAs to abandon the segment of the population that public housing is intended to serve.

HUD Response. The Cost Study showed that, while generally similar, there were certain statutory and regulatory requirements that, if modified, would align public housing more closely to the regulatory environment of other multifamily-assisted housing programs. As stated in the preamble to the April 14, 2005, proposed rule, the Committee recognized that, with the conversion to asset management, other changes were necessary. These changes, including deregulation efforts to continue to lessen burdens on PHAs, will be implemented separately and HUD will provide opportunity for input by stakeholders, as appropriate.

Comment: In some cases, centralized services are more efficient. Several commenters wrote that asset management was not a cost-effective way to run public housing, especially for PHAs that have small to moderate-sized projects for whom centralized or quasi project-based management is superior. Forcing PHAs to decentralize will increase costs, duplicate efforts, and decrease ability to respond to resident needs.

HUD Response. Section 990.275 expressly provides that PHAs can continue to maintain centralized property management services. However, consistent with practices in multifamily housing, this section further provides that services must be arranged in accordance with the best interests of the property and that the cost for any centralized service must be reasonable.

Comment: PHAs already run more efficiently than FHA properties and, therefore, asset management is unnecessary. Several commenters wrote that there was no compelling reason for PHAs to convert to asset management since there is no evidence that conversion will improve efficiency and effectiveness. The Cost Study recommended an increase in subsidy to PHAs based on a comparison between AELs and the FHA benchmark, thereby showing that PHAs administer their properties more efficiently than FHA.

HUD Response. The fact that the Cost Study recommended increased funding levels, based on costs in other federally subsidized housing, does not necessarily mean that PHAs operate efficiently. Indeed, the Cost Study's recommendations to move to asset management were related to concerns that program effectiveness could be greatly improved.

Comment: Other institutions similar to PHAs do not perform asset management. One commenter wrote that, although project-based management is the norm for the multifamily housing industry, it is not the norm for other institutions that are similar to PHAs. Universities, municipal governments, school systems, and hospitals manage multiple properties and do so more similarly to PHAs than the multifamily housing industry.

HUD Response. HUD believes that the appropriate peer group in this situation is, indeed, the multifamily housing industry and not entities such as universities, schools, or hospitals. In the multifamily housing industry, project-based budgeting, accounting, and management is the norm.

Comment: HUD should require PHAs to distribute reports to resident organizations and other entities with

oversight and monitoring responsibilities. Several commenters suggested that HUD add language to § 990.285(b) and § 990.315(a) requiring that PHAs provide project-based budgets, year-end statements, and operating budgets to resident organizations and other entities.

HUD Response. HUD has not adopted the suggestion of the commenters. While HUD does encourage PHAs to discuss these documents with resident organizations and other entities, HUD believes that this decision should be left to individual PHAs and their PHA Board of Commissioners.

Comment: HUD should include responsibilities to resident organizations in the responsibilities of asset management. One commenter suggested that § 990.270 be amended to include language regarding a PHA's responsibility to resident organizations. The commenter suggested that "responding to and supporting independent resident organizations, consulting with residents and the Resident Advisory Board (RAB) in the development of and any amendments to the PHA's annual and five year plans" be added to the sentence at the end of the section.

HUD Response. HUD has not adopted this suggestion. The requirement regarding PHA annual and five-year plans are codified in 24 CFR part 903, including all of the requirements for resident participation and meetings.

VII. Findings and Certifications

Information Collection Requirements

The revised information collection requirements contained in this final rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. The information collection requirements for the Operating Fund program have been approved by OMB and assigned OMB Control Number 2577–0029. The revised public reporting burden for this collection of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the revised estimated public reporting burden is provided in the following table:

HUD form number	Number of respondents	Responses per respondents	Total annual responses	Hours per response	Total hours
HUD–52722	3,141	1	1	.75	2,355.75
HUD–52723	3,141	1	1	.75	2,355.75
HUD–53087	24	1	1	.75	18.00
Total					4,729.50

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). The Finding of No Significant Impact remains applicable to this final rule and is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–5000.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The entities that would be subject to this rule are public housing agencies that administer public housing. Under the definition of "small governmental jurisdiction" in section 601(5) of the RFA, the provisions of the RFA are applicable only to those public housing agencies that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial. Further, the proposed regulatory changes were developed using negotiated rulemaking procedures and with the active participation of PHAs that will be affected by the revised Operating Fund requirements. The membership of the negotiated rulemaking committee included representatives of smaller PHAs, which expressed the views and concerns of these PHAs during development of the proposed regulatory changes.

Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This rule does not have federalism implications and will not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the executive order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal government, nor on the private sector, within the meaning of UMRA.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 ("entitled Regulatory Planning and Review"). This rule was determined to be economically significant under E.O. 12866. The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to

security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). The Economic Analysis prepared for this rule is also available for public inspection at the same location and on HUD's Web site at *http://www.hud.gov.*

Congressional Review of Major Proposed Rules

This rule is a "major rule" as defined in Chapter 8 of 5 U.S.C. The final rule has been submitted for congressional review in accordance with this chapter.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program number is 14.850.

List of Subjects in 24 CFR Part 990

Accounting, Grant programs-housing and community development, Public housing, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, HUD revises 24 CFR part 990 to read as follows:

PART 990—THE PUBLIC HOUSING OPERATING FUND PROGRAM

Subpart A—Purpose, Applicability, Formula, and Definitions

Sec.

Subpart B—Eligibility for Operating Subsidy; Computation of Eligible Unit Months

Subpart C—Calculating Formula Expenses

Subpart D—Calculating Formula Income

Subpart E—Determination and Payment of Operating Subsidy

Subpart F—Transition Policy and Transition Funding

Subpart G—Appeals

Subpart H—Asset Management

Subpart I—Operating Subsidy for Properties Managed by Resident Management Corporations (RMCs)

Subpart J—Financial Management Systems, Monitoring, and Reporting

Authority: 42 U.S.C. 1437g; 42 U.S.C. 3535(d).

Subpart A—Purpose, Applicability, Formula, and Definitions

§ 990.100 Purpose.

This part implements section 9(f) of the United States Housing Act of 1937 (1937 Act), (42 U.S.C. 1437g). Section 9(f) establishes an Operating Fund for the purposes of making assistance available to public housing agencies (PHAs) for the operation and management of public housing. In the case of unsubsidized housing, the total expenses of operating rental housing should be covered by the operating income, which primarily consists of rental income and, to some degree, investment and non-rental income. In the case of public housing, the Operating Fund provides operating subsidy to assist PHAs to serve low, very low, and extremely low-income families. This part describes the policies and procedures for Operating Fund formula calculations and management under the Operating Fund Program.

§ 990.105 Applicability.

(a) *Applicability of this part.* (1) With the exception of subpart I of this part, this part is applicable to all PHA rental units under an Annual Contributions Contract (ACC). This includes PHAs that have not received operating subsidy previously, but are eligible for operating subsidy under the Operating Fund Formula.

(2) This part is applicable to all rental units managed by a resident management corporation (RMC), including a direct-funded RMC.

(b) *Inapplicability of this part.* (1) This part is not applicable to Indian Housing, section 5(h) and section 32 homeownership projects, the Housing Choice Voucher Program, the section 23 Leased Housing Program, or the section 8 Housing Assistance Payments Programs.

(2) With the exception of subpart J of this part, this part is not applicable to the Mutual Help Program or the Turnkey III Homeownership Opportunity Program.

§ 990.110 Operating fund formula.

(a) *General formula.* (1) The amount of annual contributions (operating subsidy) each PHA is eligible to receive under this part shall be determined by a formula.

(2) In general, operating subsidy shall be the difference between formula expense and formula income. If a PHA's formula expense is greater than its formula income, then the PHA is eligible for an operating subsidy.

(3) Formula expense is an estimate of a PHA's operating expense and is determined by the following three components: Project Expense Level (PEL), Utility Expense Level (UEL), and other formula expenses (add-ons). Formula expense and its three components are further described in subpart C of this part. Formula income is an estimate for a PHA's non-operating subsidy revenue and is further described in subpart D of this part.

(4) Certain portions of the operating fund formula (*e.g.*, PEL) are calculated in terms of per unit per month (PUM) amounts and are converted into whole

dollars by multiplying the PUM amount by the number of eligible unit months (EUMs). EUMs are further described in subpart B of this part.

(b) *Specific formula.* (1) A PHA's formula amount shall be the sum of the three formula expense components calculated as follows: {[(PEL multiplied by EUM) plus (UEL multiplied by EUM) plus add-ons] minus (formula income multiplied by EUM)}.

(2) A PHA whose formula amount is equal to or less than zero is still eligible to receive operating subsidy equal to its most recent actual audit cost for its Operating Fund Program.

(3) Operating subsidy payments will be limited to the availability of funds as described in § 990.210(c).

(c) *Non-codified formula elements.* This part defines the major components of the Operating Fund Formula and describes the relationships of these various components. However, this part does not codify certain secondary elements that will be used in the revised Operating Fund Formula. HUD will more appropriately provide this information in non-codified guidance, such as a Handbook, **Federal Register** notice, or other non-regulatory means that HUD determines appropriate.

§ 990.115 Definitions.

The following definitions apply to the Operating Fund program:

1937 Act means the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*).

Annual contributions contract (ACC) is a contract prescribed by HUD for loans and contributions, which may be in the form of operating subsidy, whereby HUD agrees to provide financial assistance and the PHA agrees to comply with HUD requirements for the development and operation of its public housing projects.

Asset management is a management model that emphasizes project-based management, as well as long-term and strategic planning.

Current consumption level is the amount of each utility consumed at a project during the 12-month period that ended the June 30th prior to the beginning of the applicable funding period.

Eligible unit months (EUM) are the actual number of PHA units in eligible categories expressed in months for a specified time frame and for which a PHA receives operating subsidy.

Formula amount is the amount of operating subsidy a PHA is eligible to receive, expressed in whole dollars, as determined by the Operating Fund Formula.

Formula expense is an estimate of a PHA's operating expense used in the Operating Fund Formula.

Formula income is an estimate of a PHA's non-operating subsidy revenue used in the Operating Fund Formula.

Funding period is the calendar year for which HUD will distribute operating subsidy according to the Operating Fund Formula.

Operating Fund is the account/program authorized by section 9 of the 1937 Act for making operating subsidy available to PHAs for the operation and management of public housing.

Operating Fund Formula (or Formula) means the data and calculations used under this part to determine a PHA's amount of operating subsidy for a given period.

Operating subsidy is the amount of annual contributions for operations a PHA receives each funding period under section 9 of the 1937 Act as determined by the Operating Fund Formula in this part.

Other operating costs (add-ons) means PHA expenses that are recognized as formula expenses but are not included either in the project expense level or in the utility expense level.

Payable consumption level is the amount for all utilities consumed at a project that the Formula recognizes in the computation of a PHA's utility expense level at that project.

Per unit per month (PUM) describes a dollar amount on a monthly basis per unit, such as Project Expense Level, Utility Expense Level, and formula income.

Project means each PHA project under an ACC to which the Operating Fund Formula is applicable. However, for purposes of asset management, as described in subpart H of this part, projects may be as identified under the ACC or may be a reasonable grouping of projects or portions of a project or projects under the ACC.

Project-based management is the provision of property management services that is tailored to the unique needs of each property, given the resources available to that property.

Project expense level (PEL) is the amount of estimated expenses for each project (excluding utilities and add-ons) expressed as a PUM cost.

Project units means all dwelling units in all of a PHA's projects under an ACC.

Rolling base consumption level (RBCL) is the average of the yearly consumption levels for the 36-month period ending on the June 30th that is 18 months prior to the beginning of the applicable funding period.

Transition funding is the timing and amount by which a PHA will realize increases and reductions in operating subsidy based on the new funding levels of the Operating Fund Formula.

