Federal Register

4–18–05 Monday
Vol. 70 No. 73 Apr. 18, 2005

United States Government Printing Office
SUPERINTENDENT OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

Federal Register

4–18–05 Monday
Vol. 70 No. 73 Apr. 18, 2005

Pages 20045–20270

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov*.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara*, available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov*. The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov*.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 70 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

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

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

WHEN: Tuesday, April 19, 2005
9:00 a.m.-Noon—(SESSION FULL)

Tuesday, May 17, 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

Printed on recycled paper.

Contents

Federal Register

Vol. 70, No. 73

Monday, April 18, 2005

Separate Parts In This Issue

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 70, No. 73
Monday, April 18, 2005

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19766; Directorate Identifier 2002–NM–161–AD; Amendment 39–14057; AD 2005–08–05]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. This AD requires replacing the aileron trim chain with a new, improved aileron trim chain, and modifying the installation of the aileron trim chain. This AD is prompted by a report that the aileron trim cables were connected incorrectly on a correctly installed aileron trim chain. We are issuing this AD to prevent incorrect connection of the aileron trim cables, which could result in failure of the aileron trim system and consequent reduced controllability of the airplane.

DATES: This AD becomes effective May 23, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the **Federal Register** as of May 23, 2005.

ADDRESSES: For service information identified in this AD, contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2004–19766; the directorate identifier for this docket is 2002–NM–161–AD.

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

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. That action, published in the **Federal Register** on December 8, 2004 (69 FR 70938), proposed to require replacing the aileron trim chain with a new, improved aileron trim chain, and modifying the installation of the aileron trim chain.

Comments

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

Support for the Proposed AD

One commenter supports the proposed AD.

Request To Revise Compliance Time

One commenter, the airplane manufacturer, requests that we revise the proposed AD to require installing modified aileron trim chains at the next time the aileron trim circuit is broken down, but not later than 30 months after the effective date of the AD. The proposed AD requires compliance within 30 months after the effective date of the AD. The commenter states that disassembly of the aileron trim circuit introduces the risk of incorrect installation (cross-connection) during re-assembly. This is the reason why British airworthiness directive 006–11–2001 requires compliance "not later than the next aileron trim circuit break down, or by 31 March 2005, whichever is the sooner."

We do not concur with the commenter's request. In developing a compliance time for this AD, we considered the urgency associated with the subject unsafe condition, the manufacturer's recommendation, and the practical aspect of accomplishing the required modification within a period of time that corresponds to the normal scheduled maintenance for most affected operators. As we explained in the proposed AD, a compliance time of 30 months after the effective date of the AD is comparable in length to the compliance time in the British airworthiness directive, will allow the majority of operators sufficient time to accomplish the proposed action during a regularly scheduled maintenance visit, and will not compromise safety. We have not changed this AD in this regard.

Conclusion

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

Costs of Compliance

This AD will affect about 57 airplanes of U.S. registry. The required actions will take about 36 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $2,500 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is $275,880, or $4,840 per airplane.

Authority for This Rulemaking

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

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

because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–08–05 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–14057. Docket No. FAA–2004–19766; Directorate Identifier 2002–NM–161–AD.

Effective Date

(a) This AD becomes effective May 23, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report that the aileron trim cables can be connected incorrectly on a correctly installed aileron trim chain. We are issuing this AD to prevent incorrect connection of the aileron trim cables, which could result in failure of the aileron trim system and consequent reduced controllability of the airplane.

Compliance

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

Replacement of Aileron Trim Chain and Modification of Installation

(f) Within 30 months after the effective date of this AD: Replace the aileron trim chain, part number (P/N) 14127003–401, with a new, improved aileron trim chain, P/N 14127003–403; and modify the installation of the aileron trim chain; according to the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–27–061, Revision 1, dated July 12, 2002.

Actions Accomplished According to Previous Issue of Service Bulletin

(g) Replacements and modifications accomplished before the effective date of this AD according to BAE Systems (Operations) Limited Service Bulletin J41–27–061, dated November 7, 2001, are considered acceptable for compliance with the corresponding actions specified in this AD.

No Reporting Requirement

(h) Although the service bulletin referenced in this AD specifies to report compliance information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(j) British airworthiness directive 006–11–2001 also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use BAE Systems (Operations) Limited Service Bulletin J41–27–061, Revision 1, dated July 12, 2002, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, go to British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on April 5, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–7482 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA 2004–16896; Airspace Docket 02–ANM–08]

Revision of Class E Airspace; Blanding, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule will revise Class E airspace at Blanding, UT. This additional Class E airspace is necessary to accommodate the new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Blanding Airport. This change will improve the safety of Instrument Flight Rules (IFR) aircraft executing the new RNAV GPS SIAP at Blanding Airport, Blanding, UT.

DATES: *Effective Date:* 0901 UTC, July 07, 2005.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, Air Traffic Organization, Western En Route and Oceanic Area Office, Airspace Branch. 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On February 03, 2004, the FAA proposed to amend Title 14 Code of Federal Regulations part 71 (CFR part 71) by modifying Class E airspace at Blanding, UT, (69 FR 5097). The proposed action would provide additional controlled airspace to

accommodate the new RNAV GPS SIAP at Blanding Airport, Blanding, UT.

Interested parties were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at Blanding, UT by providing additional controlled airspace for aircraft executing the new RNAV GPS SIAP at Blanding Airport. This additional controlled airspace extending upward from 1200 feet above the surface of the earth is necessary for the containment and safety of IFR aircraft executing these SIAP procedures and transitioning to/from the en route environment.

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

■ Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ANM UT E5 Blanding, UT [Revised]

Blanding Municipal Airport, Blanding, UT
(Lat. 37°34′59″ N., long. 109°29′00″ W.)

That airspace extending upward from 1,200 feet above the surface of the earth bounded by a line beginning at lat. 37°42′00″ N., long. 109°42′00″ W.; to lat. 37°42′00″ N., long. 109°20′30″ W.; to lat. 37°52′18″ N., long. 108°58′58″ W.; to Dove Creek VOR (DVC); to Cortez VOR (CEZ); to lat. 36°48′30″ N., long. 108°03′30″ W.; to lat. 36°41′30″ N., long. 108°09′15″ W.; to lat. 36°55′30″ N., long. 109°16′15″ W.; to lat. 36°26′45″ N., long. 109°36′30″ W.; to lat. 36°27′30″ N., long. 109°46′45″ W.; thence to point of origin; excluding that airspace within Federal airways airspace area and previously established Class E airspace 700 feet above the surface of the earth.

* * * * *

Issued in Seattle, Washington, on April 1, 2005.

Raul C. Treviño,

Area Director, Western En Route and Oceanic Operations.

[FR Doc. 05–7623 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA 2004–18915; Airspace Docket 04–ANM–11]

Revision of Class E Airspace; Burns, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule will revise Class E airspace at Burns, OR. This additional Class E airspace is necessary to accommodate the new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Burns Municipal Airport. This change will improve the safety of Instrument Flight Rules (IFR) aircraft executing the new RNAV GPS SIAP at Burns Municipal Airport, Burns, OR. A minor correction also is being made in the geographic position coordinates of the Burns Municipal Airport.

DATES: *Effective Date:* 0901 UTC, July 07, 2005.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, Western En Route and Oceanic Area Office, Airspace Branch, 1601 Lind Avenue SW., Renton, WA, 98055–4056; telephone (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On December 17, 2004, the FAA proposed to amend Title 14 Code of Federal Regulations part 71 (CFR part 71) by modifying Class E airspace at Burns, OR, (69 FR 75490). The proposed action would provide additional controlled airspace to accommodate the new RNAV GPS SIAP at the Burns Municipal Airport. Interested parties were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at Burns, OR, by providing additional controlled airspace for aircraft executing the new RNAV GPS SIAP at Burns Municipal Airport. This additional controlled airspace extending upward from 700 feet or more above the surface of the earth is necessary for the containment and safety of IFR aircraft executing this SIAP procedure and transitioning to/from the en route environment.

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 the regulations current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air

traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The Incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

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

* * * * *

ANM OR E5 Burns, OR [Revised]

Burns Municipal Airport, Burns, OR
(Lat. 43°35′31″ N., long. 118°57′20″ W.)
Wildhorse VOR/DME
(Lat. 43°35′35″ N., long. 118°57′18″ W.)

That airspace extending upward from 700 feet above the surface of the earth within 10.9 miles northeast and 10.1 miles southwest of the 141° and 321° radials of the Wildhorse VOR/DME extending from 9.6 miles southeast to 9.2 miles northwest of the VOR/DME; that airspace extending upward from 1,200 feet above the surface of the earth within 10.9 miles northeast and 16.0 miles southwest of the 141° and 321° radials of the Wildhorse VOR/DME extending from 20.1 miles southeast to 9.2 miles northwest of the VOR/DME;

* * * * *

Issued in Seattle, Washington, on April 1, 2005.

Raul C. Treviño

Area Director, Western en Route and Oceanic Operations.

[FR Doc. 05–7622 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 526

Intramammary Dosage Forms; Ceftiofur

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pharmacia & Upjohn Co., a Division of Pfizer, Inc. The NADA provides for the veterinary prescription use of ceftiofur hydrochloride suspension, by intramammary infusion, for the treatment of subclinical mastitis in dairy cattle at the time of dry off.

DATES: This rule is effective April 18, 2005.

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

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., a Division of Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed NADA 141–239 for SPECTRAMAST DC (ceftiofur hydrochloride) Sterile Suspension. The NADA provides for the veterinary prescription use of ceftiofur hydrochloride suspension, by intramammary infusion, for the treatment of subclinical mastitis in dairy cattle at the time of dry off associated with *Staphylococcus aureus*, *Streptococcus dysgalactiae*, and *Streptococcus uberis*. The application is approved as of March 15, 2005, and the regulations are amended in 21 CFR 526.314 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

FDA has determined under 21 CFR 25.33(d)(5) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning March 15, 2005.

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

List of Subjects in 21 CFR Part 526

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 526 is amended as follows:

PART 526—INTRAMAMMARY DOSAGE FORMS

■ 1. The authority citation for 21 CFR part 526 continues to read as follows:

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

■ 2. Section 526.314 is amended by adding paragraphs (a)(2) and (d)(2) to read as follows:

§ 526.314 Ceftiofur.

(a) * * *

* * * * *

(2) Each 10-mL syringe contains ceftiofur hydrochloride suspension equivalent to 500 mg ceftiofur.

* * * * *

(d) * * *

(2) *Dry cows*—(i) *Amount.* 500 mg per affected quarter at the time of dry off using product described in paragraph (a)(2) of this section.

(ii) *Indications for use.* For the treatment of subclinical mastitis in dairy cattle at the time of dry off associated with *Staphylococcus aureus*, *Streptococcus dysgalactiae*, and *Streptococcus uberis*.

(iii) *Limitations.* Milk taken from cows completing a 30-day dry off period may be used for food with no milk discard due to ceftiofur residues. Following intramammary infusion, a 3-day preslaughter withdrawal period is required for treated cows. Following label use, no preslaughter withdrawal period is required for neonatal calves from treated cows regardless of colostrum consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: March 24, 2005.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 05–7730 Filed 4–15–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9192]

RIN 1545–BC38; RIN 1545–BC74; RIN 1545–BC95

Guidance Under Section 1502; Application of Section 108 to Members of a Consolidated Group; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document corrects final regulations, (TD 9192) that were published in the **Federal Register** on Tuesday, March 22, 2005 (70 FR 14395), that govern the application of section 108 when a member of a consolidated group realizes discharge of indebtedness income.

DATES: This correction is effective on March 22, 2005.

FOR FURTHER INFORMATION CONTACT: Amber Cook, (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations, temporary regulations, and removal of temporary regulations (TD 9192) that is the subject of this correction is under section 1502 of the Internal Revenue Code.

Need for Correction

As published, (TD 9192) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

■ Accordingly, the publication of the final regulations, temporary regulations, and removal of temporary regulations (TD 9192) that were the subject of FR. Doc. 05–5528, are corrected as follows:

PART 1—INCOME TAXES

■ 1. The authority citation for 26 CFR part 1 continues to read as follows:

Authority: 26 U.S.C. 7805, unless otherwise noted. Section 1.1502–11 also issued under 26 U.S.C. 1502.

§ 1.1502–11 [Corrected]

■ 2. In § 1.1502–11, paragraph (c)(5), *Example 3,* (ii)(E), remove the words "take into account its $80 of excluded COD." and add in their place the words "take into account its $80 of excluded COD income.".