Unit months are the total number of project units in a PHA's inventory expressed in months for a specified time frame.

Utilities means electricity, gas, heating fuel, water, and sewerage service.

Utilities expense level (UEL) is a product of the utility rate multiplied by the payable consumption level multiplied by the utilities inflation factor expressed as a PUM dollar amount.

Utility rate (rate) means the actual average rate for any given utility for the most recent 12-month period that ended the June 30th prior to the beginning of the applicable funding period.

Yearly consumption level is the actual amount of each utility consumed at a project during a 12-month period ending June 30th.

§ 990.116 Environmental review requirements.

The environmental review procedures of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) and the implementing regulations at 24 CFR parts 50 and 58 are applicable to the Operating Fund Program.

Subpart B—Eligibility for Operating Subsidy; Computation of Eligible Unit Months

§ 990.120 Unit months.

(a) Some of the components of HUD's Operating Fund Formula are based on a measure known as unit months. Unit months represent a PHA's public housing inventory during a specified period of time. The unit months eligible for operating subsidy in a 12-month period are equal to the number of months that the units are in an operating subsidy-eligible category, adjusted for changes in inventory (*e.g.*, units added or removed), as described below.

(b) A PHA is eligible to receive operating subsidy for a unit on the date it is both placed under the ACC and occupied. The date a unit is eligible for operating subsidy does not change the Date of Full Availability (DOFA) or the date of the End of Initial Operating Period (EIOP), nor does this provision place a project into management status.

§ 990.125 Eligible units.

A PHA is eligible to receive operating subsidy for public housing units under an ACC for:

(a) Occupied dwelling units as defined in § 990.140;

(b) A dwelling unit with an approved vacancy (as defined in § 990.145); and

(c) A limited number of vacancies (as defined in § 990.150).

§ 990.130 Ineligible units.

(a) Vacant units that do not fall within the definition of § 990.145 or § 990.150 are not eligible for operating subsidy under this part.

(b) Units that are eligible to receive an asset-repositioning fee, as described in § 990.190(h), are not eligible to receive operating subsidy under this subpart.

§ 990.135 Eligible unit months (EUMs).

(a) A PHA's total number of EUMs will be calculated for the 12-month period from July 1st to June 30th that is prior to the first day of the applicable funding period, and will consist of eligible units as defined in § 990.140, § 990.145, or § 990.150.

(b)(1) The determination of whether a public housing unit satisfies the requirements of § 990.140, § 990.145, or § 990.150 for any unit month shall be based on the unit's status as of either the first or last day of the month, as determined by the PHA.

(2) HUD reserves the right to determine the status of any and all public housing units based on information in its information systems.

(c) The PHA shall maintain and, at HUD's request, shall make available to HUD, specific documentation of the status of all units, including, but not limited to, a listing of the units, street addresses or physical address, and project/management control numbers.

(d) Any unit months that do not meet the requirements of this subpart are not eligible for operating subsidy, and will not be subsidized by the Operating Fund.

§ 990.140 Occupied dwelling units.

A PHA is eligible to receive operating subsidy for public housing units for each unit month that those units are under an ACC and occupied by a public housing-eligible family under lease.

§ 990.145 Dwelling units with approved vacancies.

(a) A PHA is eligible to receive operating subsidy for vacant public housing units for each unit month the units are under an ACC and meet one of the following HUD-approved vacancies:

(1) *Units undergoing modernization.* Vacancies resulting from project modernization or unit modernization (such as work necessary to reoccupy vacant units) provided that one of the following conditions is met:

(i) The unit is undergoing modernization (*i.e.*, the modernization contract has been awarded or force account work has started) and must be vacant to perform the work, and the construction is on schedule according to a HUD-approved PHA Annual Plan; or

(ii) The unit must be vacant to perform the work and the treatment of the vacant unit is included in a HUD-approved PHA Annual Plan, but the time period for placing the vacant unit under construction has not yet expired. The PHA shall place the vacant unit under construction within two federal fiscal years (FFYs) after the FFY in which the capital funds are approved.

(2) *Special use units.* Units approved and used for resident services, resident organization offices, and related activities, such as self-sufficiency and anti-crime initiatives.

(b) On a project-by-project basis, subject to prior HUD approval and for the time period agreed to by HUD, a PHA shall receive operating subsidy for the units affected by the following events that are outside the control of the PHA:

(1) *Litigation.* Units that are vacant due to litigation, such as a court order or settlement agreement that is legally enforceable; units that are vacant in order to meet regulatory and statutory requirements to avoid potential litigation (as covered in a HUD-approved PHA Annual Plan); and units under voluntary compliance agreements with HUD or other voluntary compliance agreements acceptable to HUD (*e.g.*, units that are being held vacant as part of a court-order, HUD-approved desegregation plan, or voluntary compliance agreement requiring modifications to the units to make them accessible pursuant to 24 CFR part 8).

(2) *Disasters.* Units that are vacant due to a federally declared, state-declared, or other declared disaster.

(3) *Casualty losses.* Damaged units that remain vacant due to delays in settling insurance claims.

(c) A PHA may appeal to HUD to receive operating subsidy for units that are vacant due to changing market conditions (see subpart G of this part—Appeals).

§ 990.150 Limited vacancies.

(a) *Operating subsidy for a limited number of vacancies.* HUD shall pay operating subsidy for a limited number of vacant units under an ACC if the annualized vacancy rate is less than or equal to:

(1) Three percent of the PHA's total unit inventory (not to exceed 100 percent of the unit months under an ACC) for the period July 1, 2004, to June 30, 2005, and

(2) Three percent of the total units on a project-by-project basis based on the definition of a project under subpart H of this part, beginning July 1, 2005.

(b) *Exception for PHAs with 100 or fewer units.* Notwithstanding paragraph (a) of this section, a PHA with 100 or fewer units will be paid operating subsidy for up to five vacant units not to exceed 100 percent of the unit months under an ACC. For example, a PHA with an inventory of 100 units and four vacancies during its fiscal year will be eligible for operating subsidy for all 100 units. A PHA with an inventory of 50 units with seven vacancies during its fiscal year will be eligible for operating subsidy for 48 units.

§ 990.155 Addition and deletion of units.

(a) *Changes in public housing unit inventory.* To generate a change to its formula amount within each one-year funding period, PHAs shall periodically (*e.g.*, quarterly) report the following information to HUD, during the funding period:

(1) New units that were added to the ACC, and occupied by a public housing-eligible family during the prior reporting period for the one-year funding period, but have not been included in the previous EUMs' data; and

(2) Projects, or entire buildings in a project, that are eligible to receive an asset repositioning fee in accordance with the provisions in § 990.190(h).

(b) *Revised EUM calculation.* (1) For new units, the revised calculation shall assume that all such units will be fully occupied for the balance of that funding period. The actual occupancy/vacancy status of these units will be included to calculate the PHA's operating subsidy in the subsequent funding period after these units have one full year of a reporting cycle.

(2) Projects, or entire buildings in a project, that are eligible to receive an asset repositioning fee in accordance with § 990.190(h) are not to be included in the calculation of EUMs. Funding for these units is provided under the conditions described in § 990.190(h).

Subpart C—Calculating Formula Expenses

§ 990.160 Overview of calculating formula expenses.

(a) *General.* Formula expenses represent the costs of services and materials needed by a well-run PHA to sustain the project. These costs include items such as administration, maintenance, and utilities. HUD also

determines a PHA's formula expenses at a project level. HUD uses the following three factors to determine the overall formula expense level for each project:

(1)The project expense level (PEL) (calculated in accordance with § 990.165);

(2) The utilities expense level (UEL) (calculated in accordance with §§ 990.170, 990.175, 990.180, and 990.185); and

(3)Other formula expenses (add-ons) (calculated in accordance with § 990.190).

(b) *PEL, UEL, and Add-ons.* Each project of a PHA has a unique PEL and UEL. The PEL for each project is based on ten characteristics and certain adjustments described in § 990.165. The PEL represents the normal expenses of operating public housing projects, such as maintenance and administration costs. The UEL for each project represents utility expenses. Utility expense levels are based on an incentive system aimed at reducing utility expenses. Both the PEL and UEL are expressed in PUM costs. The expenses not included in these expense levels and which are unique to PHAs are titled "other formula expenses (add-ons)" and are expressed in a dollar amount.

(c) *Calculating project formula expense.* The formula expense of any one project is the sum of the project's PEL and the UEL, multiplied by the total EUMs specific to the project, plus the add-ons.

§ 990.165 Computation of project expense level (PEL).

(a) *Computation of PEL.* The PEL is calculated in terms of PUM cost and represents the costs associated with the project, except for utility and add-on costs. Costs associated with the PEL are administration, management fees, maintenance, protective services, leasing, occupancy, staffing, and other expenses, such as project insurance. HUD will calculate the PEL using regression analysis and benchmarking for the actual costs of Federal Housing Administration (FHA) projects to estimate costs for public housing projects. HUD will use the ten variables described in paragraph (b) of this section and their associated coefficient (*i.e.*, values that are expressed in percentage terms) to produce a PEL.

(b) *Variables.* The ten variables are:

(1) Size of project (number of units);

(2) Age of property (Date of Full Availability (DOFA));

(3) Bedroom mix;

(4) Building type;

(5) Occupancy type (family or senior);

(6) Location (an indicator of the type of community in which a property is located; location types include rural, city central metropolitan, and non-city central metropolitan (suburban) areas);

(7) Neighborhood poverty rate;

(8) Percent of households assisted;

(9) Ownership type (profit, non-profit, or limited dividend); and

(10) Geographic.

(c) *Cost adjustments.* HUD will apply four adjustments to the PEL. The adjustments are:

(1) Application of a $200 PUM floor for any senior property and a $215 PUM floor for any family property;

(2) Application of a $420 PUM ceiling for any property except for New York City Housing Authority projects, which have a $480 PUM ceiling;

(3) Application of a four percent reduction for any PEL calculated over $325 PUM, with the reduction limited so that a PEL will not be reduced to less than $325; and

(4) The reduction of audit costs as reported for FFY 2003 in a PUM amount.

(d) *Annual inflation factor.* The PEL for each project shall be adjusted annually, beginning in 2005, by the local inflation factor. The local inflation factor shall be the HUD-determined weighted average percentage increase in local government wages and salaries for the area in which the PHA is located, and non-wage expenses.

(e) *Calculating a PEL.* To calculate a specific PEL for a given property, the sum of the coefficients for nine variables (all variables except ownership type) shall be added to a formula constant. The exponent of that sum shall be multiplied by a percentage to reflect the non-profit ownership type, which will produce an unadjusted PEL. For the calculation of the initial PEL, the cost adjustments described in paragraphs (c)(1), (c)(2), and (c)(3) of this section will be applied. After these initial adjustments are applied, the audit adjustment described in paragraph (c)(4) of this section will be applied to arrive at the PEL in year 2000 dollars. After the PEL in year 2000 dollars is created, the annual inflation factor as described in paragraph (d) of this section will be applied cumulatively to this number through 2004 to yield an initial PEL in terms of current dollars.

(f) *Calculation of the PEL for Moving to Work PHAs.* PHAs participating in the Moving to Work (MTW) Demonstration authorized under section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, approved April 26, 1996) shall receive an operating subsidy as provided in Attachment A of their MTW Agreements executed prior to November 18, 2005. PHAs with an MTW Agreement will continue to have the right to request extensions of or modifications to their MTW Agreements.

(g) *Calculation of the PELs for mixed-finance developments.* If, prior to November 18, 2005, a PHA has either a mixed-finance arrangement that has closed or has filed documents in accordance with 24 CFR 941.606 for a mixed-finance transaction, then the project covered by the mixed-finance transaction will receive funding based on the higher of its former Allowable Expense Level or the new computed PEL.

(h) *Calculation of PELs when data are inadequate or unavailable.* When sufficient data are unavailable for the calculation of a PEL, HUD may calculate a PEL using an alternative methodology. The characteristics may be used from similarly situated properties.

(i) *Review of PEL methodology by advisory committee.* In 2009, HUD will convene a meeting with representation of appropriate stakeholders, to review the methodology to evaluate the PEL based on actual cost data. The meeting shall be convened in accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix) (FACA). HUD may determine appropriate funding levels for each project to be effective in FY 2011 after following appropriate rulemaking procedures.

§ 990.170 Computation of utilities expense level (UEL): Overview.

(a) *General.* The UEL for each PHA is based on its consumption for each utility, the applicable rates for each utility, and an applicable inflation factor. The UEL for a given funding period is the product of the utility rate multiplied by the payable consumption level multiplied by the inflation factor. The UEL is expressed in terms of PUM costs.

(b) *Utility rate.* The utility rate for each type of utility will be the actual average rate from the most recent 12-month period that ended June 30th prior to the beginning of the applicable funding period. The rate will be calculated by dividing the actual utility cost by the actual utility consumption, with consideration for pass-through costs (*e.g.*, state and local utility taxes, tariffs) for the time period specified in this paragraph.

(c) *Payable consumption level.* The payable consumption level is based on the current consumption level adjusted by a utility consumption incentive. The incentive shall be computed by comparing current consumption levels of each utility to the rolling base consumption level. If the comparison

reflects a decrease in the consumption of a utility, the PHA shall retain 75 percent of this decrease. Alternately, if the comparison reflects an increase in the consumption of a utility, the PHA shall absorb 75 percent of this increase.

(d) *Inflation factor for utilities.* The UEL shall be adjusted annually by an inflation/deflation factor based upon the fuels and utilities component of the United States Department of Labor, Bureau of Labor Statistics (BLS) Consumer Price Index for All Urban Consumers (CPI–U). The annual adjustment to the UEL shall reflect the most recently published and localized data available from BLS at the time the annual adjustment is calculated.

(e) *Increases in tenant utility allowances.* Increases in tenant utility allowances, as a component of the formula income, as described in § 990.195, shall result in a commensurate increase of operating subsidy. Decreases in such utility allowances shall result in a commensurate decrease in operating subsidy.

(f) *Records and reporting.* (1) Appropriate utility records, satisfactory to HUD, shall be developed and maintained, so that consumption and rate data can be determined.

(2) All records shall be kept by utility and by project for each 12-month period ending June 30th.

(3) HUD will notify each PHA when HUD has the automated systems capacity to receive such information. Each PHA then will be obligated to provide consumption and cost data to HUD for all utilities for each project.

(4) If a PHA has not maintained or cannot recapture utility data from its records for a particular utility, the PHA shall compute the UEL by:

(i) Using actual consumption data for the last complete year(s) of available data or data of comparable project(s) that have comparable utility delivery systems and occupancy, in accordance with a method prescribed by HUD; or

(ii) Requesting field office approval to use actual PUM utility expenses for its UEL in accordance with a method prescribed by HUD when the PHA cannot obtain necessary data to calculate the UEL in accordance with paragraph (f)(4)(i) of this section.

§ 990.175 Utilities expense level: Computation of the current consumption level.

The current consumption level shall be the actual amount of each utility consumed during the 12-month period ending June 30th that is 6 months prior to the first day of the applicable funding period.

§ 990.180 Utilities expense level: Computation of the rolling base consumption level.

(a) *General.* (1) The rolling base consumption level (RBCL) shall be equal to the average of yearly consumption levels for the 36-month period ending on the June 30th that is 18 months prior to the first day of the applicable funding period.

(2) The yearly consumption level is the actual amount of each utility consumed during a 12-month period ending June 30th. For example, for the funding period January 1, 2006, through December 31, 2006, the RBCL will be the average of the following yearly consumption levels:

(i) Year 1 = July 1, 2001, through June 30, 2002.

(ii) Year 2 = July 1, 2002, through June 30, 2003.

(iii) Year 3 = July 1, 2003, through June 30, 2004.

Note to paragraph (a)(2): In this example, the current year's consumption level will be July 1, 2004, through June 30, 2005.

(b) *Distortions to rolling base consumption level.* The PHA shall have its RBCL determined so as not to distort the rolling base period in accordance with a method prescribed by HUD if:

(1) A project has not been in operation during at least 12 months of the rolling base period;

(2) A project enters or exits management after the rolling base period and prior to the end of the applicable funding period; or

(3) A project has experienced a conversion from one energy source to another, switched from PHA-supplied to resident-purchased utilities during or after the rolling base period, or for any other reason that would cause the RBCL not to be comparable to the current year's consumption level.

(c) *Financial incentives.* The three-year rolling base for all relevant utilities will be adjusted to reflect any financial incentives to the PHA to reduce consumption as described in § 990.185.

§ 990.185 Utilities expense level: Incentives for energy conservation/rate reduction.

(a) *General/consumption reduction.* If a PHA undertakes energy conservation measures that are financed by an entity other than HUD, the PHA may qualify for the incentives available under this section. For a PHA to qualify for these incentives, the PHA must obtain HUD approval. Approval shall be based on a determination that payments under the contract can be funded from the reasonably anticipated energy cost savings. The contract period shall not exceed 12 years. The energy conservation measures may include, but are not limited to: Physical improvements financed by a loan from a bank, utility, or governmental entity; management of costs under a performance contract; or a shared savings agreement with a private energy service company.

(1) *Frozen rolling base.* (i) If a PHA undertakes energy conservation measures that are approved by HUD, the RBCL for the project and the utilities involved may be frozen during the contract period. Before the RBCL is frozen, it must be adjusted to reflect any energy savings resulting from the use of any HUD funding. The RBCL also may be adjusted to reflect systems repaired to meet applicable building and safety codes as well as to reflect adjustments for occupancy rates increased by rehabilitation. The RBCL shall be frozen at the level calculated for the year during which the conservation measures initially shall be implemented.

(ii) The PHA operating subsidy eligibility shall reflect the retention of 100 percent of the savings from decreased consumption until the term of the financing agreement is complete. The PHA must use at least 75 percent of the cost savings to pay off the debt, *e.g.*, pay off the contractor or bank loan. If less than 75 percent of the cost savings is used for debt payment, however, HUD shall retain the difference between the actual percentage of cost savings used to pay off the debt and 75 percent of the cost savings. If at least 75 percent of the cost savings is paid to the contractor or bank, the PHA may use the full amount of the remaining cost savings for any eligible operating expense.

(iii) The annual three-year rolling base procedures for computing the RBCL shall be reactivated after the PHA satisfies the conditions of the contract. The three years of consumption data to be used in calculating the RBCL after the end of the contract period shall be the yearly consumption levels for the final three years of the contract.

(2) PHAs undertaking energy conservation measures that are financed by an entity other than HUD may include resident-paid utilities under the consumption reduction incentive, using the following methodology:

(i) The PHA reviews and updates all utility allowances to ascertain that residents are receiving the proper allowances before energy savings measures are begun;

(ii) The PHA makes future calculations of rental income for purposes of the calculation of operating subsidy eligibility based on these

baseline allowances. In effect, HUD will freeze the baseline allowances for the duration of the contract;

(iii) After implementation of the energy conservation measures, the PHA updates the utility allowances in accordance with provisions in 24 CFR part 965, subpart E. The new allowance should be lower than baseline allowances;

(iv) The PHA uses at least 75 percent of the savings for paying the cost of the improvement (the PHA will be permitted to retain 100 percent of the difference between the baseline allowances and revised allowances);

(v) After the completion of the contract period, the PHA begins using the revised allowances in calculating its operating subsidy eligibility; and

(vi) The PHA may exclude from its calculation of rental income the increased rental income due to the difference between the baseline allowances and the revised allowances of the projects involved, for the duration of the contract period.

(3) *Subsidy add-on.* (i) If a PHA qualifies for this incentive (i.e., the subsidy add-on, in accordance with the provisions of paragraph (a) of this section), then the PHA is eligible for additional operating subsidy each year of the contract to amortize the cost of the loan for the energy conservation measures and other direct costs related to the energy project under the contract during the term of the contract subject to the provisions of this paragraph (a)(3) of this section. The PHA's operating subsidy for the current funding year will continue to be calculated in accordance with paragraphs (a), (b), and (c) of § 990.170 (*i.e.*, the rolling base is not frozen). The PHA will be able to retain part of the cost savings in accordance with § 990.170(c).

(ii) The actual cost of energy (of the type affected by the energy conservation measure) after implementation of the energy conservation measure will be subtracted from the expected energy cost, to produce the energy cost savings for the year.

(iii) If the cost savings for any year during the contract period are less than the amount of operating subsidy to be made available under this paragraph to pay for the energy conservation measure in that year, the deficiency will be offset against the PHA's operating subsidy eligibility for the PHA's next fiscal year.

(iv) If energy cost savings are less than the amount necessary to meet amortization payments specified in a contract, the contract term may be extended (up to the 12-year limit) if HUD determines that the shortfall is the result of changed circumstances rather than a miscalculation or misrepresentation of projected energy savings by the contractor or PHA. The contract term may be extended only to accommodate payment to the contractor and associated direct costs.

(b) *Rate reduction.* If a PHA takes action beyond normal public participation in rate-making proceedings, such as well-head purchase of natural gas, administrative appeals, or legal action to reduce the rate it pays for utilities, then the PHA will be permitted to retain one-half the annual savings realized from these actions.

(c) *Utility benchmarking.* HUD will pursue benchmarking utility consumption at the project level as part of the transition to asset management. HUD intends to establish benchmarks by collecting utility consumption and cost information on a project-by-project basis. In 2009, after conducting a feasibility study, HUD will convene a meeting with representation of appropriate stakeholders to review utility benchmarking options so that HUD may determine whether or how to implement utility benchmarking to be effective in FY 2011. The meeting shall be convened in accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix) (FACA). The HUD study shall take into account typical levels of utilities consumption at public housing developments based upon factors such as building and unit type and size, temperature zones, age and construction of building, and other relevant factors.

§ 990.190 Other formula expenses (add-ons).

In addition to calculating operating subsidy based on the PEL and UEL, a PHA's eligible formula expenses shall be increased by add-ons. The allowed add-ons are:

(a) *Self-sufficiency.* A PHA may request operating subsidy for the reasonable cost of program coordinator(s) and associated costs in accordance with HUD's self-sufficiency program regulations and notices.

(b) *Energy loan amortization.* A PHA may qualify for operating subsidy for payments of principal and interest cost for energy conservation measures described in § 990.185(a)(3).

(c) *Payments in lieu of taxes (PILOT).* Each PHA will receive an amount for PILOT in accordance with section 6(d) of the 1937 Act, based on its cooperation agreement or its latest actual PILOT payment.

(d) *Cost of independent audits.* A PHA is eligible to receive operating subsidy equal to its most recent actual audit costs for the Operating Fund Program when an audit is required by the Single Audit Act (31 U.S.C. 7501–7507) (see 24 CFR part 85) or when a PHA elects to prepare and submit such an audit to HUD. For the purpose of this rule, the most recent actual audit costs include the associated costs of an audit for the Operating Fund Program only. A PHA whose operating subsidy is determined to be zero based on the formula is still eligible to receive operating subsidy equal to its most recent actual audit costs. The most recent actual audit costs are used as a proxy to cover the cost of the next audit. If a PHA does not have a recent actual audit cost, the PHA working with HUD may establish an audit cost. A PHA that requests funding for an audit shall complete an audit. The results of the audit shall be transmitted in a time and manner prescribed by HUD.

(e) *Funding for resident participation activities.* Each PHA's operating subsidy calculation shall include $25 per occupied unit per year for resident participation activities, including, but not limited to, those described in 24 CFR part 964. For purposes of this section, a unit is eligible to receive resident participation funding if it is occupied by a public housing resident or it is occupied by a PHA employee, or a police officer or other security personnel who is not otherwise eligible for public housing. In any fiscal year, if appropriations are not sufficient to meet all funding requirements under this part, then the resident participation component of the formula will be adjusted accordingly.