Cynthia E. Grigsby,

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

[FR Doc. 05–7636 Filed 4–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–022]

RIN 1625–AA08

Special Local Regulation for Marine Events; Pasquotank River, Camden, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the "Camden Spring Race", a marine event to be held over the waters of the Pasquotank River at Camden, North Carolina. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the Pasquotank River during the event.

DATES: This rule is effective from 9:30 a.m. on April 23, to 6:30 p.m. on April 24, 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 CGD05–05–022 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be impracticable. The event will take place on April 23 and 24, 2005. There is not sufficient time to allow for a notice and comment period, prior to the event. Immediate action is needed to protect the safety of life at sea from the danger posed by high-speed powerboats.

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

Background and Purpose

On April 23 and 24, 2005, the Carolina Virginia Racing Association will sponsor the "Camden Spring Race", on the waters of the Pasquotank River at Camden, North Carolina. The event will consist of approximately 70 hydroplanes and runabout powerboats conducting high-speed competitive races on the Pasquotank River in the vicinity of Shipyard Landing, Camden, North Carolina. A fleet of approximately 50 spectator vessels is expected to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the Pasquotank River adjacent to Shipyard Landing, Camden, North Carolina. The regulated area includes a section of the Pasquotank River approximately 800 yards long, by 260 yards wide. The temporary special local regulations will be enforced from 9:30 a.m. to 6:30 p.m. on April 23 and 24, 2005, and will restrict general navigation in the regulated area during the power boat race. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the enforcement period.

Regulatory Evaluation

This 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 rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation will prevent traffic from transiting a portion of the Pasquotank River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so.

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 would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Pasquotank River during the event.

This rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a limited period. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.** The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of

Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add temporary § 100.35–T05–022 to read as follows:

§ 100.35–T05–022 Pasquotank River, Camden, NC.

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

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

(3) *Participant* includes all vessels participating in the Camden Spring Race under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Group Cape Hatteras.

(b) *Regulated area* includes all waters of the Pasquotank River, in an area bound by the following points: 36°21′21.9″ N, 076°13′29.6″ W; thence to 36°21′17.8″ N, 076°13′37.8″ W; thence to 36°21′38.9″ N, 076°13′54.6″ W; thence to 36°21′43.3″ N, 076°13′45″ W; thence to point of origin. All coordinates reference Datum: NAD 1983.

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

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

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

(ii) Proceed as directed by any Official Patrol.

(iii) Unless otherwise directed by the Official Patrol, operate at a minimum wake speed not to exceed six (6) knots.

(d) *Effective period.* This section will be effective from 9:30 a.m. on April 23, to 6:30 p.m. on April 24, 2005.

(e) *Enforcement period.* It is expected that this section will be enforced from 9:30 a.m. to 6:30 p.m. on April 23 and 24, 2005.

Dated: March 29, 2005.

Sally Brice-O'Hara,

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

[FR Doc. 05–7699 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–04–215]

RIN 1625–AA09

Drawbridge Operation Regulations; Chincoteague Channel, Chincoteague, VA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulations that govern the operation of the SR 175 Bridge, at mile 3.5, at Chincoteague, Virginia. The final rule will require the draw to open on demand from midnight to 6 a.m., and on the hour from 6 a.m. to midnight, except from 7 a.m. to 5 p.m. on the last consecutive Wednesday and Thursday in July of every year, the draw need not be opened. This change will reduce vehicular traffic congestion, increasing public safety and will extend the structural and operational integrity of the movable span, while still balancing the needs of marine and vehicular traffic.

DATES: This rule is effective May 18, 2005.

ADDRESSES: You may mail comments and related material to Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004. The Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Fifth Coast Guard District between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gary Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6629.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 30, 2004 we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulation; Chincoteague Channel, Chincoteague, VA" in the **Federal Register** (69 FR 78373). We received six letters commenting on the proposed rule. No public hearing was requested.

Background and Purpose

The Virginia Department of Transportation (VDOT) owns and operates this swing-type bridge. The current regulation allows the SR 175 Bridge, mile 3.5, at Chincoteague to open on signal except the draw shall remain in the closed position to vessels from 7 a.m. to 5 p.m. on the last consecutive Wednesday and Thursday in July of every year.

On behalf of the Chincoteague Town Council residents, and business owners in the area, VDOT has requested a change to the existing regulations for the SR 175 Bridge. This final rule is an effort to schedule the number of drawbridge openings thereby reducing traffic congestion for public safety. By scheduling the number of openings this change will also extend the structural and operational integrity of the movable

span, while balancing the needs of mariners and vehicular traffic transiting in and around this seaside resort area. SR 175 highway is also the principle arterial route that serves as the major evacuation highway in the event of emergencies or tidal flooding.

The final rule will provide for a safer and more efficient operation of the SR 175 Bridge.

Discussion of Comments and Changes

The Coast Guard received six comments on the NPRM. Five comments were from Chincoteague Island residents and the other comment was from Coast Guard (CG) Group Eastern Shore; all comments favored an hourly opening schedule year round. CG Group Eastern Shore expressed additional concerns for safe vessel passage after midnight. From midnight to 6 a.m., the NPRM proposed that the draw of the bridge need not be opened. CG Group Eastern Shore suggested the bridge open on demand from midnight to 6 a.m., except from 7 a.m. to 5 p.m. on the last consecutive Wednesday and Thursday in July, the draw need not be opened.

The Coast Guard considered these changes necessary for safe navigation and the final rule was changed to reflect this suggestion.

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 rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We reached this conclusion based on the fact that the changes have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the scheduled bridge openings, to minimize delays.

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 would not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. No assistance was requested from any small entity.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule would not affect 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 would not create an environmental risk to health or risk to safety that might 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 would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD,

which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have 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 (32)(e) of the Instruction, from further environmental documentation because it has been determined that the promulgation of operating regulations for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. § 117.1005 is revised to read as follows:

§ 117.1005 Chincoteague Channel.

The draw of the SR 175 Bridge, mile 3.5, at Chincoteague shall open on demand from midnight to 6 a.m., and on the hour from 6 a.m. to midnight, except that from 7 a.m. to 5 p.m. on the last consecutive Wednesday and Thursday in July of every year, the draw need not be opened.

Dated: April 7, 2005.

Sally Brice-O'Hara,

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

[FR Doc. 05–7618 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[OAR–2004–0091; FRL–7896–2]

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Final rule—consistency update.

SUMMARY: EPA is finalizing the update of the Outer Continental Shelf ("OCS") Air Regulations proposed in the **Federal Register** on June 23, 2004, July 31, 2003, January 13, 2003, August 16, 2002, April 12, 2002, January 22, 2002, June 28, 2001, December 11, 2000, and May 26, 2000. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act Amendments of 1990 ("the Act"). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Santa Barbara County Air Pollution Control District, South Coast Air Quality Management District, and Ventura County Air Pollution Control District are the designated COAs. The intended effect of approving the requirements contained in "Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources" (February, 2005), "South Coast Air Quality Management District Requirements Applicable to OCS Sources" (Part I, II and III) (February, 2005), and "Ventura County Air Pollution Control District Requirements Applicable to OCS Sources" (February, 2005) is to regulate emissions from OCS sources in accordance with the requirements onshore.

DATES: *Effective Date:* This action is effective May 18, 2005.

The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of May 18, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. 2004–0091. You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours by appointment. You can inspect copies of the submitted rules by appointment at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air Division, U.S. EPA Region IX, (415) 947–4125, *vineyard.christine@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

TABLE 1

Date of proposed rule	Federal Register citation
June 23, 2004	69 FR 34981
July 31, 2003	68 FR 44914
January 13, 2003	68 FR 1570
August 16, 2002	67 FR 53546
April 12, 2002	67 FR 17955
January 22, 2002	67 FR 2846
June 28, 2001	66 FR 34394
December 11, 2000	65 FR 77333
May 26, 2000	65 FR 34129

On the dates listed in Table 1, EPA proposed to approve requirements into the OCS Air Regulations pertaining to Santa Barbara County APCD, South Coast AQMD, Ventura County APCD, and State of California. These requirements are being promulgated in response to the submittal of rules from local air pollution control agencies. EPA has evaluated the proposed requirements to ensure that they are rationally related to the attainment or maintenance of Federal or State ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

A 30-day public comment period was provided in each Proposed Rule, and no comments were received.

II. EPA Action

In this document, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. No changes were made to the Proposed Actions listed in table 1. EPA is approving the proposed actions as modified under section 328(a)(1) of the Act, 42 U.S.C. 7627. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore.

III. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

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

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

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, because it 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

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

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

and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

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

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This action will be effective May 18, 2005.

K. Petitions for Judicial Review

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 June 17, 2005. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action 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 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: March 25, 2005.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Title 40 of the Code of Federal Regulations, part 55, is to be amended as follows:

PART 55—[AMENDED]

■ 1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by revising paragraphs (e)(3)(ii)(F), (e)(3)(ii)(G), and (e)(3)(ii)(H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources*, February 2005.

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Part I, II and Part III), February 2005.

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources*, February 2005.

* * * * *

■ 3. Appendix A to CFR part 55 is amended by revising paragraphs (b)(6), (7), and (8) under the heading "California" to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

* * * * *

(b) Local Requirements

* * * * *

(6) *The following requirements are containing in Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources*, February 2005:

Rule 102 Definition (Adopted 6/19/03)
Rule 103 Severability (Adopted 10/23/78)
Rule 106 Notice to Comply for Minor Violations (Adopted 7/15/99)
Rule 107 Emergencies (Adopted 4/19/01)
Rule 201 Permits Required (Adopted 4/17/97)
Rule 202 Exemptions to Rule 201 (Adopted 4/17/97)
Rule 203 Transfer (Adopted 4/17/97)
Rule 204 Applications (Adopted 4/17/97)
Rule 205 Standards for Granting Applications (Adopted 4/17/97)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 4/17/97)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter-Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration-Southern Zone (Adopted 10/23/78)
Rule 306 Dust and Fumes-Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate-Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 316 Storage and Transfer of Gasoline (Adopted 4/17/97)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems-Southern Zone (Adopted 10/23/78)
Rule 321 Solvent Cleaning Operations (Adopted 9/18/97)
Rule 322 Metal Surface Coating Thinner and Reducer(Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 11/15/01)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Adopted 7/19/01)
Rule 326 Storage of Reactive Organic Liquid Compounds (Adopted 1/18/01)

Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 1/20/00)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 4/17/97)
Rule 342 Control of Oxides of Nitrogen (NO_X) from Boilers, Steam Generators and Process Heaters) (Adopted 4/17/97)
Rule 343 Petroleum Storage Tank Degassing (Adopted 12/14/93)
Rule 344 Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94)
Rule 346 Loading of Organic Liquid Cargo Vessels (Adopted 01/18/01)
Rule 352 Natural Gas-Fired Fan-Type Central Furnaces and Residential Water Heaters (Adopted 9/16/99)
Rule 353 Adhesives and Sealants (Adopted 8/19/99)
Rule 359 Flares and Thermal Oxidizers (6/28/94)
Rule 360 Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 10/17/02)
Rule 370 Potential to Emit—Limitations for Part 70 Sources (Adopted 6/15/95)
Rule 505 Breakdown Conditions Sections A., B.1, and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)
Rule 702 General Conformity (Adopted 10/20/94)
Rule 801 New Source Review (Adopted 4/17/97)
Rule 802 Nonattainment Review (Adopted 4/17/97)
Rule 803 Prevention of Significant Deterioration (Adopted 4/17/97)
Rule 804 Emission Offsets (Adopted 4/17/97)
Rule 805 Air Quality Impact Analysis and Modeling (Adopted 4/17/97)
Rule 808 New Source Review for Major Sources of Hazardous Air Pollutants (Adopted 5/20/99)
Rule 1301 Part 70 Operating Permits—General Information (Adopted 6/19/03)
Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303 Part 70 Operating Permits—Permits (Adopted 11/09/93)
Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/09/93)
Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

(7) *The following requirements are contained in South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Part I, II and III), February 2005:

Rule 102 Definition of Terms (Adopted 10/19/01)
Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 8/18/00)
Rule 112 Definition of Minor Violation and Guidelines for Issuance of Notice to Comply (Adopted 11/13/98)
Rule 118 Emergencies (Adopted 12/7/95)
Rule 201 Permit to Construct (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 3/6/92)
Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit and Burn Authorization for Open Burning (12/21/01)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications (Adopted 1/5/90)
Rule 212 Standards for Approving Permits (Adopted 12/7/95) except (c)(3) and (e)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Continuous Emission Monitoring (Adopted 5/14/99)
Rule 218.1 Continuous Emission Monitoring Performance Specifications (Adopted 5/14/99)
Rule 218.1 - Attachment A—Supplemental and Alternative CEMS Performance Requirements (Adopted 5/14/99)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 5/19/00)
Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 5/11/01) except (e)(7)and Table IV
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 5/11/01)
Rule 304.1 Analyses Fees (Adopted 5/11/01)
Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
Rule 306 Plan Fees (Adopted 5/11/01)
Rule 309 Fees for Regulation XVI Plans (Adopted 5/11/01)
Rule 401 Visible Emissions (Adopted 11/9/01)
Rule 403 Fugitive Dust (Adopted 12/11/98)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (e) only (Adopted 7/12/96)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 6/12/98)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 9/15/00)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 12/15/00)
Rule 444 Open Burning (Adopted 12/21/01)
Rule 463 Organic Liquid Storage (Adopted 3/11/94)
Rule 465 Vacuum Producing Devices or Systems (Adopted 8/13/99)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474 Fuel Burning Equipment—Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77) Addendum to Regulation IV (Effective 1977)
Rule 518 Variance Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.1 Permit Appeal Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.2 Federal Alternative Operating Conditions (Adopted 12/21/01)
Rule 701 Air Pollution Emergency Contingency Actions (Adopted 6/13/97)
Rule 702 Definitions (Adopted 7/11/80)
Rule 708 Plans (Rescinded 9/8/95)
Regulation IX New Source Performance Standards (Adopted 5/11/01)
Reg. X National Emission Standards for Hazardous Air Pollutants (NESHAPS) (Adopted 5/11/01)
Rule 1105.1 Reduction of PM_{10} and Ammonia Emissions From Fluid Catalytic Cracking Units (Adopted 11/7/03)
Rule 1106 Marine Coatings Operations (Adopted 1/13/95)
Rule 1107 Coating of Metal Parts and Products (Adopted 11/9/01)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/14/97)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous- and Liquid Fueled Internal Combustion Engines (Adopted 11/14/97)
Rule 1113 Architectural Coatings (Amended 12/05/03)
Rule 1116.1 Lightering Vessel Operations—Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 12/10/99)
Rule 1122 Solvent Degreasers (Adopted 12/06/02)

Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1125 Metal Containers, Closure, and Coil Coating Operations (1/13/95)
Rule 1129 Aerosol Coatings (Adopted 3/8/96)
Rule 1132 Further Control of VOC Emissions from High-Emitting Spray Booth Facilities (Adopted 1/19/01)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/8/97)
Rule 1136 Wood Products Coatings (Adopted 6/14/96)
Rule 1137 PM_{10} Emission Reductions from Woodworking Operations (Adopted 2/01/02)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 11/17/00)
Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1146.2 Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 1/9/98)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 7/14/95)
Rule 1162 Polyester Resin Operations (Amended 07/11/03)
Rule 1168 Adhesive and Sealant Applications (Amended 10/3/03)
Rule 1171 Solvent Cleaning Operations (Amended 11/7/03)
Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 12/06/02)
Rule 1176 VOC Emissions from Wastewater Systems (Adopted 9/13/96)
Rule 1178 Further Reductions of VOC Emissions from Storage Tanks at Petroleum Facilities (Adopted 12/21/01)
Rule 1301 General (Adopted 12/7/95)
Rule 1302 Definitions (Adopted 12/06/02)
Rule 1303 Requirements (Adopted 12/06/02)
Rule 1304 Exemptions (Adopted 6/14/96)
Rule 1306 Emission Calculations (Adopted 12/06/02)
Rule 1313 Permits to Operate (Adopted 12/7/95)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 4/8/94)
Rule 1605 Credits for the Voluntary Repair of On-Road Vehicles Identified Through Remote Sensing Devices (Adopted 10/11/96)
Rule 1610 Old-Vehicle Scrapping (Adopted 2/12/99)
Rule 1612 Credits for Clean On-Road Vehicles (Adopted 7/10/98)
Rule 1612.1 Mobile Source Credit Generation Pilot Program (Adopted 3/16/01)
Rule 1620 Credits for Clean Off-Road Mobile Equipment (Adopted 7/10/98)
Rule 1701 General (Adopted 8/13/99)
Rule 1702 Definitions (Adopted 8/13/99)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 8/13/99)
Rule 1706 Emission Calculations (Adopted 8/13/99)
Rule 1713 Source Obligation (Adopted 10/7/88)
Regulation XVII Appendix (effective 1977)
Rule 1901 General Conformity (Adopted 9/9/94)
Rule 2000 General (Adopted 5/11/01)
Rule 2001 Applicability (Adopted 2/14/97)
Rule 2002 Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_X) Emissions (Adopted 5/11/01)
Rule 2004 Requirements (Adopted 5/11/01) except (l)
Rule 2005 New Source Review for RECLAIM (Adopted 4/20/01) except (i)
Rule 2006 Permits (Adopted 5/11/01)
Rule 2007 Trading Requirements (Adopted 5/11/01)
Rule 2008 Mobile Source Credits (Adopted 10/15/93)
Rule 2010 Administrative Remedies and Sanctions (Adopted 5/11/01)
Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SOx) Emissions (Adopted 5/11/01)
Appendix A Volume IV—(Protocol for Oxides of Sulfur) (Adopted 3/10/95)
Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions (Adopted 5/11/01)
Appendix A Volume V—(Protocol for Oxides of Nitrogen) (Adopted 3/10/95)
Rule 2015 Backstop Provisions (Adopted 5/11/11) except (b)(1)(G) and (b)(3)(B)
Rule 2020 RECLAIM Reserve (Adopted 5/11/01)
Rule 2100 Registration of Portable Equipment (Adopted 7/11/97)
Rule 2506 Area Source Credits for NO_X and SO_X (Adopted 12/10/99)
XXX Title V Permits
Rule 3000 General (Adopted 11/14/97)
Rule 3001 Applicability (Adopted 11/14/97)
Rule 3002 Requirements (Adopted 11/14/97)
Rule 3003 Applications (Adopted 3/16/01)
Rule 3004 Permit Types and Content (Adopted 12/12/97)
Rule 3005 Permit Revisions (Adopted 3/16/01)
Rule 3006 Public Participation (Adopted 11/14/97)
Rule 3007 Effect of Permit (Adopted 10/8/93)
Rule 3008 Potential To Emit Limitations (3/16/01)
XXXI Acid Rain Permit Program (Adopted 2/10/95)

(8) *The following requirements are contained in Ventura County Air Pollution Control District Requirements Applicable to OCS Sources,* February 2005:

Rule 2 Definitions (Adopted 4/13/04)
Rule 5 Effective Date (Adopted 4/13/04)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 4/13/04)
Rule 11 Definition for Regulation II (Adopted 6/13/95)
Rule 12 Application for Permits (Adopted 6/13/95)
Rule 13 Action on Applications for an Authority to Construct (Adopted 6/13/95)
Rule 14 Action on Applications for a Permit to Operate (Adopted 6/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 6/13/95)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 23 Exemptions from Permits (Revised 4/13/04)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 5/14/02)
Rule 26.2 New Source Review—Requirements (Adopted 5/14/02)
Rule 26.3 New Source Review—Exemptions (Adopted 5/14/02)
Rule 26.6 New Source Review—Calculations (Adopted 5/14/02)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 1/13/98)
Rule 26.11 New Source Review—ERC Evaluation At Time of Use (Adopted 5/14/02)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 4/13/04)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Rule 33 Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1 Part 70 Permits—Definitions (Adopted 4/10/01)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 4/10/01)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 4/10/01)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 4/10/01)
Rule 33.5 Part 70 Permits—Time Frames for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 4/10/01)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 4/10/01)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 3/14/95)
Rule 35 Elective Emission Limits (Adopted 11/12/96)
Rule 36 New Source Review—Hazardous Air Pollutants (Adopted 10/6/98)
Rule 42 Permit Fees (Adopted 4/13/04)
Rule 44 Exemption Evaluation Fee (Adopted 9/10/96)

Rule 45 Plan Fees (Adopted 6/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 47 Source Test, Emission Monitor, and Call-Back Fees (Adopted 6/22/99)
Rule 50 Opacity (Adopted 4/13/04)
Rule 52 Particulate Matter-Concentration (Adopted 4/13/04)
Rule 53 Particulate Matter-Process Weight (Adopted 4/13/04)
Rule 54 Sulfur Compounds (Adopted 6/14/94)
Rule 56 Open Burning (Revised 11/11/03)
Rule 57 Combustion Contaminants-Specific (Adopted 6/14/77)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 4/13/99)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 4/13/04)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 4/10/01)
Rule 73 National Emission Standards for Hazardous Air Pollutants (NESHAPS (Adopted 04/10/01)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 11/13/01)
Rule 74.6 Surface Cleaning and Degreasing (Revised 11/11/03—effective 7/1/04)
Rule 74.6.1 Batch Loaded Vapor Degreasers (Adopted 11/11/03—effective 7/1/04)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 11/14/00)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 3/10/98)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NO_x (Adopted 4/9/85)
Rule 74.11.1 Large Water Heaters and Small Boilers (Adopted 9/14/99)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 11/11/03)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 11/8/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (Adopted 6/13/00)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 9/9/03)
Rule 74.23 Stationary Gas Turbines (Adopted 1/08/02)
Rule 74.24 Marine Coating Operations (Revised 11/11/03)
Rule 74.24.1 Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 1/08/02)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 5/10/94)
Rule 74.30 Wood Products Coatings (Revised 11/11/03)
Rule 75 Circumvention (Adopted 11/27/78)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 4/13/04)
Rule 103 Continuous Monitoring Systems (Adopted 2/9/99)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)
Rule 220 General Conformity (Adopted 5/9/95)
Rule 230 Notice to Comply (Adopted 11/9/99)

* * * * *

[FR Doc. 05–7574 Filed 4–15–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7900–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct Final Deletion of the RCA Del Caribe Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 2, announces the deletion of the RCA Del Caribe Superfund Site (Site), located in Barceloneta, Puerto Rico, from the National Priorities List (NPL) and requests public comment on this action. The NPL is appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. This Direct Final Notice of Deletion is being published by EPA with the concurrence of the Commonwealth of Puerto Rico, through the Puerto Rico Environmental Quality Board (EQB). EPA and EQB have determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

DATES: This direct final deletion will be effective June 17, 2005, unless EPA receives significant adverse comments by May 18, 2005. If significant adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register**, informing the public that the deletion will not take effect.

ADDRESSES: Written comments should be mailed to: Adalberto Bosque, Remedial Project Manager, Caribbean Environmental Protection Division, U.S. Environmental Protection Agency, Region 2, Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, San Juan, Puerto Rico 00907.

Information Repositories:

Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. Environmental Protection Agency, Region 2, Caribbean Environmental Protection Division, Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, San Juan, Puerto Rico 00907, Hours: 9 a.m. to 5 p.m., Monday through Friday. U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866, (212) 637–4308, Hours: 9 a.m. to 5 p.m., Monday through Friday. Sixto Escobar Municipal Library, Escobar Avenue, Barceloneta, Puerto Rico, Hours: Monday through Thursday, 10 a.m. to 9 p.m., Friday through Saturday, 8 a.m. to 4:30 p.m., (809) 846–7056. And, Puerto Rico Environmental Quality Board, Emergency Response and Superfund Program, National Bank Plaza, 431 Ponce De Leon Avenue, Hato Rey, Puerto Rico 00917, (787) 767–8181 Ext. 2230, Hours: 9 a.m. to 3 p.m., Monday through Friday by appointment.

FOR FURTHER INFORMATION CONTACT: Mr. Adalberto Bosque, Remedial Project Manager, U.S. Environmental Protection Division, Caribbean Environmental Protection Division, Centro Europa Building Suite 417, 1492 Ponce de Leon Avenue, Santurce, Puerto Rico, 00907, (787) 977–5825; fax number (787) 289–7104; e-mail address: *bosque.adalberto@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region 2 announces the deletion of the RCA del Caribe Superfund Site (Site) from the National Priorities List (NPL). The EPA maintains the NPL as the list of those sites that appear to present a significant risk to public health or the environment. Sites on the NPL can have remedial actions financed by the Hazardous Substances Response Fund. As described in § 300.425(e)(3) of the NCP, a site deleted from the NPL remains eligible for remedial actions if conditions at the site warrant such action.