(f) *Asset management fee.* Each PHA with at least 250 units shall receive a $4 PUM asset management fee. PHAs with fewer than 250 units that elect to transition to asset management shall receive an asset management fee of $2 PUM. PHAs with fewer than 250 units that elect to have their entire portfolio treated and considered as a single project as described in § 990.260(b) or PHAs with only one project will not be eligible for an asset management fee. For all PHAs eligible to receive the asset management fee, the fee will be based on the total number of ACC units. PHAs that are not in compliance with asset management as described in subpart H of this part by FY 2011 will forfeit this fee.

(g) *Information technology fee.* Each PHA's operating subsidy calculation shall include $2 PUM for costs attributable to information technology. For all PHAs, this fee will be based on the total number of ACC units.

(h) *Asset repositioning fee.* (1) A PHA that transitions projects or entire

buildings of a project out of its inventory is eligible for an asset-repositioning fee. This fee supplements the costs associated with administration and management of demolition or disposition, tenant relocation, and minimum protection and service associated with such efforts. The asset-repositioning fee is not intended for individual units within a multi-unit building undergoing similar activities.

(2) Projects covered by applications approved for demolition or disposition shall be eligible for an asset repositioning fee on the first day of the next quarter six months after the date the first unit becomes vacant after the relocation date included in the approved relocation plan. When this condition is met, the project and all associated units are no longer considered an EUM as described in § 990.155. Each PHA is responsible for accurately applying and maintaining supporting documentation on the start date of this transition period or is subject to forfeiture of this add-on.

(3) Units categorized for demolition and which are eligible for an asset repositioning fee are eligible for operating subsidy at the rate of 75 percent PEL per unit for the first twelve months, 50 percent PEL per unit for the next twelve months, and 25 percent PEL per unit for the next twelve months.

(4) Units categorized for disposition and which are eligible for an asset repositioning fee are eligible for operating subsidy at the rate of 75 percent PEL per unit for the first twelve months and 50 percent PEL per unit for the next twelve months.

(5) The following is an example of how eligibility for an asset-repositioning fee is determined:

(i) A PHA has HUD's approval to demolish (or dispose of) a 100-unit project from its 1,000 unit inventory. On January 12th, in conjunction with the PHA's approved Relocation Plan, a unit in that project becomes vacant. Accordingly, the demolition/disposition-approved project is eligible for an asset-repositioning fee on October 1st. (This date is calculated as follows: January 12th + six months = July 12th. The first day of the next quarter is October 1st.)

(ii) Although payment of the asset-repositioning fee will not begin until October 1st, the PHA will receive its full operating subsidy based on the 1,000 units through September 30th. On October 1st the PHA will begin to receive the 36-month asset-repositioning fee in accordance with paragraph (h)(3) of this section for the 100 units approved for demolition. (Asset repositioning fee requirements for projects approved for disposition are found in paragraph (h)(4) of this section.) On October 1st, the PHA's units will be 900.

(i) *Costs attributable to changes in Federal law, regulation, or economy.* In the event that HUD determines that enactment of a Federal law or revision in HUD or other Federal regulations has caused or will cause a significant change in expenditures of a continuing nature above the PEL and UEL, HUD may, at HUD's sole discretion, decide to prescribe a procedure under which the PHA may apply for or may receive an adjustment in operating subsidy.

Subpart D—Calculating Formula Income

§ 990.195 Calculation of formula income.

(a) *General.* For the purpose of the formula, formula income is equal to the amount of rent charged to tenants divided by the respective unit months leased, and is therefore expressed as a PUM. Formula income will be derived from a PHA's year-end financial information. The financial information used in the formula income computation will be the audited information provided by the PHA through HUD's information systems. The information will be calculated using the following PHA fiscal year-end information:

(1) April 1, 2003, through March 31, 2004;

(2) July 1, 2003, through June 30, 2004;

(3) October 1, 2003, through September 30, 2004; and

(4) January 1, 2004, through December 31, 2004.

(b) *Calculation of formula income.* To calculate formula income in whole dollars, the PUM amount will be multiplied by the EUMs as described in subpart B of this part.

(c) *Frozen at 2004 level.* After a PHA's formula income is calculated as described in paragraph (a) of this section, it will not be recalculated or inflated for fiscal years 2006 through 2008, unless a PHA can show a severe local economic hardship that is impacting the PHA's ability to maintain some semblance of its formula income (see subpart G of this part—Appeals). A PHA's formula income may be recalculated if the PHA appeals to HUD for an adjustment in its formula.

(d) *Calculation of formula income when data are inadequate or unavailable.* When audited data are unavailable in HUD's information systems for the calculation of formula income, HUD may use an alternative methodology, including, but not limited to, certifications, hard copy reports, and communications with the respective PHAs.

(e) *Inapplicability of 24 CFR 85.25.* Formula income is not subject to the provisions regarding program income in 24 CFR 85.25.

Subpart E—Determination and Payment of Operating Subsidy

§ 990.200 Determination of formula amount.

(a) *General.* The amount of operating subsidy that a PHA is eligible for is the difference between its formula expenses (as calculated under subpart C of this part) and its formula income (as calculated under subpart D of this part).

(b) *Use of HUD databases to calculate formula amount.* HUD shall utilize its databases to make the formula calculations. HUD's databases are intended to be employed to provide information on all primary factors in determining the operating subsidy amount. Each PHA is responsible for supplying accurate information on the status of each of its units in HUD's databases.

(c) *PHA responsibility to submit timely data.* PHAs shall submit data used in the formula on a regular and timely basis to ensure accurate calculation under the formula. If a PHA fails to provide accurate data, HUD will make a determination as to the PHA's inventory, occupancy, and financial information using available or verified data, which may result in a lower operating subsidy. HUD has the right to adjust any or all formula amounts based on clerical, mathematical, and information system errors that affect any of the data elements used in the calculation of the formula.

§ 990.205 Fungibility of operating subsidy between projects.

(a) *General.* Operating subsidy shall remain fully fungible between ACC projects until operating subsidy is calculated by HUD at a project level. After subsidy is calculated at a project level, operating subsidy can be transferred as the PHA determines during the PHA's fiscal year to another ACC project(s) if a project's financial information, as described more fully in § 990.280, produces excess cash flow, and only in the amount up to those excess cash flows.

(b) Notwithstanding the provisions of paragraph (a) of this section and subject to all of the other provisions of this part, the New York City Housing Authority's Development Grant Project Amendment Number 180, dated July 13, 1995, to Consolidated Annual Contributions Contract NY–333, remains in effect.

§ 990.210 Payment of operating subsidy.

(a) *Payments of operating subsidy under the formula.* HUD shall make monthly payments equal to 1/12 of a PHA's total annual operating subsidy under the formula by electronic funds transfers through HUD's automated disbursement system. HUD shall establish thresholds that permit PHAs to request monthly installments. Requests by PHAs that exceed these thresholds will be subject to HUD review. HUD approvals of requests that exceed these thresholds are limited to PHAs that have an unanticipated and immediate need for disbursement.

(b) *Payments procedure.* In the event that the amount of operating subsidy has not been determined by HUD as of the beginning of the funding period, operating subsidy shall be provided monthly, quarterly, or annually based on the amount of the PHA's previous year's formula or another amount that HUD may determine to be appropriate.

(c) *Availability of funds.* In the event that insufficient funds are available, HUD shall have discretion to revise, on a pro rata basis, the amounts of operating subsidy to be paid to PHAs.

§ 990.215 Payments of operating subsidy conditioned upon reexamination of income of families in occupancy.

(a) *General.* Each PHA is required to reexamine the income of each family in accordance with the provisions of the ACC, the 1937 Act, and HUD regulations. Income reexaminations shall be performed annually, except as provided in the 1937 Act, in HUD regulations, or in the MTW agreements. A PHA must be in compliance with all reexamination requirements in order to be eligible to receive full operating subsidy. A PHA's calculations of rent and utility allowances shall be accurate and timely.

(b) *A PHA in compliance.* A PHA shall submit a certification that states that the PHA is in compliance with the annual income reexamination requirements and its rent and utility allowance calculations have been or will be adjusted in accordance with current HUD requirements and regulations.

(c) *A PHA not in compliance.* Any PHA not in compliance with annual income reexamination requirements at the time of the submission of the calculation of operating subsidy shall furnish to the responsible HUD field office a copy of the procedures it is using to achieve compliance and a statement of the number of families that have undergone reexamination during the 12 months preceding the current funding cycle. If, on the basis of this submission or any other information, HUD determines that the PHA is not substantially in compliance with all of the annual income reexamination requirements, HUD shall withhold payments to which the PHA may be entitled under this part. Payment may be withheld in an amount equal to HUD's estimate of the loss of rental income to the PHA resulting from its failure to comply with the requirements.

Subpart F—Transition Policy and Transition Funding

§ 990.220 Purpose.

This policy is aimed at assisting all PHAs in transitioning to the new funding levels as determined by the formula set forth in this rule. PHAs will be subject to a transition funding policy that will either increase or reduce their total operating subsidy for a given year.

§ 990.225 Transition determination.

The determination of the amount and period of the transition funding shall be based on the difference in subsidy levels between the formula set forth in this part and the formula in effect prior to November 18, 2005. The difference in subsidy levels will be calculated using FY 2004 data. When actual data are not available for one of the formula components needed to calculate the formula of this part for FY 2004, HUD will use alternate data as a substitute (*e.g.*, unit months available for eligible unit months, etc.) If the difference between these formulas indicates that a PHA shall have its operating subsidy reduced as a result of this formula, the PHA will be subject to a transition policy as indicated in § 990.230. If the difference between these formulas indicates that a PHA will have its operating subsidy increased as a result of this formula, the PHA will be subject to the transition policy as indicated in § 990.235.

§ 990.230 PHAs that will experience a subsidy reduction.

(a) For PHAs that will experience a reduction in their operating subsidy, as determined in § 990.225, such reductions will have a limit of:

(1) 24 percent of the difference between the two funding levels in the first year following November 18, 2005;

(2) 43 percent of the difference between the two funding levels in the second year following November 18, 2005;

(3) 62 percent of the difference between the two levels in the third year following November 18, 2005; and

(4) 81 percent of the difference between the two levels in the fourth year following November 18, 2005.

(b) The full amount of the reduction in the operating subsidy level shall be realized in the fifth year following November 18, 2005.

(c) For example, a PHA has a subsidy reduction from $1 million under the formula in effect prior to November 18, 2005 to $900,000 under the formula used for calculating operating subsidy under this part using FY 2004 data. The difference would be calculated at $100,000 ($1 million − $900,000 = $100,000). In the first year, the subsidy reduction would be limited to $24,000 (24 percent of the difference). Thus, the PHA will receive an operating subsidy amount of this rule plus a transition-funding amount of $76,000 (the $100,000 difference between the two subsidy amounts minus the $24,000 reduction limit).

(d) If a PHA can demonstrate a successful conversion to the asset management requirements of subpart H of this part, as determined under paragraph (f) of this section, HUD will discontinue the reduction at the PHA's next subsidy calculation following such demonstration, as reflected in the schedule in paragraph (e) of this section, notwithstanding § 990.290(c).

(e) The schedule of reductions for a PHA that will experience a reduction in subsidy is reflected in the table below.

Funding period	Demonstration date by	Reduction limited to
Prior to year 1	October 1, 2005	5 percent of the difference between the two funding levels.
Year 1	October 1, 2006	24 percent of the difference.
Year 2	October 1, 2007	43 percent of the difference.
Year 3	October 1, 2008	62 percent of the difference.
Year 4	October 1, 2009	81 percent of the difference.
Year 5	October 1, 2010	Full reduction reached.

(f)(1) For purposes of this section, compliance with the asset management requirements of subpart H of this part will be based on an independent assessment conducted by a HUD-approved professional familiar with property management practices in the region or state in which the PHA is located.

(2) A PHA must select from a list of HUD-approved professionals to conduct the independent assessment. The professional review and recommendation will then be forwarded to the Assistant Secretary for Public and Indian Housing (or designee) for final determination of compliance with the asset management requirements of subpart H of this part.

(3) Upon completion of the independent assessment, the assessor shall conduct an exit conference with the PHA. In response to the exit conference, the PHA may submit a management response and other pertinent information (including, but not limited to, an additional assessment procured at the PHAs' own expense) within ten working days of the exit conference to be included in the report submitted to HUD.

(4) In the event that HUD is unable to produce a list of independent assessors on a timely basis, the PHA may submit its own demonstration of a successful conversion to asset management directly to HUD for determination of compliance.

(5) The Assistant Secretary for Public and Indian Housing (or designee) shall consider all information submitted and respond with a final determination of compliance within 60 days of the independent assessor's report being submitted to HUD.

§ 990.235 PHAs that will experience a subsidy increase.

(a) For PHAs that will experience a gain in their operating subsidy, as determined in § 990.225, such increases will have a limit of 50 percent of the difference between the two funding levels in the first year following November 18, 2005.

(b) The full amount of the increase in the operating subsidy level shall be realized in the second year following November 18, 2005.

(c) For example, a PHA's subsidy increased from $900,000 under the formula in effect prior to November 18, 2005 to $1 million under the formula used to calculate operating subsidy under this part using FY 2004 data. The difference would be calculated at $100,000 ($1 million − $900,000 = $100,000). In the first year, the subsidy increase would be limited to $50,000 (50 percent of the difference). Thus, in this example the PHA will receive the operating subsidy amount of this rule minus a transition-funding amount of $50,000 (the $100,000 difference between the two subsidy amounts minus the $50,000 transition amount).

(d) The schedule for a PHA whose subsidy would be increased is reflected in the table below.

Funding period	Increase limited to
Year 1	50 percent of the difference.
Year 2	Full increase reached.

Subpart G—Appeals

§ 990.240 General.

(a) PHAs will be provided opportunities for appeals. HUD will provide up to a two percent hold-back of the Operating Fund appropriation for FY 2006 and FY 2007. HUD will use the hold-back amount to fund appeals that are filed during each of these fiscal years. Hold-back funds not utilized will be added back to the formula within each of the affected fiscal years.

(b) Appeals are voluntary and must cover an entire portfolio, not single projects. However, the Assistant Secretary for Public and Indian Housing (or designee) has the discretion to accept appeals of less than an entire portfolio for PHAs with greater than 5,000 public housing units.

§ 990.245 Types of appeals.

(a) *Streamlined appeal.* This appeal would demonstrate that the application of a specific Operating Fund formula component has a blatant and objective flaw.

(b) *Appeal of formula income for economic hardship.* After a PHA's formula income has been frozen, the PHA can appeal to have its formula income adjusted to reflect a severe local economic hardship that is impacting the PHA's ability to maintain rental and other revenue.

(c) *Appeal for specific local conditions.* This appeal would be based on demonstrations that the model's predictions are not reliable because of specific local conditions. To be eligible, the affected PHA must demonstrate a variance of ten percent or greater in its PEL.

(d) *Appeal for changing market conditions.* A PHA may appeal to receive operating subsidy for vacant units due to changing market conditions, after a PHA has taken aggressive marketing and outreach measures to rent these units. For example, a PHA could appeal if it is located in an area experiencing population loss or economic dislocations that faces a lack of demand for housing in the foreseeable future.

(e) *Appeal to substitute actual project cost data.* A PHA may appeal its PEL if it can produce actual project cost data derived from actual asset management, as outlined in subpart H of this part, for a period of at least two years.

§ 990.250 Requirements for certain appeals.

(a) Appeals under § 990.245 (a) and (c) must be submitted once annually. Appeals under § 990.245 (a) and (c) must be submitted for new projects entering a PHA's inventory within one year of the applicable Date of Full Availability (DOFA).

(b) Appeals under § 990.245 (c) and (e) are subject to the following requirements:

(1) The PHA is required to acquire an independent cost assessment of its projects;

(2) The cost of services for the independent cost assessment is to be paid by the appellant PHA;

(3) The assessment is to be reviewed by a professional familiar with property management practices and costs in the region or state in which the appealing PHA is located. This professional is to be procured by HUD. The professional review and recommendation will then be forwarded to the Assistant Secretary for Public and Indian Housing (or designee) for final determination; and

(4) If the appeal is granted, the PHA agrees to be bound to the independent cost assessment regardless of new funding levels.

Subpart H—Asset Management

§ 990.255 Overview.

(a) PHAs shall manage their properties according to an asset management model, consistent with the management norms in the broader multi-family management industry. PHAs shall also implement project-based management, project-based budgeting, and project-based accounting, which are essential components of asset management. The goals of asset management are to:

(1) Improve the operational efficiency and effectiveness of managing public housing assets;

(2) Better preserve and protect each asset;

(3) Provide appropriate mechanisms for monitoring performance at the property level; and

(4) Facilitate future investment and reinvestment in public housing by public and private sector entities.

(b) HUD recognizes that appropriate changes in its regulatory and monitoring programs may be needed to support PHAs to undertake the goals identified in paragraph (a) of this section.

§ 990.260 Applicability.

(a) PHAs that own and operate 250 or more dwelling rental units under title I of the 1937 Act, including units managed by a third-party entity (for example, a resident management corporation) but excluding section 8 units, are required to operate using an asset management model consistent with this subpart.

(b) PHAs that own and operate fewer than 250 dwelling rental units may treat their entire portfolio as a single project. However, if a PHA selects this option, it will not receive the add-on for the asset management fee described in § 990.190(f).

§ 990.265 Identification of projects.

For purposes of this subpart, project means a public housing building or set of buildings grouped for the purpose of management. A project may be as identified under the ACC or may be a reasonable grouping of projects or portions of a project under the ACC. HUD shall retain the right to disapprove of a PHA's designation of a project. PHAs may group up to 250 scattered-site dwelling rental units into a single project.

§ 990.270 Asset management.

As owners, PHAs have asset management responsibilities that are above and beyond property management activities. These responsibilities include decision-making on topics such as long-term capital planning and allocation, the setting of ceiling or flat rents, review of financial information and physical stock, property management performance, long-term viability of properties, property repositioning and replacement strategies, risk management responsibilities pertaining to regulatory compliance, and those decisions otherwise consistent with the PHA's ACC responsibilities, as appropriate.

§ 990.275 Project-based management (PBM).

PBM is the provision of property-based management services that is tailored to the unique needs of each property, given the resources available to that property. These property management services include, but are not limited to, marketing, leasing, resident services, routine and preventive maintenance, lease enforcement, protective services, and other tasks associated with the day-to-day operation of rental housing at the project level. Under PBM, these property management services are arranged, coordinated, or overseen by management personnel who have been assigned responsibility for the day-to-day operation of that property and who are charged with direct oversight of operations of that property. Property management services may be arranged or provided centrally; however, in those cases in which property management services are arranged or provided centrally, the arrangement or provision of these services must be done in the best interests of the property, considering such factors as cost and responsiveness.

§ 990.280 Project-based budgeting and accounting.

(a) All PHAs covered by this subpart shall develop and maintain a system of budgeting and accounting for each project in a manner that allows for analysis of the actual revenues and expenses associated with each property. Project-based budgeting and accounting will be applied to all programs and revenue sources that support projects under an ACC (*e.g.*, the Operating Fund, the Capital Fund, etc.).

(b)(1) Financial information to be budgeted and accounted for at a project level shall include all data needed to complete project-based financial statements in accordance with Accounting Principles Generally Accepted in the United States of America (GAAP), including revenues, expenses, assets, liabilities, and equity data. The PHA shall also maintain all records to support those financial transactions. At the time of conversion to project-based accounting, a PHA shall apportion its assets, liabilities, and equity to its respective projects and HUD-accepted central office cost centers.

(2) Provided that the PHA complies with GAAP and other associated laws and regulations pertaining to financial management (*e.g.*, OMB Circulars), it shall have the maximum amount of responsibility and flexibility in implementing project-based accounting.

(3) Project-specific operating income shall include, but is not limited to, such items as project-specific operating subsidy, dwelling and non-dwelling rental income, excess utilities income, and other PHA or HUD-identified income that is project-specific for management purposes.

(4) Project-specific operating expenses shall include, but are not limited to, direct administrative costs, utilities costs, maintenance costs, tenant services, protective services, general expenses, non-routine or capital expenses, and other PHA or HUD-identified costs which are project-specific for management purposes. Project-specific operating costs also shall include a property management fee charged to each project that is used to fund operations of the central office. Amounts that can be charged to each project for the property management fee must be reasonable. If the PHA contracts with a private management company to manage a project, the PHA may use the difference between the property management fee paid to the private management company and the fee that is reasonable to fund operations of the central office and other eligible purposes.

(5) If the project has excess cash flow available after meeting all reasonable operating needs of the property, the PHA may use this excess cash flow for the following purposes:

(i) Fungibility between projects as provided for in § 990.205.

(ii) Charging each project a reasonable asset management fee that may also be used to fund operations of the central office. However, this asset management fee may be charged only if the PHA performs all asset management activities described in this subpart (including project-based management, budgeting, and accounting). Asset management fees are considered a direct expense.

(iii) Other eligible purposes.

(c) In addition to project-specific records, PHAs may establish central office cost centers to account for non-project specific costs (*e.g.*, human resources, Executive Director's office, etc.). These costs shall be funded from the property-management fees received from each property, and from the asset management fees to the extent these are available.

(d) In the case where a PHA chooses to centralize functions that directly support a project (*e.g.*, central maintenance), it must charge each project using a fee-for-service approach. Each project shall be charged for the actual services received and only to the extent that such amounts are reasonable.

§ 990.285 Records and reports.

(a) Each PHA shall maintain project-based budgets and fiscal year-end financial statements prepared in accordance with GAAP and shall make these budgets and financial statements available for review upon request by interested members of the public.

(b) Each PHA shall distribute the project-based budgets and year-end financial statements to the Chairman and to each member of the PHA Board of Commissioners, and to such other

state and local public officials as HUD may specify.

(c) Some or all of the project-based budgets and financial statements and information shall be required to be submitted to HUD in a manner and time prescribed by HUD.

§ 990.290 Compliance with asset management requirements.

(a) A PHA is considered in compliance with asset management requirements if it can demonstrate substantially, as described in paragraph (b) of this section, that it is managing according to this subpart.

(b) Demonstration of compliance with asset management will be based on an independent assessment.

(1) The assessment is to be conducted by a professional familiar with property management practices and costs in the region or state in which the PHA is located. This professional is to be procured by HUD.

(2) The professional review and recommendation will then be forwarded to the Assistant Secretary for Public and Indian Housing (or designee) for final determination of compliance to asset management.

(c) Upon HUD's determination of successful compliance with asset management, PHAs will then be funded based on this information pursuant to § 990.165(i).

(d) PHAs must be in compliance with the project-based accounting and budgeting requirements in this subpart by FY 2007. PHAs must be in compliance with the remainder of the components of asset management by FY 2011.

Subpart I—Operating Subsidy for Properties Managed by Resident Management Corporations (RMCs)

§ 990.295 Resident Management Corporation operating subsidy.

(a) *General.* This part applies to all projects managed by a Resident Management Corporation (RMC), including a direct funded RMC.

(b) *Operating subsidy.* Subject to paragraphs (c) and (d) of this section, the amount of operating subsidy that a PHA or HUD provides a project managed by an RMC shall not be reduced during the three-year period beginning on the date the RMC first assumes management responsibility for the project.