EPA considers this action to be noncontroversial and routine, and therefore, EPA is taking it without prior publication of a Notice of Intent to Delete. This action will be effective June 17, 2005, unless EPA receives significant adverse comments by May 18, 2005, on this action or on the parallel Notice of Intent to Delete published in the Notice section of today's **Federal Register**. If significant adverse comments are received within the 30-day public comment period of this action or the Notice of Intent to Delete, EPA will publish a timely withdrawal of this Direct Final Deletion before the effective date of the deletion and the deletion will not take effect. EPA will, if appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the RCA del Caribe Superfund Site and demonstrates how it meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that Sites may be deleted from the NPL where no further response is appropriate. In accordance with § 300.425(e)(1), EPA shall consult with the Commonwealth to determine whether any of the following criteria have been met:

i. Responsible parties or other parties have implemented all appropriate response actions required; or,

ii. All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, implementing remedial measures is not appropriate.

In addition, the Commonwealth shall concur with the deletion, as required by § 300.425(e)(2); and, the public shall be informed, as required by § 300.425(e)(4). A site which is deleted from the NPL does remain eligible for remedial actions should future conditions warrant such action, § 300.425(e)(3).

III. Deletion Procedures

The following procedures apply to deletion of the Site.

(1) The Site was listed on the NPL in December 1982. Four lined lagoons (ponds) on the Site were closed in 1985 under an approved closure plan.

(2) On April 11, 1988, a Potentially Responsible Party (PRP) entered into a joint CERCLA/ Resource Conservation and Recovery Act (RCRA) Administrative Order on Consent with EPA. The Order designated separate units of the Site to be covered under CERCLA and RCRA. The closed lagoons and groundwater contamination was to be addressed by CERCLA. Remaining sludge drying beds and sludge surface impoundments were to be addressed by RCRA.

(3) On September 30, 1994 , EPA issued a Record of Decision which concluded that no action was required for the CERCLA units of the Site.

(4) A Preliminary Close Out report was issued by EPA on September 5, 2000.

(5) Region 2, Emergency and Remedial Response Division (ERRD) evaluated site risks based on soil samples taken from the North and South Sludge Drying Beds, the Large and Small Surface Impoundment Areas and the area around the Surface Impoundment Areas. The concentrations were found to be within the risk range for residential use.

(6) Region 2 finds the September 30, 1994 ROD and the conclusion reached by ERRD in (5) above indicates that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures under CERCLA is not appropriate.

(7) EPA consulted with the Commonwealth of Puerto Rico through the Environmental Quality Board (EQB) on the deletion of this Site from the NPL, and EQB has concurred with the deletion.

(8) If no significant adverse comments are received related to this Direct Final Notice of Deletion, the Site will be deleted. If significant adverse comments are received within the 30-day public comment period established for this Direct Final Action or the Notice of Intent to Delete published in today's **Federal Register**, EPA will publish a timely notice of withdrawal of this Direct Final Deletion before its effective date. EPA will prepare, if appropriate, a response to comments and continue with the deletion process on the basis of the notice of Intent to Delete and the comments already received.

(9) EPA has placed copies of documents supporting the deletion in the Site information repositories identified above.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is the list of uncontrolled hazardous substance releases in the United States that are priorities for long-term remedial evaluation and response.

IV. Basis for Site Deletion

The RCA del Caribe Superfund Site is the location of a former manufacturing facility in Barceloneta, Puerto Rico. The Site is situated on the north coast of the island, approximately 30 miles due west of San Juan in Barrio Afuera, Municipio de Barceloneta, Puerto Rico, 3.3 miles southwest of the center of Barceloneta. The Site is located 400 feet south of the intersection of Highways 2 and 140 and covers approximately 30 acres.

The Site was the location of a facility that manufactured low-carbon steel aperture masks for color television picture tubes by chemically etching carbon steel with a ferric chloride solution. The facility operated for approximately 17 years until April 1987. The used ferric chloride solution was a listed hazardous waste under RCRA. Used solution was stored in four lined lagoons (or ponds). Used water from the manufacturing process (process water), containing ferric chloride, was treated on-site to remove contaminants and discharged into a sinkhole at the Site. The treatment of process water created a sludge that was stored on-site in drying beds and in surface impoundments. Between 1978 and 1981, sinkholes developed on the Site causing approximately 1.4 million gallons of the ferric chloride solution from the lagoons to be spilled onto the ground and into the groundwater. Shortly thereafter, EPA conducted an investigation to determine whether the

Site should be placed on the NPL. It was listed in December, 1982. The lagoons were closed in 1985 under an EPA and EQB-approved RCRA closure plan. Under the closure plan, the lining materials and related piping were removed and the lagoon areas were regraded with clean soil from other areas of the Site. From 1982 until 1987, the ferric chloride solution was stored in tanks and sold to a waste water treatment facility. The sludge remaining in the drying beds was estimated to be approximately 100 cubic yards, and the sludge within the two surface impoundments was estimated to be approximately 1,000 cubic yards.

The Radio Corporation of America (RCA) ceased operations at the facility on April 4, 1987. On December 31, 1987, General Electric Company (GE) acquired RCA and became its legal successor. On April 11, 1988, GE, as successor to RCA, entered into an Administrative Order on Consent with EPA to perform a Remedial Investigation/Feasibility Study (RI/FS) to determine the extent and magnitude of the contamination created by the release of ferric chloride. In addition, GE agreed to comply with RCRA's closure requirements for the RCRA regulated units. The RCRA portion of the Site was identified as two sludge drying beds and two sludge surface impoundments. While the Order required RCRA closure of these units, EPA later acknowledged that GE could petition EPA for the delisting of these wastes under RCRA. Subsequently, GE pursued the delisting of these wastes and on March 19, 2004, a proposed rule to delist these wastes was published in the **Federal Register** (Volume 69, Number 54).

For the CERCLA portion of the site, a remedial investigation was conducted by GE. On September 30, 1994, EPA issued a Record of Decision determining that the Site did not pose a significant threat to human health or the environment and, therefore, remediation was not necessary nor appropriate. This determination was based upon the remedial investigation and a risk assessment performed for the Site. This determination covered the CERCLA portion of the Site, which was defined by the soils and sediments in the four lined lagoons and any groundwater contamination associated with releases from those lagoons. On September 5, 2000 EPA issued a Preliminary Close Out Report (PCOR) finding that all remedial construction for the Site was complete.

The Municipality of Barceloneta has entered into an "Agreement For The Transfer of Physical Possession of Barceloneta Property" dated December 7, 2004. It is EPA's understanding that the Municipality intends to reuse the Site. It is the policy of EPA to support the reuse of Superfund sites. Deletion of a site from the NPL, when appropriate, supports reuse by informing the public that the site no longer poses a significant threat to public health or the environment under CERCLA.

The Site meets Commonwealth requirements that are applicable or relevant and appropriate. The finding that remediation is not appropriate is cost-effective and provides for a permanent solution meeting the requirements of CERCLA. There are no site-related hazardous substances, pollutants or contaminants which would prevent the unlimited use of this site without restricting or controlling exposures. No five-year reviews of site remedies are required by EPA regulations or policies.

EPA and EQB have determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate. Therefore, EPA is deleting this Site from the NPL.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: March 30, 2005.

George Pavlou,

Acting Deputy Regional Administrator, Region 2.

■ 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; and E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

Appendix B to Part 300 [Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing the site name "RCA Del Caribe, Barceloneta, PR."

[FR Doc. 05–7572 Filed 4–15–05; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 70, No. 73
Monday, April 18, 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 HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5, Appendix C

[DHS–2005–0029]

Privacy Act of 1974: Implementation of Exemptions: the Homeland Security Operations Center Database

AGENCY: Privacy Office, Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is concurrently establishing one new system of records pursuant to the Privacy Act of 1974, the Homeland Security Operations Center Database. In this proposed rulemaking, the Department of Homeland Security proposes to exempt portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil and administrative enforcement requirements.

DATES: Comments must be received on or before May 18, 2005.

ADDRESSES: You may submit comments, identified by docket number DHS–2004–, by one of the following methods:

- EPA Federal Partner EDOCKET Web site: *http://www.epa.gov/feddocket*. Follow instructions for submitting comments on the Web site.
- DHS has joined the Environmental Protection Agency (EPA) online public docket and comment system on its Partner Electronic Docket System (Partner EDOCKET).
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: (202) 772–5036 (This is not a toll-free number).
- Mail: Nuala O'Connor Kelly, Chief Privacy Officer, Department of Homeland Security, Nuala O'Connor Kelly, DHS Chief Privacy Officer, Washington, DC 20528.
- Hand Delivery/Courier: Nuala O'Connor Kelly, Chief Privacy Officer, Department of Homeland Security, Nuala O'Connor Kelly, Chief Privacy Officer, 245 Murray Lane, SW., Building 410, Washington, DC 20528, 7:30 a.m. to 4 p.m.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.epa.gov/feddocket*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.epa.gov/feddocket*. You may also access the Federal eRulemaking Portal at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Sandy Ford Page, Director, Disclosure Officer, Office of the Chief of Staff, Office of the Undersecretary for Information Analysis and Infrastructure Protection, Department of Homeland Security, Washington, DC 20528 by telephone (202) 282–8522 or facsimile (202) 282–9069; Nuala O'Connor Kelly, DHS Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, by telephone (202) 772–9848 or facsimile (202) 772–5036.

SUPPLEMENTARY INFORMATION:

Background

Concurrently with the publication of this notice of proposed rulemaking, the Department of Homeland Security (DHS) is publishing a Notice establishing a new system of records that is subject to the Privacy Act of 1974, 5 U.S.C. 552a. DHS is proposing to exempt this system in part, from certain provisions of the Privacy Act. This system is the Office of the Undersecretary for Information Analysis and Infrastructure Protection (IAIP) Homeland Security Operations Center (HSOC) Database (DHS/IAIP001), which is being established to serve as the primary national-level hub for operational communications and information pertaining to domestic incident management and serves as the Nation's single point of threat information integration and dissemination to secure the homeland. The HSOC Database will support a single, centralized repository for gathered information.

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Homeland Security Act of 2002 requires the Secretary of DHS to appoint a senior official to oversee implementation of the Privacy Act and to undertake other privacy-related activities. Pub. L. 107–296, § 222, 116 Stat. 2135, 2155 (Nov. 25, 2002) (HSA). The systems of records being published today help to carry out the DHS Chief Privacy Officer's statutory activities.

The Privacy Act requires each agency to publish in the **Federal Register** a description of the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals to more easily find such files within the agency. By separate notice, the Department has described the Homeland Security Operations Center database.

The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed. DHS is claiming exemption from certain requirements of the Privacy Act. In the case of DHS/IAIP 001, which consists of operational communications and information pertaining to domestic incident management, allowing access to the

information that is derived from these files could alert the subject of the information to an investigation of an actual or potential criminal, civil, or regulatory violation and reveal investigative interest on the part of DHS or another agency. Disclosure of the information would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the information would also permit the individual who is the subject of a record to impede the investigation and avoid detection or apprehension, which undermines the entire system. This exemption is standard law enforcement and national security exemption utilized by numerous law enforcement and intelligence agencies.

List of Subjects in 6 CFR Part 5

Classified information; Courts; Freedom of information; Government employees; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for Part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. Add at the end of Appendix C the following:

* * * * *

DHS/IAIP/OO1

Portions of the following DHS systems of records are exempt from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552(j) and (k): DHS/IAIP 001, Department of Homeland Security (DHS) Homeland Security Operations Center database allows IAIP to maintain and retrieve intelligence information and other information received from agencies and components of the Federal Government, foreign governments, organizations or entities, international organizations, state and local government agencies (including law enforcement agencies), and private sector entities, as well as information provided by individuals, regardless of the medium used to submit the information or the agency to which it was submitted. This system also contains: information regarding persons on watch lists with possible links to terrorism; the results of intelligence analysis and reporting; ongoing law enforcement investigative information, information systems security analysis and reporting; historical law enforcement information, operational and administrative records; financial information; and public-source data such as that contained in media reports and commercial databases as appropriate to identify and assess the nature and scope of terrorist threats to the homeland, detect and identify threats of terrorism against the United States, and understand such threats in light of actual and potential vulnerabilities of the homeland. Data about the providers of information, including the means of transmission of the data is also retained.

IAIP will use the information in the HSOC database to access, receive, and analyze law enforcement information, intelligence information, and other information and to integrate such information in order identify and assess the nature and scope of terrorist or other threats to the homeland.