(c) *Change factors.* The operating subsidy for an RMC-managed project shall reflect changes in inflation, utility rates, and consumption, as well as changes in the number of units in the resident managed project.

(d) *Exclusion of increased income.* Any increased income directly generated by activities by the RMC or facilities operated by the RMC shall be excluded from the calculation of the operating subsidy.

(e) *Exclusion of technical assistance.* Any technical assistance the PHA provides to the RMC will not be included for purposes of determining the amount of funds provided to a project under paragraph (b) of this section.

(f) The following conditions may not affect the amounts to be provided under this part to a project managed by an RMC:

(1) *Income reduction.* Any reduction in the subsidy or total income of a PHA that occurs as a result of fraud, waste, or mismanagement by the PHA; and

(2) *Change in total income.* Any change in the total income of a PHA that occurs as a result of project-specific characteristics when these characteristics are not shared by the project managed by the RMC.

(g) *Other project income.* In addition to the operating subsidy calculated in accordance with this part and the amount of income derived from the project (from sources such as rents and charges), the management contract between the PHA and the RMC may specify that income be provided to the project from other legally available sources of PHA income.

§ 990.300 Preparation of operating budget.

(a) The RMC and the PHA must submit operating budgets and calculations of operating subsidy to HUD for approval in accordance with § 990.200. The budget will reflect all project expenditures and will identify the expenditures related to the responsibilities of the RMC and the expenditures that are related to the functions that the PHA will continue to perform.

(b) For each project or part of a project that is operating in accordance with the ACC amendment relating to this subpart and in accordance with a contract vesting maintenance responsibilities in the RMC, the PHA will transfer into a sub-account of the operating reserve of the PHA an operating reserve for the RMC project. When all maintenance responsibilities for a resident-managed project are the responsibility of the RMC, the amount of the reserve made available to a project under this subpart will be the per-unit cost amount available to the PHA operating reserve, excluding all inventories, prepaids, and receivables at the end of the PHA fiscal year preceding implementation, multiplied by the number of units in the project operated. When some, but not all, maintenance responsibilities are vested in the RMC, the management contract between the PHA and RMC may provide for an appropriately reduced portion of the operating reserve to be transferred into the RMC's sub-account.

(c) The RMC's use of the operating reserve is subject to all administrative procedures applicable to the conventionally owned public housing program. Any expenditure of funds from the reserve must be for eligible expenditures that are incorporated into an operating budget subject to approval by HUD.

(d) Investment of funds held in the reserve will be in accordance with HUD regulations and guidance.

§ 990.305 Retention of excess revenues.

(a) Any income generated by an RMC that exceeds the income estimated for the income categories specified in the RMC's management contract must be excluded in subsequent years in calculating:

(1) The operating subsidy provided to a PHA under this part; and

(2) The funds the PHA provides to the RMC.

(b) The RMC's management contract must specify the amount of income that is expected to be derived from the project (from sources such as rents and charges) and the amount of income to be provided to the project from the other sources of income of the PHA (such as operating subsidy under this part, interest income, administrative fees, and rents). These income estimates must be calculated consistent with HUD's administrative instructions. Income estimates may provide for adjustment of anticipated project income between the RMC and the PHA, based upon the management and other project-associated responsibilities (if any) that are to be retained by the PHA under the management contract.

(c) Any revenues retained by an RMC under this section may be used only for purposes of improving the maintenance and operation of the project, establishing business enterprises that employ residents of public housing, or acquiring additional dwelling units for lower income families. Units acquired by the RMC will not be eligible for payment of operating subsidy.

Subpart J—Financial Management Systems, Monitoring, and Reporting

§ 990.310 Purpose—General policy on financial management, monitoring and reporting.

All PHA financial management systems, reporting, and monitoring of

program performance and financial reporting shall be in compliance with the requirements of 24 CFR 85.20, 85.40, and 85.41. Certain HUD requirements provide exceptions for additional specialized procedures that are determined by HUD to be necessary for the proper management of the program in accordance with the requirements of the 1937 Act and the ACC between each PHA and HUD.

§ 990.315 Submission and approval of operating budgets.

(a) Required documentation:

(1) Prior to the beginning of its fiscal year, a PHA shall prepare an operating budget in a manner prescribed by HUD. The PHA's Board of Commissioners shall review and approve the budget by resolution. Each fiscal year, the PHA shall submit to HUD, in a time and manner prescribed by HUD, the approved Board resolution.

(2) HUD may direct the PHA to submit its complete operating budget with detailed supporting information and the Board resolution if the PHA has breached the ACC contract, or for other reasons, which, in HUD's determination, threaten the PHA's future serviceability, efficiency, economy, or stability. When the PHA no longer is operating in a manner that threatens the future serviceability, efficiency, economy, or stability of the housing it operates, HUD will notify the PHA that it no longer is required to submit a complete operating budget with detailed supporting information to HUD for review and approval.

(b) If HUD finds that an operating budget is incomplete, inaccurate, includes illegal or ineligible expenditures, contains mathematical errors or errors in the application of accounting procedures, or is otherwise unacceptable, HUD may, at any time, require the PHA to submit additional or revised information regarding the budget or revised budget.

§ 990.320 Audits.

All PHAs that receive financial assistance under this part shall submit an acceptable audit and comply with the audit requirements in 24 CFR 85.26.

§ 990.325 Record retention requirements.

The PHA shall retain all documents related to all financial management and activities funded under the Operating Fund for a period of five fiscal years after the fiscal year in which the funds were received.

Dated: September 12, 2005.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 05–18624 Filed 9–16–05; 8:45 am]

BILLING CODE 4210–33–P

Federal Register

Monday,
September 19, 2005

Part III

The President

Federal Register
Vol. 70, No. 180
Monday, September 19, 2005

Presidential Documents

Presidential Determination No. 2005–33 of August 29, 2005

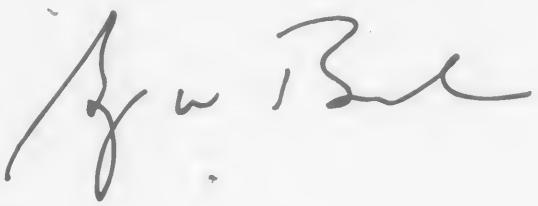
Waiving Prohibition on Use of FY 2005 Economic Support Funds with Respect to Jordan

Memorandum for the Secretary of State

Consistent with the authority vested in me by section 574 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005 (the "Act"), Division D of Public Law 108–447, I hereby:

- Determine that it is important to the national security interests of the United States to waive, for a period of 6 months from the date of this determination, the prohibition of section 574(a) of the Act with respect to Jordan; and
- Waive the prohibition with respect to this country for that period.

You are authorized and directed to report this determination to the Congress, and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, August 29, 2005.

[FR Doc. 05–18739
Filed 9–16–05; 8:45 am]
Billing code 4710–10–P

Presidential Documents

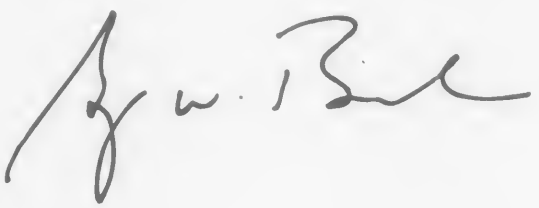
Memorandum of September 9, 2005

Assignment of Functions with Respect to Loan Guarantees to Egypt

Memorandum for the Secretary of State

By the authority vested in me by the Constitution and laws of the United States, including section 301 of title 3 of the United States Code, I hereby assign to the Secretary of State the functions conferred upon the President relating to loan guarantees to Egypt in paragraph (2) under the heading "Economic Support Fund" in chapter 5 of title I of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108–11).

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 9, 2005.

[FR Doc. 05–18740
Filed 9–16–05; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2005–34 of September 9, 2005

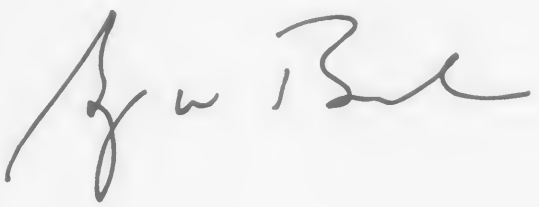
Waiving Prohibition on United States Military Assistance with Respect to Benin

Memorandum for the Secretary of State

Consistent with the authority vested in me by section 2007 of the American Servicemembers' Protection Act of 2002 (the "Act"), title II of Public Law 107–206 (22 U.S.C. 7421 *et seq.*), I hereby

- Determine that Benin has entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against U.S. personnel present in such country; and
- Waive the prohibition of section 2007(a) of the Act with respect to this country for as long as such agreement remains in force.

You are authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 9, 2005.

[FR Doc. 05–18741
Filed 9–16–05; 8:45 am]
Billing code 4710–10–P

Federal Register

Monday,
September 19, 2005

Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Part 57
Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners; Proposed Rule and Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

RIN 1219–AB29

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; extension of comment period, change of public hearing dates.

SUMMARY: We (the Mine Safety and Health Administration) are extending the period for comments on the proposed rule entitled "Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners (DPM)," published in the **Federal Register** on September 7, 2005 (70 FR 53280). We are also rescheduling the public hearings on the proposed rule from September 26, 28, and 30, 2005 to January 5, 9, 11, and 13, 2006. We find these actions necessary to provide sufficient time and an orderly process for affected parties to comment on the proposed rule.

By a separate document published in today's **Federal Register**, we are also temporarily delaying the applicability date for 30 CFR 57.5060(b) published in the **Federal Register** on January 19, 2001 (66 FR 5706) from January 20, 2006 to May 20, 2006, to provide sufficient time to complete the September 7, 2005 proposal to amend the 2001 DPM rule.

DATES: Public hearing dates and locations are discussed in the **SUPPLEMENTARY INFORMATION** section below. Public comments and other appropriate data for the record must be received by January 27, 2006, when the post-hearing comment period will close.

SUPPLEMENTARY INFORMATION:

I. Public Hearings

We will hold four public hearings on the proposed rule. The public hearings will begin at 9 a.m., and will be held on the following dates at the locations indicated:

Date	Location	Phone
January 5, 2006	Mine Safety and Health Administration, 1100 Wilson Boulevard, Conference Room, 25th Floor, Arlington, VA 22209.	(202) 693–9440
January 9, 2006	Little America Hotel, 500 South Main Street, Salt Lake City, UT 84101	(801) 363–6781
January 11, 2006	Clarion Hotel Sports Complex, 9103 E. 39th Street, Kansas City, MO 64133	(816) 737–0200
January 13, 2006	Marriott Louisville Downtown, 280 West Jefferson Street, Louisville, KY 40202	(800) 228–9290

II. Background

On September 7, 2005, we proposed a rule to phase in the final DPM limit because we are concerned that there may be feasibility issues for some mines to meet that limit by January 20, 2006. Accordingly, we proposed a five-year phase-in period and noted our intent to initiate a separate rulemaking to convert the final DPM limit from a total carbon limit to an elemental carbon limit. We set hearing dates and a deadline for receiving comments on the September 7, 2005 proposed rule with the expectation that we would complete the rulemaking to phase in the final DPM limit before January 20, 2006.

After publication of the September 7, 2005 proposed rule, we received a request from the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) for more time to comment on the proposed rule. The USW explained that Hurricane Katrina had placed demands on their resources that will prevent them from participating effectively in the rulemaking under the current schedule for hearings and comments. We recognize the USW's need to devote resources to respond to the aftermath of Hurricane Katrina and the impact that would have on their participation under the current timetable. We also received a request from the National Stone, Sand and Gravel Association (NSSGA) for additional time to comment on the proposed rule and for an additional public hearing in Arlington, Virginia. Accordingly, due to requests from the USW and NSSGA, we are extending the deadline for receiving comments until January 27, 2006, and rescheduling the public hearings to January 5, 9, 11, 13, 2006.

List of Subjects in 30 CFR Part 57

Diesel particulate matter, Metal and nonmetal, Mine safety and health, Underground miners.

Dated: September 15, 2005.

David G. Dye,

Deputy Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 05–18737 Filed 9–15–05; 2:55 pm]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

RIN 1219–AB11

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule; delay of applicability date.

SUMMARY: At the initiation of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) and the National Stone, Sand and Gravel Association (NSSGA), and with the concurrence of other interested parties, we (the Mine Safety and Health Administration) are delaying the applicability date of 30 CFR 57.5060(b) addressing "Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners (DPM)" published in the **Federal Register** on January 19, 2001 (66 FR 5706) from January 20, 2006 to May 20, 2006, to provide sufficient time to complete the September 7, 2005 proposal to amend the 2001 DPM rule. Section 57.5060(b) is also being revised to reflect this new applicability date.

By a separate document published in today's **Federal Register** we are extending the period for comments on the proposed rule published on September 7, 2005 (70 FR 53280) and rescheduling the public hearings on the proposed rule from September 26, 28, and 30, 2005 to January 5, 9, 11, and 13, 2006. The comment period on that rulemaking will close on January 27, 2006. We find these actions necessary to provide sufficient time and an orderly process for affected parties to comment on that proposed rule.

DATES: This final rule is effective September 19, 2005. The applicability date for 30 CFR 57.5060(b) has been delayed from January 20, 2006 to May 20, 2006.

SUPPLEMENTARY INFORMATION:

I. Background

In January 2001, we published a final rule that, among other things, established interim and final limits for diesel particulate matter exposure of underground metal and nonmetal miners (66 FR 5706). Industry groups challenged the rule in the United States Court of Appeals for the District of Columbia Circuit, and the USW's predecessor union intervened to defend it. The Court of Appeals has held the challenges in abeyance while the parties attempted to resolve their differences through settlement. In a July 2002 settlement, we agreed to propose revisions to the interim and final DPM limits (67 FR 47296, 47297).

In June 2005, we published a final rule that, among other things, revises the interim DPM limit (70 FR 32868). The USW and six industry petitioners challenged that rule in the United States Court of Appeals for the District of Columbia Circuit. The Court has consolidated the USW's challenge with three of the industry challenges. We asked the Court to consolidate all challenges to the June 2005 rule. The MARG Diesel Litigation Coalition has asked the Court to consolidate the challenges to the June 2005 rule with challenges to the January 2001 rule that established the final DPM limit in 30 CFR 57.5060(b).

On September 7, 2005, we proposed a rule to phase in the final DPM limit because we are concerned that there may be feasibility issues for some mines to meet that limit by January 20, 2006. Accordingly, we proposed a five-year phase-in period and noted our intent to initiate a separate rulemaking to convert the final DPM limit from a total carbon limit to an elemental carbon limit. We set hearing dates and a deadline for receiving comments on the September 7, 2005 proposed rule with the expectation that we would complete the rulemaking to phase in the final DPM limit before January 20, 2006.

After publication of the September 7, 2005 proposed rule, we received a request from the USW for more time to comment on the proposed rule. The USW explained that Hurricane Katrina had placed demands on their resources that will prevent them from participating effectively in the rulemaking under the current schedule for hearings and comments. We recognize the USW's need to devote resources to respond to the aftermath of Hurricane Katrina and the impact that would have on their participation under the current timetable. Accordingly, in a separate document in today's **Federal Register** we are extending the deadline for receiving comments until January 27, 2006, and rescheduling the public hearings to January 5, 9, 11, and 13, 2006. We also received a request from the NSSGA for an extension of the comment period.

These extensions, however, will prevent us from reviewing the comments, drafting a final rule, and obtaining necessary clearances before January 20, 2006. Accordingly, and due to the requests from the USW's, and the NSSGA, we have determined that it is necessary to delay the effective date of 30 CFR 57.5060(b) from January 20, 2006 to May 20, 2006. We find that it is in the public interest to provide this delay in light of our concerns over the feasibility issues and industry compliance with 30 CFR 57.5060(b) and the request of the USW and the NSSGA, and with the concurrence of other interested parties for the extension of the comment period of the September 7, 2005 proposed rule. These considerations lead us to conclude that, to the extent notice and comment is required, providing for such notice and comment before issuing this delay would be impracticable and contrary to the public interest. Accordingly, we find good cause pursuant to 5 U.S.C. 553(b)(3)(B), to delay the effective date of 30 CFR 57.5060(b) without notice and comment. Nothing in this delay notice alters the proposed phase-in implementation dates in our September 7, 2005 proposed rule.

List of Subjects in 30 CFR Part 57

Diesel particulate matter, Metal and nonmetal, Mine safety and health, Underground miners.

Dated: September 15, 2005.

David G. Dye,

Deputy Assistant Secretary of Labor for Mine Safety and Health.

■ For reasons set forth in the preamble, we amend Chapter 1 of Title 30 as follows:

■ 1. The authority citation for part 57 reads as follows:

Authority: 30 U.S.C. 811.

§ 57.5060 [Amended]

■ 2. Section 57.5060 is amended by revising paragraph (b) to read as follows:

* * * * *

(b) After May 19, 2006, any mine operator covered by this part must limit the concentration of diesel particulate matter to which miners are exposed in underground areas of a mine by restricting the average eight-hour equivalent full shift airborne concentration of total carbon, where miners normally work or travel, to 160 micrograms per cubic meter of air (160TC $\mu g/m^3$).

* * * * *

[FR Doc. 05–18736 Filed 9–15–05; 2:55 pm]

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Meetings:
Environmental Management Site-Specific Advisory Board—
Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Commercial and industrial equipment; energy efficiency program:
Test procedures and efficiency standards—
Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric rate and corporate regulation filings:
Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 3650/P.L. 109–63

Federal Judiciary Emergency Special Sessions Act of 2005 (Sept. 9, 2005; 119 Stat. 1993)

Last List August 12, 2005

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1	(869–056–00001–4)	5.00	Jan. 1, 2005
2	(869–056–00002–2)	5.00	Jan. 1, 2005
3 (2003 Compilation and Parts 100 and 101)	(869–056–00003–1)	35.00	[1] Jan. 1, 2005
4	(869–056–00004–9)	10.00	[4]Jan. 1, 2005
5 Parts:			
1–699	(869–056–00005–7)	60.00	Jan. 1, 2005
700–1199	(869–056–00006–5)	50.00	Jan. 1, 2005
1200–End	(869–056–00007–3)	61.00	Jan. 1, 2005
6	(869–056–00008–1)	10.50	Jan. 1, 2005
7 Parts:			
1–26	(869–056–00009–0)	44.00	Jan. 1, 2005
27–52	(869–056–00010–3)	49.00	Jan. 1, 2005
53–209	(869–056–00011–1)	37.00	Jan. 1, 2005
210–299	(869–056–00012–0)	62.00	Jan. 1, 2005
300–399	(869–056–00013–8)	46.00	Jan. 1, 2005
400–699	(869–056–00014–6)	42.00	Jan. 1, 2005
700–899	(869–056–00015–4)	43.00	Jan. 1, 2005
900–999	(869–056–00016–2)	60.00	Jan. 1, 2005
1000–1199	(869–056–00017–1)	22.00	Jan. 1, 2005
1200–1599	(869–056–00018–9)	61.00	Jan. 1, 2005
1600–1899	(869–056–00019–7)	64.00	Jan. 1, 2005
1900–1939	(869–056–00020–1)	31.00	Jan. 1, 2005
1940–1949	(869–056–00021–9)	50.00	Jan. 1, 2005
1950–1999	(869–056–00022–7)	46.00	Jan. 1, 2005
2000–End	(869–056–00023–5)	50.00	Jan. 1, 2005
8	(869–056–00024–3)	63.00	Jan. 1, 2005
9 Parts:			
1–199	(869–056–00025–1)	61.00	Jan. 1, 2005
200–End	(869–056–00026–0)	58.00	Jan. 1, 2005
10 Parts:			
1–50	(869–056–00027–8)	61.00	Jan. 1, 2005
51–199	(869–056–00028–6)	58.00	Jan. 1, 2005
200–499	(869–056–00029–4)	46.00	Jan. 1, 2005
500–End	(869–056–00030–8)	62.00	Jan. 1, 2005
11	(869–056–00031–6)	41.00	Jan. 1, 2005
12 Parts:			
1–199	(869–056–00032–4)	34.00	Jan. 1, 2005
200–219	(869–056–00033–2)	37.00	Jan. 1, 2005
220–299	(869–056–00034–1)	61.00	Jan. 1, 2005
300–499	(869–056–00035–9)	47.00	Jan. 1, 2005
500–599	(869–056–00036–7)	39.00	Jan. 1, 2005
600–899	(869–056–00037–5)	56.00	Jan. 1, 2005
900–End	(869–056–00038–3)	50.00	Jan. 1, 2005
13	(869–056–00039–1)	55.00	Jan. 1, 2005
14 Parts:			
1–59	(869–056–00040–5)	63.00	Jan. 1, 2005
60–139	(869–056–00041–3)	61.00	Jan. 1, 2005
140–199	(869–056–00042–1)	30.00	Jan. 1, 2005
200–1199	(869–056–00043–0)	50.00	Jan. 1, 2005
1200–End	(869–056–00044–8)	45.00	Jan. 1, 2005
15 Parts:			
0–299	(869–056–00045–6)	40.00	Jan. 1, 2005
300–799	(869–056–00046–4)	60.00	Jan. 1, 2005
800–End	(869–056–00047–2)	42.00	Jan. 1, 2005
16 Parts:			
0–999	(869–056–00048–1)	50.00	Jan. 1, 2005
1000–End	(869–056–00049–9)	60.00	Jan. 1, 2005
17 Parts:			
1–199	(869–056–00051–1)	50.00	Apr. 1, 2005
200–239	(869–056–00052–9)	58.00	Apr. 1, 2005
240–End	(869–056–00053–7)	62.00	Apr. 1, 2005
18 Parts:			
1–399	(869–056–00054–5)	62.00	Apr. 1, 2005
400–End	(869–056–00055–3)	26.00	[9]Apr. 1, 2005
19 Parts:			
1–140	(869–056–00056–1)	61.00	Apr. 1, 2005
141–199	(869–056–00057–0)	58.00	Apr. 1, 2005
200–End	(869–056–00058–8)	31.00	Apr. 1, 2005
20 Parts:			
1–399	(869–056–00059–6)	50.00	Apr. 1, 2005
400–499	(869–056–00060–0)	64.00	Apr. 1, 2005
500–End	(869–056–00061–8)	63.00	Apr. 1, 2005
21 Parts:			
1–99	(869–056–00062–6)	42.00	Apr. 1, 2005
100–169	(869–056–00063–4)	49.00	Apr. 1, 2005
170–199	(869–056–00064–2)	50.00	Apr. 1, 2005
200–299	(869–056–00065–1)	17.00	Apr. 1, 2005
300–499	(869–056–00066–9)	31.00	Apr. 1, 2005
500–599	(869–056–00067–7)	47.00	Apr. 1, 2005
600–799	(869–056–00068–5)	15.00	Apr. 1, 2005
800–1299	(869–056–00069–3)	58.00	Apr. 1, 2005
1300–End	(869–056–00070–7)	24.00	Apr. 1, 2005
22 Parts:			
1–299	(869–056–00071–5)	63.00	Apr. 1, 2005
300–End	(869–056–00072–3)	45.00	Apr. 1, 2005
23	(869–056–00073–1)	45.00	Apr. 1, 2005
24 Parts:			
0–199	(869–056–00074–0)	60.00	Apr. 1, 2005
200–499	(869–056–00074–0)	50.00	Apr. 1, 2005
500–699	(869–056–00076–6)	30.00	Apr. 1, 2005
700–1699	(869–056–00077–4)	61.00	Apr. 1, 2005
1700–End	(869–056–00078–2)	30.00	Apr. 1, 2005
25	(869–056–00079–1)	63.00	Apr. 1, 2005
26 Parts:			
§§ 1.0–1–1.60	(869–056–00080–4)	49.00	Apr. 1, 2005
§§ 1.61–1.169	(869–056–00081–2)	63.00	Apr. 1, 2005
§§ 1.170–1.300	(869–056–00082–1)	60.00	Apr. 1, 2005
§§ 1.301–1.400	(869–056–00083–9)	46.00	Apr. 1, 2005
§§ 1.401–1.440	(869–056–00084–7)	62.00	Apr. 1, 2005
§§ 1.441–1.500	(869–056–00085–5)	57.00	Apr. 1, 2005
§§ 1.501–1.640	(869–056–00086–3)	49.00	Apr. 1, 2005
§§ 1.641–1.850	(869–056–00087–1)	60.00	Apr. 1, 2005
§§ 1.851–1.907	(869–056–00088–0)	61.00	Apr. 1, 2005
§§ 1.908–1.1000	(869–056–00089–8)	60.00	Apr. 1, 2005
§§ 1.1001–1.1400	(869–056–00090–1)	61.00	Apr. 1, 2005
§§ 1.1401–1.1550	(869–056–00091–0)	55.00	Apr. 1, 2005
§§ 1.1551–End	(869–056–00092–8)	55.00	Apr. 1, 2005
2–29	(869–056–00093–6)	60.00	Apr. 1, 2005
30–39	(869–056–00094–4)	41.00	Apr. 1, 2005
40–49	(869–056–00095–2)	28.00	Apr. 1, 2005
50–299	(869–056–00096–1)	41.00	Apr. 1, 2005