Pursuant to exemptions (j)(2), (k)(1), and (k)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H) and (I), and (e)(8), (f), and (g). Exemptions from the particular subsections are justified, on a case by case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c) (3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation and avoid detection or apprehension, which undermines the entire system.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and reveal investigative interest on the part of DHS or another agency. Access to the records would permit the individual who is the subject of a record to impede the investigation and avoid detection or apprehension. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. The information contained in the system may also include properly classified information, the release of which would pose a threat to national defense and/or foreign policy. In addition, permitting access and amendment to such information also could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e) (1) (Relevancy and Necessity of Information) because in the course of operations DHS IAIP must be able to review information from a variety of sources. What information is relevant and necessary may not always be apparent until after the evaluation is completed. In the interests of Homeland Security, it is appropriate to include a broad range of information that may aid in identifying and assessing the nature and scope of terrorist or other threats to the Homeland. Additionally, investigations into potential violations of federal law, the accuracy of information obtained or introduced, occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective enforcement of federal laws, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e) (4) (G), (H) and (I) (Agency Requirements), and (f), because portions of this system are exempt from the access and amendment provisions of subsection (d).

Dated: April 7, 2005.

Nuala O'Connor Kelly,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 05–7705 Filed 4–15–05; 8:45 am]

BILLING CODE 4410–10–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

RIN 3150–AH56

AP1000 Design Certification

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) proposes to amend its regulations to certify the AP1000 standard plant design. This action is necessary so that applicants or licensees intending to construct and operate an AP1000 design may do so by referencing the AP1000

design certification rule (DCR). This proposed DCR is nearly identical to the AP600 DCR in the current regulations. The applicant for certification of the AP1000 design is Westinghouse Electric Company LLC (Westinghouse). The public is invited to submit comments on this proposed DCR and the AP1000 design control document (DCD) that would be incorporated by reference into the DCR. The NRC also invites the public to submit comments on the environmental assessment for the AP1000 design.

DATES: Submit comments on the rule by July 5, 2005. Submit comments specific to the information collections aspects of this rule by May 18, 2005. Comments received after the above dates will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after these dates.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH56) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*. Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between the hours of 7:30 a.m. and 4:15 p.m. Federal workdays (telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

FOR FURTHER INFORMATION CONTACT: Lauren Quinones-Navarro or Jerry N. Wilson, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–2007 or (301) 415–3145; e-mail: *lnq@nrc.gov* or *jnw@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The NRC added 10 CFR part 52 to its regulations to provide for the issuance of early site permits (ESPs), standard design certifications, and combined licenses (COLs) for nuclear power plants. Subpart B of 10 CFR part 52 established the process for obtaining design certifications. On March 28, 2002 (67 FR 20845), Westinghouse tendered its application for certification of the AP1000 standard plant design with the NRC. Westinghouse submitted this application in accordance with subpart B and appendix O of 10 CFR part 52. The NRC formally accepted the application as a docketed application for design certification (Docket No. 52–006) on June 25, 2002 (67 FR 43690). The pre-application information submitted before the NRC formally accepted the application can be found under Project No. 711.

II. Technical Evaluation of the AP1000 Design

As stated above, the procedure for certifying a standard design is performed under 10 CFR part 52, subpart B, and is carried out in two stages (technical and administrative). The technical review stage is initiated by an application filed in accordance with the requirements of 10 CFR 52.45, "Filing of Applications." This stage continues with reviews by the NRC staff and the Advisory Committee on Reactor Safeguards and ends with the issuance of a final safety evaluation report (FSER) that discusses the staff's conclusions related to the acceptability of the AP1000 design. The NRC staff issued the AP1000 FSER in September 2004 (NUREG–1793). The FSER provides the bases for issuance of a final design approval under appendix O to part 52, which is a prerequisite to a design certification. The final design approval for the AP1000 design was issued on September 13, 2004, and published in the **Federal Register** on September 17, 2004 (69 FR 56101).

The administrative review stage begins with the publication of a **Federal Register** notice that initiates rulemaking, in accordance with 10 CFR 52.51, "Administrative Review of Applications," and includes a proposed design certification rule. The rulemaking culminates with the denial of the application or the issuance of a design certification rule.

III. Section-By-Section Discussion

The following discussion sets forth the purpose and key aspects of each section and paragraph of the proposed AP1000 DCR. All section and paragraph references are to the provisions in the proposed appendix D to 10 CFR part 52. The proposed DCR for the AP1000 standard plant design is nearly identical to the AP600 DCR, which the NRC

previously codified in 10 CFR part 52, appendix C (Design Certification Rule for the AP600 Design, 64 FR 72015, December 23, 1999). Many of the procedural issues and their resolutions for the AP600 DCR (*e.g.*, the two-tier structure, Tier 2*, the scope of issue resolution) were developed after extensive discussions with public stakeholders, including Westinghouse. Also, Westinghouse requested that policy resolutions for the AP600 design review be applied to the AP1000. Accordingly, the NRC has modeled the AP1000 DCR on the existing DCRs, with certain departures. These departures are necessary to account for differences in the AP1000 design documentation, design features, and environmental assessment (including severe accident mitigation design alternatives).

A. Introduction

The purpose of Section I of proposed appendix D to 10 CFR part 52 (this appendix) would be to identify the standard plant design that is approved by this DCR and the applicant for certification of the standard design. Identification of the design certification applicant is necessary to implement this appendix, for two reasons. First, the implementation of 10 CFR 52.63(c) depends on whether an applicant for a COL contracts with the design certification applicant to provide the generic design control document (DCD) and supporting design information. If the COL applicant does not use the design certification applicant to provide this information, then the COL applicant must meet the requirements in 10 CFR 52.63(c). Also, X.A.1 of this appendix would impose a requirement on the design certification applicant to maintain the generic DCD throughout the time period in which this appendix may be referenced.

B. Definitions

During development of the first two design certification rules, the Commission decided that there would be both generic (master) DCDs maintained by the NRC and the design certification applicant, as well as individual plant-specific DCDs, maintained by each applicant and licensee who reference the appendix. This distinction is necessary in order to specify the plant-specific requirements applicable to applicants and licensees referencing the appendix. The generic DCDs would reflect generic changes to the version of the DCD approved in this design certification rulemaking. The generic changes would occur as the result of generic rulemaking by the Commission, in accordance with the change criteria in section VIII of this appendix. In addition, the Commission understood that each applicant and licensee referencing this appendix would be required to submit and maintain a plant-specific DCD.

This plant-specific DCD would contain (not just incorporate by reference) the information in the generic DCD. The plant-specific DCD would be updated as necessary to reflect the generic changes to the DCD that the Commission may adopt through rulemaking, any plant-specific departures from the generic DCD that the Commission imposed on the licensee by order, and any plant-specific departures that the licensee chooses to make in accordance with the relevant processes in section VIII of this appendix. Thus, the plant-specific DCD would function like an updated Final Safety Analysis Report (FSAR) because it would provide the most complete and accurate information on a plant's licensing basis for that part of the plant within the scope of this appendix. Therefore, this appendix would define both a generic DCD and a plant-specific DCD.

Also, the Commission decided to treat the technical specifications (TS) in section 16.1 of the generic DCD as a special category of information and to designate them as generic TS in order to facilitate the special treatment of this information under this appendix. A COL applicant must submit plant-specific TS that consist of the generic TS, which may be modified under paragraph VIII.C of this appendix, and the remaining plant-specific information needed to complete the TS. The FSAR that is required by § 52.79(b) will consist of the plant-specific DCD, the site-specific portion of the FSAR, and the plant-specific TS.

The terms Tier 1, Tier 2, Tier 2*, and COL action items (license information) are defined in this appendix because these concepts were not envisioned when 10 CFR part 52 was developed. The design certification applicants and the NRC used these terms in implementing the two-tiered rule structure that was proposed by representatives of the nuclear industry after issuance of 10 CFR part 52. Therefore, appropriate definitions for these additional terms are included in this appendix. The nuclear industry representatives requested a two-tiered structure for the design certification rules to achieve issue preclusion for a greater amount of information than was originally planned for the design certification rules, while retaining flexibility for design implementation. The Commission approved the use of a two-tiered rule structure in its staff requirements memorandum (SRM), dated February 14, 1991, on SECY–90–377, "Requirements for Design Certification Under 10 CFR Part 52," dated November 8, 1990. This document and others are available in the Regulatory History of Design Certification (see section IV, Availability of Documents).

The Tier 1 portion of the design-related information contained in the DCD would be *certified* by this appendix and, therefore, be subject to the special backfit provisions in paragraph VIII.A of this appendix. An applicant who references this appendix would be required to incorporate by reference and comply with Tier 1, under paragraphs III.B and IV.A.1 of this appendix. This information consists of an introduction to Tier 1, the system based and non-system based design descriptions and corresponding inspections, tests, analyses, and acceptance criteria (ITAAC), significant interface requirements, and significant site parameters for the design. The design descriptions, interface requirements, and site parameters in Tier 1 were derived from Tier 2, but may be more general than the Tier 2 information. The NRC staff's evaluation of the Tier 1 information is provided in section 14.3 of the FSER. Changes to or departures from the Tier 1 information must comply with section VIII.A of this appendix.

The Tier 1 design descriptions serve as commitments for the lifetime of a facility referencing the design certification. The ITAAC verifies that the as-built facility conforms with the approved design and applicable regulations. Under 10 CFR 52.103(g), the Commission must find that the acceptance criteria in the ITAAC are met before authorizing operation. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not constitute regulatory requirements for licensees or for renewal of the COL. However, subsequent modifications to the facility must comply with the design descriptions in the plant-specific DCD unless changes are under the change process in section VIII of this appendix. The Tier 1 interface requirements are the most significant of the interface requirements for systems that are wholly or partially outside the scope of the standard design. Tier 1 interface requirements were submitted in response to 10 CFR 52.47(a)(1)(vii) and must be met by the site-specific design features of a facility that references this appendix. The Tier 1 site parameters are the most significant site parameters,

which were submitted in response to 10 CFR 52.47(a)(1)(iii). An application that references this appendix must demonstrate that the site parameters (both Tier 1 and Tier 2) are met at the proposed site (refer to paragraph III.D of this statement of consideration [SOC]).

Tier 2 is the portion of the design-related information contained in the DCD that would be *approved* by this appendix but not certified. Tier 2 information would be subject to the backfit provisions in paragraph VIII.B of this appendix. Tier 2 includes the information required by 10 CFR 52.47 (with the exception of generic TS, conceptual design information, and the evaluation of severe accident mitigation design alternatives) and the supporting information on inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met. As with Tier 1, paragraphs III.B and IV.A.1 of this appendix would require an applicant who references this appendix to incorporate Tier 2 by reference and to comply with Tier 2, except for the COL action items, including the investment protection short-term availability controls in section 16.3 of the generic DCD. The definition of Tier 2 makes clear that Tier 2 information has been determined by the Commission, by virtue of its inclusion in this appendix and its designation as Tier 2 information, to be an approved sufficient method for meeting Tier 1 requirements. However, there may be other acceptable ways of complying with Tier 1. The appropriate criteria for departing from Tier 2 information would be specified in paragraph VIII.B of this appendix. Departures from Tier 2 would not negate the requirement in paragraph III.B to reference Tier 2.

A definition of "combined license action items" (COL information), which is part of the Tier 2 information, would be added to clarify that COL applicants who reference this appendix are required to address COL action items in their license application. However, the COL action items are not the only acceptable set of information. An applicant may depart from or omit COL action items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items would not be requirements for the licensee unless they are restated in the FSAR. For additional discussion, see section D.

The investment protection short-term availability controls, which are set forth in section 16.3 of the generic DCD, would be added to the information that is part of Tier 2. These requirements were added to Tier 2 to make it clear that the availability controls are not operational requirements for the purposes of paragraph VIII.C of this appendix. Rather, the availability controls are associated with specific design features. The availability controls may be changed if the associated design feature is changed under paragraph VIII.B of this appendix. For additional discussion, see section C.

Certain Tier 2 information has been designated in the generic DCD with brackets and italicized text as "Tier 2*" information and, as discussed in greater detail in the section-by-section explanation for section H, a plant-specific departure from Tier 2* information would require prior NRC approval. However, the Tier 2* designation expires for some of this information when the facility first achieves full power after the finding required by 10 CFR 52.103(g). The process for changing Tier 2* information and the time at which its status as Tier 2* expires is set forth in paragraph VIII.B.6 of this appendix. Some Tier 2* requirements concerning special preoperational tests are designated to be performed only for the first plant or first three plants referencing the AP1000 DCR. The Tier 2* designation for these selected tests would expire after the first plant or first three plants complete the specified tests. However, a COL action item requires that subsequent plants shall also perform the tests or justify that the results of the first-plant-only or first-three-plants-only tests are applicable to the subsequent plant.

In an earlier rulemaking (64 FR 53582; October 4, 1999), the Commission revised 10 CFR § 50.59 to incorporate new thresholds for permitting changes to a plant as described in the FSAR without NRC approval. For consistency and clarity, the Commission proposes to use these new thresholds in the proposed AP1000 DCR. Inasmuch as § 50.59 is the primary change mechanism for operating nuclear plants, the Commission believes that future plants referencing the AP1000 DCR should utilize thresholds as close to § 50.59 as is practicable and appropriate. Because of some differences in how the change control requirements are structured in the DCRs, certain definitions contained in § 50.59 are not applicable to 10 CFR part 52 and are not being included in this proposed rule. One definition that the Commission is including is the definition from the new § 50.59 for a "departure from a method of evaluation," (paragraph II.G), which is appropriate to include in this rulemaking so that the eight criteria in paragraph VIII.B.5.b of the proposed rule will be implemented as intended.

C. Scope and Contents

The purpose of section III of this DCR would be to describe and define the scope and contents of this design certification and to set forth how documentation discrepancies or inconsistencies are to be resolved. Paragraph A is the required statement of the Office of the Federal Register (OFR) for approval of the incorporation by reference of Tier 1, Tier 2, and the generic TS into this appendix. Paragraph B requires COL applicants and licensees to comply with the requirements of this appendix. The legal effect of incorporation by reference is that the incorporated material has the same legal status as if it were published in the Code of Federal Regulations. This material, like any other properly-issued regulation, has the force and effect of law. Tier 1 and Tier 2 information, as well as the generic TS, have been combined into a single document called the generic DCD, in order to effectively control this information and facilitate its incorporation by reference into the rule. The generic DCD was prepared to meet the requirements of the OFR for incorporation by reference (10 CFR part 51). One of the requirements of the OFR for incorporation by reference is that the design certification applicant must make the generic DCD available upon request after the final rule becomes effective. Therefore, paragraph III.A of this appendix would identify a Westinghouse representative to be contacted in order to obtain a copy of the generic DCD.

Paragraphs A and B would also identify the investment protection short-term availability controls in Section 16.3 of the generic DCD as part of the Tier 2 information. During its review of the AP1000 design, the NRC determined that residual uncertainties associated with passive safety system performance increased the importance of non-safety-related active systems in providing defense-in-depth functions that back-up the passive systems. As a result, Westinghouse developed administrative controls to provide a high level of confidence that active systems having a significant safety role are available when challenged. Westinghouse named these additional controls "investment protection short-term availability controls." The Commission included this characterization in section III to ensure that these availability controls are binding on applicants and licensees that reference this appendix and will be enforceable by the NRC. The NRC's

evaluation of the availability controls is provided in chapter 22 of the FSER.

The generic DCD (master copy) for this design certification will be accessible electronically in ADAMS and at the OFR. Copies of the generic DCD will also be available at the NRC's PDR. Questions concerning the accuracy of information in an application that references this appendix will be resolved by checking the master copy of the generic DCD in ADAMS. If a generic change (rulemaking) is made to the DCD by the change process provided in section VIII of this appendix, then at the completion of the rulemaking the NRC would request approval of the Director, OFR, for the changed incorporation by reference and change its copies of the generic DCD and notify the OFR and the design certification applicant to change their copies. The Commission would require that the design certification applicant maintain an up-to-date copy under paragraph X.A.1 of this appendix because it is likely that most applicants intending to reference the standard design would obtain the generic DCD from the design certification applicant. Plant-specific changes to and departures from the generic DCD would be maintained by the applicant or licensee that references this appendix in a plant-specific DCD under paragraph X.A.2 of this appendix.

In addition to requiring compliance with this appendix, paragraph B would clarify that the conceptual design information and Westinghouse's evaluation of severe accident mitigation design alternatives are not considered to be part of this appendix. The conceptual design information is for those portions of the plant that are outside the scope of the standard design and are contained in Tier 2 information. As provided by 10 CFR 52.47(a)(1)(ix), these conceptual designs are not part of this appendix and, therefore, are not applicable to an application that references this appendix. Therefore, the applicant is not required to conform with the conceptual design information that was provided by the design certification applicant. The conceptual design information, which consists of site-specific design features, was required to facilitate the design certification review. Conceptual design information is neither Tier 1 nor Tier 2. Section 1.8 of Tier 2 identifies the location of the conceptual design information. Westinghouse's evaluation of various design alternatives to prevent and mitigate severe accidents does not constitute design requirements. The Commission's assessment of this information is discussed in section VII of this SOC on environmental impacts.

Paragraphs C and D would set forth the manner in which potential conflicts would be resolved. Paragraph C establishes the Tier 1 description in the DCD as controlling in the event of an inconsistency between the Tier 1 and Tier 2 information in the DCD. Paragraph D would establish the generic DCD as the controlling document in the event of an inconsistency between the DCD and the FSER for the certified standard design.

Paragraph E would clarify that design activities that are wholly outside the scope of this design certification may be performed using site-specific design parameters, provided the design activities do not affect Tier 1 or Tier 2, or conflict with the interface requirements in the DCD. This provision would apply to site-specific portions of the plant, such as the administration building. Because this statement is not a definition, this provision has been located in section III of this appendix.

D. Additional Requirements and Restrictions

Section IV of this appendix would set forth additional requirements and restrictions imposed upon an applicant who references this appendix. Paragraph IV.A would set forth the information requirements for these applicants. This appendix would distinguish between information and/or documents which must actually be *included* in the application or the DCD, versus those which may be *incorporated by reference* (*i.e.*, referenced in the application as if the information or documents were included in the application). Any incorporation by reference in the application should be clear and should specify the title, date, edition, or version of a document, the page number(s), and table(s) containing the relevant information to be incorporated.

Paragraph A.1 would require an applicant who references this proposed DCR to incorporate by reference this DCR in its application. The legal effect of such an incorporation by reference is that this appendix would be legally binding on the applicant or licensee. Paragraph A.2.a would require that a plant-specific DCD be included in the initial application. This would ensure that the applicant commits to complying with the DCD. This paragraph also would require that the plant-specific DCD uses the same format as the generic DCD and reflects the applicant's proposed departures and exemptions from the generic DCD as of the time of submission of the application. The Commission expects that the plant-specific DCD would become the plant's FSAR, by including information such as site-specific information for the portions of the plant outside the scope of the referenced design, including related ITAAC, and other matters required to be included in an FSAR by 10 CFR 50.34 and 52.79. Integration of the plant-specific DCD and remaining site-specific information into the plant's FSAR, would result in an application that is easier to use and should minimize "duplicate documentation" and the attendant possibility for confusion. Paragraph A.2.a would also require that the initial application include the reports on departures and exemptions as of the time of submission of the application.

Paragraph A.2.b would require that an application referencing this proposed DCR include the reports required by paragraph X.B of this appendix for exemptions and departures proposed by the applicant as of the date of submission of its application. Paragraph A.2.c would require submission of plant-specific TS for the plant that consists of the generic TS from section 16.1 of the DCD, with any changes made under paragraph VIII.C of this appendix, and the TS for the site-specific portions of the plant that are either partially or wholly outside the scope of this design certification. The applicant must also provide the plant-specific information designated in the generic TS, such as bracketed values.

Paragraph A.2.d would require the applicant referencing this proposed DCR to provide information demonstrating that the proposed site falls within the site parameters for this appendix and that the plant-specific design complies with the interface requirements, as required by 10 CFR 52.79(b). If the proposed site has a characteristic that exceeds one or more of the site parameters in the DCD, then it would be unacceptable for this design unless the applicant seeks an exemption under section VIII of this appendix and provides adequate justification for locating the certified design on the proposed site. Paragraph A.2.e would require submission of information addressing COL action items, identified in the generic DCD as COL information in the application. The COL information identifies matters that need to be addressed by an applicant who references this appendix, as required by subpart C of 10 CFR part 52. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in its application (FSAR). Paragraph A.2.f would require that the application include the information specified by 10 CFR 52.47(a) that is not within the

scope of this rule, such as generic issues that must be addressed, in whole or in part, by an applicant that references this rule. Paragraph A.3 would require the applicant to physically include, not simply reference, the proprietary and safeguards information referenced in the DCD, or its equivalent, to ensure that the applicant has actual notice of these requirements.

Paragraph IV.B would reserve the right to determine to the Commission in what manner this DCR may be referenced by an applicant for a construction permit or operating license under 10 CFR part 50. This determination may occur in the context of a subsequent rulemaking modifying 10 CFR part 52 or this design certification rule, or on a case-by-case basis in the context of a specific application for a 10 CFR part 50 construction permit or operating license. This provision is necessary because the previous DCRs were not implemented in the manner that was originally envisioned at the time that 10 CFR part 52 was promulgated. The Commission's concern is with the way ITAAC were developed and the lack of experience with design certifications in license proceedings. Therefore, it is appropriate that the Commission retain some discretion regarding the way this DCR could be referenced in a 10 CFR part 50 licensing proceeding.

E. Applicable Regulations

The purpose of section V of this appendix is to specify the regulations that would be applicable and in effect if this proposed design certification is approved. These regulations would consist of the technically relevant regulations identified in paragraph A, except for the regulations in paragraph B that would not be applicable to this certified design.

Paragraph A would identify the regulations in 10 CFR parts 20, 50, 73, and 100 that are applicable to the AP1000 design. The Commission's determination of the applicable regulations would be made as of the date specified in paragraph V.A of this appendix, which would be the date that this appendix is approved by the Commission and signed by the Secretary.

In paragraph V.B of this appendix, the Commission would identify the regulations that do not apply to the AP1000 design. The Commission has determined that the AP1000 design should be exempt from portions of 10 CFR 50.34, 50.62, and appendix A to part 50, as described in the FSER (NUREG–1793) and/or summarized below:

(1) *Paragraph (f)(2)(iv) of 10 CFR 50.34—Plant Safety Parameter Display Console.*

Under 10 CFR 52.47(a)(ii), an applicant for design certification must demonstrate compliance with any technically relevant Three Mile Island (TMI) requirements in 10 CFR 50.34(f). The requirement in 10 CFR 50.34(f)(2)(iv) states that an application must provide a plant safety parameter display console that will display a minimum set of parameters defining the safety status of the plant, be capable of displaying a full range of important plant parameters and data trends on demand, and be capable of indicating when process limits are being approached or exceeded. Westinghouse addresses this requirement, in Section 18.8.2 of the DCD, with an integrated design rather than a stand-alone, add-on system, as is used at most current operating plants. Specifically, Westinghouse integrated the safety parameter display system (SPDS) requirements into the design requirements for the alarm and display systems. The NRC staff has determined that the function of a separate SPDS may be integrated into the overall control room design. Therefore, the Commission has determined that the special circumstances for allowing an exemption as described in 10 CFR 50.12(a)(2)(ii) exist because the requirement for an SPDS console need not be applied in this particular circumstance to achieve the underlying purpose because Westinghouse has provided an acceptable alternative that accomplishes the intent of the regulation. On this basis, the Commission concludes that an exemption from the requirements of 10 CFR 50.34(f)(2)(iv) is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

(2) *Paragraph (c)(1) of 10 CFR 50.62—Auxiliary feedwater system.*

The AP1000 design relies on the passive residual heat removal system (PRHR) in lieu of an auxiliary or emergency feedwater system as its safety-related method of removing decay heat. Westinghouse requested an exemption from a portion of 10 CFR 50.62(c)(1), which requires auxiliary or emergency feedwater as an alternate system for decay heat removal during an anticipated transient without scram (ATWS) event. The NRC staff concluded that Westinghouse met the intent of the rule by relying on the PRHR system to remove the decay heat and, thereby, met the underlying purpose of the rule. Therefore, the Commission has determined that the special circumstances for allowing an exemption described in 10 CFR 50.12(a)(2)(ii) exist because the requirement for an auxiliary or emergency feedwater system is not necessary to achieve the underlying purpose of 10 CFR 50.62(c)(1). This is because Westinghouse has adopted acceptable alternatives that accomplish the intent of this regulation, and the exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

(3) *Appendix A to 10 CFR part 50, GDC 17—Offsite Power Sources.*

Westinghouse requested a partial exemption from the requirement in General Design Criteria (GDC) 17 for a second offsite power supply circuit. The AP1000 plant design supports an exemption to this requirement by providing safety-related "passive" systems. These passive safety-related systems only require electric power for valves and the related instrumentation. The onsite Class 1E batteries and associated dc and ac distribution systems can provide the power for these valves and instrumentation. In addition, if no offsite power is available, it is expected that the non-safety-related onsite diesel generators would be available for important plant functions. However, this non-safety-related ac power is not relied on to maintain core cooling or containment integrity. Therefore, the Commission has determined that the special circumstances for allowing an exemption as described in 10 CFR 50.12(a)(2)(ii) exist because the requirement need not be applied in this particular circumstance to achieve the underlying purpose of having two offsite power sources. This is because the AP1000 design includes an acceptable alternative approach to accomplish safety functions that do not rely on power from the offsite system and, therefore, accomplishes the intent of the regulation. On this basis, the Commission concludes that a partial exemption from the requirements of GDC 17 is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

F. Issue Resolution

The purpose of section VI of this appendix would be to identify the scope of issues that are resolved by the Commission in this rulemaking and; therefore, are "matters resolved" within the meaning and intent of 10 CFR 52.63(a)(4). The section is divided into five parts: (A) The Commission's safety findings in adopting this appendix, (B)

the scope and nature of issues which are resolved by this rulemaking, (C) issues which are not resolved by this rulemaking, (D) the backfit restrictions applicable to the Commission with respect to this appendix, and (E) the availability of secondary references.