Title	Stock Number	Price	Revision Date
300–499	(869–056–00097–9)	61.00	Apr. 1, 2005
500–599	(869–056–00098–7)	12.00	[5]Apr. 1, 2005
600–End	(869–056–00099–5)	17.00	Apr. 1, 2005
27 Parts:			
1–199	(869–056–00100–2)	64.00	Apr. 1, 2005
200–End	(869–056–00101–1)	21.00	Apr. 1, 2005
28 Parts:			
0–42	(869–052–00101–5)	61.00	July 1, 2004
43–End	(869–052–00102–3)	60.00	July 1, 2004
29 Parts:			
0–99	(869–056–00104–5)	50.00	July 1, 2005
100–499	(869–056–00105–3)	23.00	July 1, 2005
500–899	(869–056–00106–1)	61.00	July 1, 2005
900–1899	(869–056–00107–0)	36.00	[7]July 1, 2005
1900–1910 (§§ 1900 to 1910.999)	(869–056–00108–8)	61.00	July 1, 2005
*1910 (§§ 1910.1000 to end)	(869–056–00109–6)	58.00	July 1, 2005
1911–1925	(869–052–00109–1)	30.00	July 1, 2004
1926	(869–056–00111–8)	50.00	July 1, 2005
1927–End	(869–052–00111–2)	62.00	July 1, 2004
30 Parts:			
*1–199	(869–056–00113–4)	57.00	July 1, 2005
200–699	(869–052–00113–9)	50.00	July 1, 2005
700–End	(869–056–00115–1)	58.00	July 1, 2005
31 Parts:			
0–199	(869–052–00115–5)	41.00	July 1, 2004
200–End	(869–052–00116–3)	65.00	July 1, 2004
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–056–00119–3)	61.00	July 1, 2005
*191–399	(869–056–00120–7)	63.00	July 1, 2005
400–629	(869–056–00121–5)	50.00	July 1, 2005
630–699	(869–056–00122–3)	37.00	July 1, 2005
*700–799	(869–056–00123–1)	46.00	July 1, 2005
800–End	(869–056–00124–0)	47.00	July 1, 2005
33 Parts:			
1–124	(869–052–00123–6)	57.00	July 1, 2004
125–199	(869–052–00124–4)	61.00	July 1, 2004
200–End	(869–052–00125–2)	57.00	July 1, 2004
34 Parts:			
*1–299	(869–056–00128–2)	50.00	July 1, 2005
300–399	(869–056–00129–1)	40.00	[7]July 1, 2005
400–End	(869–052–00128–7)	61.00	July 1, 2004
35	(869–052–00129–5)	10.00	[6]July 1, 2004
36 Parts			
1–199	(869–052–00130–9)	37.00	July 1, 2004
200–299	(869–056–00132–1)	37.00	July 1, 2005
*300–End	(869–056–00133–9)	61.00	July 1, 2005
37	(869–052–00133–3)	58.00	July 1, 2004
38 Parts:			
0–17	(869–052–00134–1)	60.00	July 1, 2004
18–End	(869–052–00135–0)	62.00	July 1, 2004
39	(869–052–00136–8)	42.00	July 1, 2004
40 Parts:			
1–49	(869–052–00137–6)	60.00	July 1, 2004
50–51	(869–052–00138–4)	45.00	July 1, 2004
52 (52.01–52.1018)	(869–052–00139–2)	60.00	July 1, 2004
52 (52.1019–End)	(869–052–00140–6)	61.00	July 1, 2004
53–59	(869–052–00141–4)	31.00	July 1, 2004
*60 (60.1–End)	(869–056–00143–6)	58.00	July 1, 2005
60 (Apps)	(869–052–00143–1)	57.00	July 1, 2004
61–62	(869–056–00145–2)	45.00	July 1, 2005
63 (63.1–63.599)	(869–052–00145–7)	58.00	July 1, 2004
*63 (63.600–63.1199)	(869–056–00147–9)	50.00	July 1, 2005
63 (63.1200–63.1439)	(869–052–00147–3)	50.00	July 1, 2004
63 (63.1440–63.8830)	(869–052–00148–1)	64.00	July 1, 2004
*63 (63.6580–63.8830)	(869–056–00150–9)	32.00	July 1, 2005
63 (63.8980–End)	(869–056–00151–7)	35.00	[7]July 1, 2005
*64–71	(869–056–00152–5)	29.00	July 1, 2005
*72–80	(869–056–00153–5)	62.00	July 1, 2005
81–85	(869–052–00152–0)	60.00	July 1, 2004
86 (86.1–86.599–99)	(869–052–00153–8)	58.00	July 1, 2004
86 (86.600–1–End)	(869–052–00154–6)	50.00	July 1, 2004
87–99	(869–052–00155–4)	60.00	July 1, 2004
100–135	(869–052–00156–2)	45.00	July 1, 2004
136–149	(869–052–00157–1)	61.00	July 1, 2004
150–189	(869–052–00158–9)	50.00	July 1, 2004
190–259	(869–052–00159–7)	39.00	July 1, 2004
260–265	(869–052–00160–1)	50.00	July 1, 2004
266–299	(869–052–00161–9)	50.00	July 1, 2004
*300–399	(869–056–00164–9)	42.00	July 1, 2005
400–424	(869–056–00165–7)	56.00	[8]July 1, 2005
425–699	(869–052–00164–3)	61.00	July 1, 2004
*700–789	(869–056–00167–3)	61.00	July 1, 2005
790–End	(869–052–00166–0)	61.00	July 1, 2004
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
*1–100	(869–056–00169–0)	24.00	July 1, 2005
101	(869–056–00170–3)	21.00	July 1, 2005
102–200	(869–052–00169–4)	56.00	July 1, 2004
201–End	(869–052–00170–8)	24.00	July 1, 2004
42 Parts:			
1–399	(869–052–00171–6)	61.00	Oct. 1, 2004
400–429	(869–052–00172–4)	63.00	Oct. 1, 2004
430–End	(869–052–00173–2)	64.00	Oct. 1, 2004
43 Parts:			
1–999	(869–052–00174–1)	56.00	Oct. 1, 2004
1000–end	(869–052–00175–9)	62.00	Oct. 1, 2004
44	(869–052–00176–7)	50.00	Oct. 1, 2004
45 Parts:			
1–199	(869–052–00177–5)	60.00	Oct. 1, 2004
200–499	(869–052–00178–3)	34.00	Oct. 1, 2004
500–1199	(869–052–00179–1)	56.00	Oct. 1, 2004
1200–End	(869–052–00180–5)	61.00	Oct. 1, 2004
46 Parts:			
1–40	(869–052–00181–3)	46.00	Oct. 1, 2004
41–69	(869–052–00182–1)	39.00	Oct. 1, 2004
70–89	(869–052–00183–0)	14.00	Oct. 1, 2004
90–139	(869–052–00184–8)	44.00	Oct. 1, 2004
140–155	(869–052–00185–6)	25.00	Oct. 1, 2004
156–165	(869–052–00186–4)	34.00	Oct. 1, 2004
166–199	(869–052–00187–2)	46.00	Oct. 1, 2004
200–499	(869–052–00188–1)	40.00	Oct. 1, 2004
500–End	(869–052–00189–9)	25.00	Oct. 1, 2004
47 Parts:			
0–19	(869–052–00190–2)	61.00	Oct. 1, 2004
20–39	(869–052–00191–1)	46.00	Oct. 1, 2004
40–69	(869–052–00192–9)	40.00	Oct. 1, 2004
70–79	(869–052–00193–8)	63.00	Oct. 1, 2004
80–End	(869–052–00194–5)	61.00	Oct. 1, 2004
48 Chapters:			
1 (Parts 1–51)	(869–052–00195–3)	63.00	Oct. 1, 2004
1 (Parts 52–99)	(869–052–00196–1)	49.00	Oct. 1, 2004
2 (Parts 201–299)	(869–052–00197–0)	50.00	Oct. 1, 2004
3–6	(869–052–00198–8)	34.00	Oct. 1, 2004
7–14	(869–052–00199–6)	56.00	Oct. 1, 2004
15–28	(869–052–00200–3)	47.00	Oct. 1, 2004

Title	Stock Number	Price	Revision Date
29–End	(869–052–00201–1)	47.00	Oct. 1, 2004
49 Parts:			
1–99	(869–052–00202–0)	60.00	Oct. 1, 2004
100–185	(869–052–00203–8)	63.00	Oct. 1, 2004
186–199	(869–052–00204–6)	23.00	Oct. 1, 2004
200–399	(869–052–00205–4)	64.00	Oct. 1, 2004
400–599	(869–052–00206–2)	64.00	Oct. 1, 2004
600–999	(869–052–00207–1)	19.00	Oct. 1, 2004
1000–1199	(869–052–00208–9)	28.00	Oct. 1, 2004
1200–End	(869–052–00209–7)	34.00	Oct. 1, 2004
50 Parts:			
1–16	(869–052–00210–1)	11.00	Oct. 1, 2004
17.1–17.95	(869–052–00211–9)	64.00	Oct. 1, 2004
17.96–17.99(h)	(869–052–00212–7)	61.00	Oct. 1, 2004
17.99(i)–end and 17.100–end	(869–052–00213–5)	47.00	Oct. 1, 2004
18–199	(869–052–00214–3)	50.00	Oct. 1, 2004
200–599	(869–052–00215–1)	45.00	Oct. 1, 2004
600–End	(869–052–00216–0)	62.00	Oct. 1, 2004
CFR Index and Findings Aids	(869–052–00049–3)	62.00	Jan. 1, 2004
Complete 2005 CFR set		1,342.00	2005
Microfiche CFR Edition:			
Subscription (mailed as issued)		325.00	2005
Individual copies		4.00	2005
Complete set (one-time mailing)		325.00	2004
Complete set (one-time mailing)		298.00	2003

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2004, through January 1, 2005. The CFR volume issued as of January 1, 2004 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2004. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period April 1, 2004, through April 1, 2005. The CFR volume issued as of April 1, 2004 should be retained.

Public Laws

109th Congress

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 109th Congress.

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