Paragraph A would describe the nature of the Commission's findings in general terms and make the finding required by 10 CFR 52.54 for the Commission's approval of this DCR. Furthermore, paragraph A would explicitly state the Commission's determination that this design provides adequate protection of the public health and safety.

Paragraph B would set forth the scope of issues that may not be challenged as a matter of right in subsequent proceedings. The introductory phrase of paragraph B clarifies that issue resolution as described in the remainder of the paragraph extends to the delineated NRC proceedings referencing this appendix. The remainder of paragraph B describes the categories of information for which there is issue resolution. Specifically, paragraph B.1 would provide that all nuclear safety issues arising from the Atomic Energy Act of 1954, as amended, that are associated with the information in the NRC staff's FSER (NUREG–1793), the Tier 1 and Tier 2 information (including the availability controls in section 16.3 of the generic DCD), and the rulemaking record for this appendix are resolved within the meaning of § 52.63(a)(4). These issues include the information referenced in the DCD that are requirements (*i.e.*, "secondary references"), as well as all issues arising from proprietary and safeguards information which are intended to be requirements.

Paragraph B.2 would provide for issue preclusion of proprietary and safeguards information. Paragraphs B.3, B.4, B.5, and B.6 would clarify that approved changes to and departures from the DCD which are accomplished in compliance with the relevant procedures and criteria in section VIII of this appendix continue to be matters resolved in connection with this rulemaking. Paragraphs B.4, B.5, and B.6, which would characterize the scope of issue resolution in three situations, use the phrase "but only for that plant" (emphasis added). Paragraph B.4 would describe how issues associated with a design certification rule are resolved when an exemption has been granted for a plant referencing the design certification rule. Paragraph B.5 would describe how issues are resolved when a plant referencing the design certification rule obtains a license amendment for a departure from Tier 2 information.

Paragraph B.6 would describe how issues are resolved when the applicant or licensee departs from the Tier 2 information on the basis of paragraph VIII.B.5, which would waive the requirement to get NRC approval. In all three situations, after a matter (*e.g.*, an exemption in the case of paragraph B.4) is addressed for a specific plant referencing a design certification rule, the adequacy of that matter *for that plant* would not ordinarily be subject to challenge in any subsequent proceeding or action for that plant (such as an enforcement action) listed in the introductory portion of paragraph IV.B. There would not, by contrast, be any issue resolution on that subject matter for any other plant.

Paragraph B.7 would provide that, for those plants located on sites whose site parameters do not exceed those assumed in Westinghouse's evaluation of severe accident mitigation design alternatives (SAMDAs), all issues with respect to SAMDAs arising under the National Environmental Policy Act of 1969 associated with the information in the environmental assessment for this design and the information regarding SAMDAs in appendix 1B of the generic DCD are also resolved within the meaning and intent of § 52.63(a)(4). In the event an exemption from a site parameter is granted, the exemption applicant has the initial burden of demonstrating that the original SAMDA analysis still applies to the actual site parameters but; if the exemption is approved, requests for litigation at the COL stage must meet the requirements of § 2.309 and present sufficient information to create a genuine controversy in order to obtain a hearing on the site parameter exemption.

Paragraph C would reserve the right of the Commission to impose operational requirements on applicants that reference this appendix. This provision would reflect that operational requirements, including generic TS in section 16.1 of the DCD, were not completely or comprehensively reviewed at the design certification stage. Therefore, the special backfit provisions of § 52.63 do not apply to operational requirements. However, all design changes would be controlled by the appropriate provision in section VIII of this appendix. Although the information in the DCD that is related to operational requirements was necessary to support the NRC's safety review of this design, the review of this information was not sufficient to conclude that the operational requirements are fully resolved and ready to be assigned finality under § 52.63. As a result, if the NRC wanted to change a temperature limit and that operational change required a consequential change to a design feature, then the temperature limit backfit would be controlled by section VIII (paragraph A or B) of this appendix. However, changes to other operational issues, such as in-service testing and in-service inspection programs, post-fuel load verification activities, and shutdown risk that do not require a design change would not be restricted by § 52.63 (see VIII.C of this appendix).

Paragraph C would allow the NRC to impose future operational requirements (distinct from design matters) on applicants who reference this design certification. Also, license conditions for portions of the plant within the scope of this design certification, *e.g.*, start-up and power ascension testing, are not restricted by § 52.63. The requirement to perform these testing programs is contained in Tier 1 information. However, ITAAC cannot be specified for these subjects because the matters to be addressed in these license conditions cannot be verified prior to fuel load and operation, when the ITAAC are satisfied. Therefore, another regulatory vehicle is necessary to ensure that licensees comply with the matters contained in the license conditions. License conditions for these areas cannot be developed now because this requires the type of detailed design information that will be developed during a combined license review. In the absence of detailed design information to evaluate the need for and develop specific post-fuel load verifications for these matters, the Commission is reserving the right to impose license conditions by rule for post-fuel load verification activities for portions of the plant within the scope of this design certification.

Paragraph D would reiterate the restrictions (contained in section VIII of this appendix) placed upon the Commission when ordering generic or plant-specific modifications, changes or additions to structures, systems, or components, design features, design criteria, and ITAAC (VI.D.3 would address ITAAC) within the scope of the certified design.

Paragraph E would provide the procedure for an interested member of the public to obtain access to proprietary or safeguards information for the AP1000 design, in order to request and participate in proceedings identified in paragraph VI.B of this appendix, viz., proceedings involving licenses and applications which reference this appendix. Paragraph E,

would specify that access must first be sought from the design certification applicant. If Westinghouse refuses to provide the information, the person seeking access shall request access from the Commission or the presiding officer, as applicable. Access to the proprietary or safeguards information may be ordered by the Commission, but must be subject to an appropriate non-disclosure agreement.

G. Duration of This Appendix

The purpose of section VII of this appendix would be in part, to specify the period during which this design certification may be referenced by an applicant for a COL, under 10 CFR 52.55. This section would also state that the design certification would remain valid for an applicant or licensee that references the design certification until the application is withdrawn or the license expires. Therefore, if an application references this design certification during the 15-year period, then the design certification would be effective until the application is withdrawn or the license issued on that application expires. Also, the design certification would be effective for the referencing licensee if the license is renewed. The Commission intends for this appendix to remain valid for the life of the plant that references the design certification to achieve the benefits of standardization and licensing stability. This means that changes to or plant-specific departures from information in the plant-specific DCD must be made under the change processes in section VIII of this appendix for the life of the plant.

H. Processes for Changes and Departures

The purpose of section VIII of this appendix would be to set forth the processes for generic changes to or plant-specific departures (including exemptions) from the DCD. The Commission adopted this restrictive change process in order to achieve a more stable licensing process for applicants and licensees that reference this design certification rule. Section VIII is divided into three paragraphs, which correspond to Tier 1, Tier 2, and operational requirements. The language of Section VIII distinguishes between generic *changes* to the DCD versus plant-specific *departures from* the DCD. Generic *changes* must be accomplished by rulemaking because the intended subject of the change is the design certification rule itself, as is contemplated by 10 CFR 52.63(a)(1). Consistent with 10 CFR 52.63(a)(2), any generic rulemaking changes are applicable to all plants, absent circumstances which render the change ["modification" in the language of § 52.63(a)(2)] "technically irrelevant." By contrast, plant-specific *departures* could be either a Commission-issued order to one or more applicants or licensees; or an applicant or licensee-initiated departure applicable only to that applicant's or licensee's plant(s), similar to a § 50.59 departure or an exemption. Because these plant-specific departures will result in a DCD that is unique for that plant, section X of this appendix would require an applicant or licensee to maintain a plant-specific DCD. For purposes of brevity, this discussion refers to both generic changes and plant-specific departures as "change processes."

Section VIII of this appendix and section XI of this SOC refer to an "exemption" from one or more requirements of this appendix and the criteria for granting an exemption. The Commission cautions that when the exemption involves an underlying substantive requirement (applicable regulation), then the applicant or licensee requesting the exemption must also show that an exemption from the underlying applicable requirement meets the criteria of 10 CFR 50.12.

Tier 1 Information

The change processes for Tier 1 information would be covered in paragraph VIII.A. Generic changes to Tier 1 are accomplished by rulemaking that amends the generic DCD and are governed by the standards in 10 CFR 52.63(a)(1). This provision provides that the Commission may not modify, change, rescind, or impose new requirements by rulemaking except when necessary either to bring the certification into compliance with the Commission's regulations applicable and in effect at the time of approval of the design certification or to ensure adequate protection of the public health and safety or common defense and security. The rulemakings must provide for notice and opportunity for public comment on the proposed change, as required by 10 CFR 52.63(a)(1). Departures from Tier 1 may occur in two ways: (1) The Commission may *order* a licensee to depart from Tier 1, as provided in paragraph A.3; or (2) an applicant or licensee may request an *exemption* from Tier 1, as provided in paragraph A.4. If the Commission seeks to order a licensee to depart from Tier 1, paragraph A.3 would require that the Commission find both that the departure is necessary for adequate protection or for compliance, and that special circumstances are present. Paragraph A.4 would provide that exemptions from Tier 1 requested by an applicant or licensee are governed by the requirements of 10 CFR 52.63(b)(1) and 52.97(b), which provide an opportunity for a hearing. In addition, the Commission would not grant requests for exemptions that may result in a significant decrease in the level of safety otherwise provided by the design.

Tier 2 Information

The change processes for the three different categories of Tier 2 information, namely, Tier 2, Tier 2*, and Tier 2* with a time of expiration, would be set forth in paragraph VIII.B. The change process for Tier 2 has the same elements as the Tier 1 change process, but some of the standards for plant-specific orders and exemptions would be different. As stated in section III of this preamble, it is the Commission's intent that this appendix would emulate appendix C to 10 CFR part 52. However, the Commission has revised the § 50.59-like change process in paragraph VIII.B.5 of this appendix to be commensurate with the new 10 CFR 50.59 (64 FR 53613, October 4, 1994).

The process for generic Tier 2 changes (including changes to Tier 2* and Tier 2* with a time of expiration) tracks the process for generic Tier 1 changes. As set forth in paragraph B.1, generic Tier 2 changes would be accomplished by rulemaking amending the generic DCD and would be governed by the standards in 10 CFR 52.63(a)(1). This provision would provide that the Commission may not modify, change, rescind, or impose new requirements by rulemaking except when necessary, either to bring the certification into compliance with the Commission's regulations applicable and in effect at the time of approval of the design certification or to ensure adequate protection of the public health and safety or common defense and security. If a generic change is made to Tier 2* information, then the category and expiration, if necessary, of the new information would also be determined in the rulemaking and the appropriate change process for that new information would apply.

Departures from Tier 2 would occur in five ways: (1) The Commission may order a plant-specific departure, as set forth in paragraph B.3; (2) an applicant or licensee may request an exemption from a Tier 2 requirement as set forth in paragraph B.4; (3) a licensee may make a departure without prior NRC approval under paragraph B.5 [the "§ 50.59-like" process]; (4) the licensee may request NRC approval for proposed departures which do not meet the requirements in

paragraph B.5 as provided in paragraph B.5.d; and (5) the licensee may request NRC approval for a departure from Tier 2* information under paragraph B.6.

Similar to Commission-ordered Tier 1 departures and generic Tier 2 changes, Commission-ordered Tier 2 departures could not be imposed except when necessary either to bring the certification into compliance with the Commission's regulations applicable and in effect at the time of approval of the design certification or to ensure adequate protection of the public health and safety or common defense and security, as set forth in paragraph B.3. However, the special circumstances for the Commission-ordered Tier 2 departures would not have to outweigh any decrease in safety that may result from the reduction in standardization caused by the plant-specific order, as required by 10 CFR 52.63(a)(3). The Commission determined that it was not necessary to impose an additional limitation similar to that imposed on Tier 1 departures by 10 CFR 52.63(a)(3) and (b)(1). This type of additional limitation for standardization would unnecessarily restrict the flexibility of applicants and licensees with respect to Tier 2 information.

An applicant or licensee would be permitted to request an exemption from Tier 2 information as set forth in proposed paragraph B.4. The applicant or licensee would have to demonstrate that the exemption complies with one of the special circumstances in 10 CFR 50.12(a). In addition, the Commission would not grant requests for exemptions that may result in a significant decrease in the level of safety otherwise provided by the design. However, the special circumstances for the exemption do not have to outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption. If the exemption is requested by an applicant for a license, the exemption would be subject to litigation in the same manner as other issues in the license hearing, consistent with 10 CFR 52.63(b)(1). If the exemption is requested by a licensee, then the exemption would be subject to litigation in the same manner as a license amendment.

For plant-specific Tier 2 information, the change process in the existing DCRs would be commensurate with the change process in the former 10 CFR 50.59. The proposed rule would revise paragraph VIII.B.5 to conform the terminology in the § 50.59-like change process to that used in the revised § 50.59. This amendment would delete references to unreviewed safety question and safety evaluation, and would conform to the evaluation criteria concerning when prior NRC approval is needed. Also, a definition would be added (paragraph II.G) for "departure from a method of evaluation" to support the evaluation criterion in paragraph VIII.B.5.b(8).

Paragraph B.5 would allow an applicant or licensee to depart from Tier 2 information, without prior NRC approval, if the proposed departure does not involve a change to, or departure from, Tier 1 or Tier 2* information, TS, or does not require a license amendment under paragraphs B.5.b or B.5.c. The TS referred to in B.5.a of this paragraph are the TS in section 16.1 of the generic DCD, including bases, for departures made prior to issuance of the COL. After issuance of the COL, the plant-specific TS would be controlling under paragraph B.5. The bases for the plant-specific TS would be controlled by the bases control procedures for the plant-specific TS (analogous to the bases control provision in the Improved Standard Technical Specifications). The requirement for a license amendment in paragraph B.5.b would be similar to the definition in the new 10 CFR 50.59 and apply to all information in Tier 2 except for the information that resolves the severe accident issues.

The Commission believes that the resolution of severe accident issues should be preserved and maintained in the same fashion as all other safety issues that were resolved during the design certification review (refer to SRM on SECY–90–377). However, because of the increased uncertainty in severe accident issue resolutions, the Commission has proposed separate criteria in paragraph B.5.c for determining if a departure from information that resolves severe accident issues would require a license amendment. For purposes of applying the special criteria in paragraph B.5.c, severe accident resolutions would be limited to design features when the intended function of the design feature is relied upon to resolve postulated accidents when the reactor core has melted and exited the reactor vessel, and the containment is being challenged. These design features are identified in section 1.9.5 and appendix 19B of the DCD, with other issues, and are described in other sections of the DCD. Therefore, the location of design information in the DCD is not important to the application of this special procedure for severe accident issues. However, the special procedure in paragraph B.5.c would not apply to design features that resolve so-called "beyond design basis accidents" or other low probability events. The important aspect of this special procedure is that it would be limited to severe accident design features, as defined above. Some design features may have intended functions to meet "design basis" requirements and to resolve "severe accidents." If these design features are reviewed under paragraph VIII.B.5, then the appropriate criteria from either paragraphs B.5.b or B.5.c would be selected depending upon the function being changed.

An applicant or licensee that plans to depart from Tier 2 information, under paragraph VIII.B.5, would be required to prepare an evaluation which provides the bases for the determination that the proposed change does not require a license amendment or involve a change to Tier 1 or Tier 2* information, or a change to the TS, as explained above. In order to achieve the Commission's goals for design certification, the evaluation would need to consider all of the matters that were resolved in the DCD, such as generic issue resolutions that are relevant to the proposed departure. The benefits of the early resolution of safety issues would be lost if departures from the DCD were made that violated these resolutions without appropriate review.

The evaluation of the relevant matters would need to consider the proposed departure over the full range of power operation from startup to shutdown, as it relates to anticipated operational occurrences, transients, design-basis accidents, and severe accidents. The evaluation would also have to include a review of all relevant secondary references from the DCD because Tier 2 information, which is intended to be treated as a requirement, would be contained in the secondary references. The evaluation would consider Tables 14.3–1 through 14.3–8 and 19.59–18 of the generic DCD to ensure that the proposed change does not impact Tier 1 information. These tables contain cross-references from the safety analyses and probabilistic risk assessment in Tier 2 to the important parameters that were included in Tier 1. Although many issues and analyses could have been cross-referenced, the listings in these tables were developed only for key analyses for the AP1000 design.

A party to an adjudicatory proceeding (*e.g.*, for issuance of a COL) who believes that an applicant or licensee has not complied with paragraph VIII.B.5 when departing from Tier 2 information, would be permitted to petition to admit such a contention into the proceeding under paragraph B.5.f. This provision has been proposed because an incorrect departure from the requirements of this appendix

essentially would place the departure outside of the scope of the Commission's safety finding in the design certification rulemaking. Therefore, it follows that properly founded contentions alleging such incorrectly implemented departures could not be considered "resolved" by this rulemaking. As set forth in paragraph B.5.f, the petition would have to comply with the requirements of 10 CFR 2.309 and show that the departure does not comply with paragraph B.5. Any other party would be allowed to file a response to the petition. If on the basis of the petition and any responses, the presiding officer in the proceeding determines that the required showing has been made, the matter would be certified to the Commission for its final determination. In the absence of a proceeding, petitions alleging nonconformance with paragraph B.5 requirements applicable to Tier 2 departures would be treated as petitions for enforcement action under 10 CFR 2.206.

Paragraph B.6 would provide a process for departing from Tier 2* information. The creation of and restrictions on changing Tier 2* information resulted from the development of the Tier 1 information for ABWR design certification (appendix A to part 52) and the ABB–CE System 80+ design certification (appendix B to part 52). During this development process, these applicants requested that the amount of information in Tier 1 be minimized to provide additional flexibility for an applicant or licensee who references these appendices. Also, many codes, standards, and design processes, which would not be specified in Tier 1 that are acceptable for meeting ITAAC, were specified in Tier 2. The result of these actions would be that certain significant information only exists in Tier 2 and the Commission would not want this significant information to be changed without prior NRC approval. This Tier 2* information would be identified in the generic DCD with italicized text and brackets (See Table 1–1 of AP1000 DCD Introduction).

Although the Tier 2* designation was originally intended to last for the lifetime of the facility, like Tier 1 information, the NRC determined that some of the Tier 2* information could expire when the plant first achieves full (100 percent) power, after the finding required by 10 CFR 52.103(g), while other Tier 2* information must remain in effect throughout the life of the facility. The factors determining whether Tier 2* information could expire after the first full power was achieved were whether the Tier 1 information would govern these areas after first full power and the NRC's determination that prior approval was required before implementation of the change due to the significance of the information. Therefore, certain Tier 2* information listed in paragraph B.6.c would cease to retain its Tier 2* designation after full-power operation is first achieved following the Commission finding under 10 CFR 52.103(g). Thereafter, that information would be deemed to be Tier 2 information that would be subject to the departure requirements in paragraph B.5. By contrast, the Tier 2* information identified in paragraph B.6.b would retain its Tier 2* designation throughout the duration of the license, including any period of license renewal.

Certain preoperational tests in paragraph B.6.c would be designated to be performed only for the first plant or first three plants that reference this appendix. Westinghouse's basis for performing these "first-plant-only" and "first-three-plants-only" preoperational tests is provided in section 14.2.5 of the DCD. The NRC found Westinghouse's basis for performing these tests and its justification for only performing the tests on the first plant or first three plants acceptable. The NRC's decision was based on the need to verify that plant-specific manufacturing and/or construction variations do not adversely impact the predicted performance of certain passive safety systems, while recognizing that these special tests would result in significant thermal transients being applied to critical plant components. The NRC believes that the range of manufacturing or construction variations that could adversely affect the relevant passive safety systems would be adequately disclosed after performing the designated tests on the first plant, or the first three plants, as applicable. The COL action item in Section 14.4.6 of the DCD states that subsequent plants shall either perform these preoperational tests or justify that the results of the first-plant-only or first-three-plant-only tests are applicable to the subsequent plant. The Tier 2* designation for these tests would expire after the first plant or first three plants complete these tests, as indicated in paragraph B.6.c.

If Tier 2* information is changed in a generic rulemaking, the designation of the new information (Tier 1, 2*, or 2) would also be determined in the rulemaking and the appropriate process for future changes would apply. If a plant-specific departure is made from Tier 2* information, then the new designation would apply only to that plant. If an applicant who references this design certification makes a departure from Tier 2* information, the new information would be subject to litigation in the same manner as other plant-specific issues in the licensing hearing. If a licensee makes a departure from Tier 2* information, it would be treated as a license amendment under 10 CFR 50.90 and the finality would be determined in accordance with paragraph VI.B.5 of this appendix. Any requests for departures from Tier 2* information that affects Tier 1 would also have to comply with the requirements in paragraph VIII.A of this appendix.

Operational Requirements

The change process for TS and other operational requirements in the DCD would be set forth in paragraph VIII.C. This change process has elements similar to the Tier 1 and Tier 2 change process in paragraphs VIII.A and VIII.B, but with significantly different change standards. Because of the different finality status for TS and other operational requirements (refer to paragraph III.F of this SOC), the Commission decided to designate a special category of information, consisting of the TS and other operational requirements, with its own change process in proposed paragraph VIII.C. The key to using the change processes proposed in section VIII is to determine if the proposed change or departure would require a change to a design feature described in the generic DCD. If a design change is required, then the appropriate change process in paragraph VIII.A or VIII.B would apply. However, if a proposed change to the TS or other operational requirements does not require a change to a design feature in the generic DCD, then paragraph VIII.C would apply. The language in paragraph VIII.C would also distinguish between generic (Section 16.1 of DCD) and plant-specific TS to account for the different treatment and finality accorded TS before and after a license is issued.

The process in proposed paragraph C.1 for making generic changes to the generic TS in section 16.1 of the DCD or other operational requirements in the generic DCD would be accomplished by rulemaking and governed by the backfit standards in 10 CFR 50.109. The determination of whether the generic TS and other operational requirements were completely reviewed and approved in the design certification rulemaking would be based upon the extent to which an NRC safety conclusion in the FSER is being modified or changed. If it cannot be determined that the TS or operational requirement was comprehensively

reviewed and finalized in the design certification rulemaking, then there would be no backfit restriction under 10 CFR 50.109 because no prior position was taken on this safety matter. Generic changes made under proposed paragraph VIII.C.1 would be applicable to all applicants or licensees (refer to paragraph VIII.C.2), unless the change is irrelevant because of a plant-specific departure.

Some generic TS contain values in brackets [ ]. The brackets are placeholders indicating that the NRC's review is not complete, and represent a requirement that the applicant for a combined license referencing the AP1000 DCR must replace the values in brackets with final plant-specific values. The values in brackets are neither part of the design certification rule nor are they binding. Therefore, the replacement of bracketed values with final plant-specific values does not require an exemption from the generic TS.

Plant-specific departures may occur by either a Commission order under proposed paragraph VIII.C.3 or an applicant's exemption request under paragraph VIII.C.4. The basis for determining if the TS or operational requirement was completely reviewed and approved for these processes would be the same as for proposed paragraph VIII.C.1 above. If the TS or operational requirement is comprehensively reviewed and finalized in the design certification rulemaking, then the Commission must demonstrate that special circumstances are present before ordering a plant-specific departure. If not, there would be no restriction on plant-specific changes to the TS or operational requirements, prior to the issuance of a license, provided a design change is not required. Although the generic TS were reviewed by the NRC staff to facilitate the design certification review, the Commission intends to consider the lessons learned from subsequent operating experience during its licensing review of the plant-specific TS. The process for petitioning to intervene on a TS or operational requirement would be similar to other issues in a licensing hearing, except that the petitioner must also demonstrate why special circumstances are present (paragraph VIII.C.5).

Finally, the generic TS would have no further effect on the plant-specific TS after the issuance of a license that references this appendix. The bases for the generic TS would be controlled by the change process in paragraph VIII.C of this appendix. After a license is issued, the bases would be controlled by the bases change provision set forth in the administrative controls section of the plant-specific TS.

I. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

The purpose of section IX of this appendix would be to set forth how the ITAAC in Tier 1 of this design certification rule would be treated in a license proceeding. Paragraph A would restate the responsibilities of an applicant or licensee for performing and successfully completing ITAAC, and notifying the NRC of such completion. Paragraph A.1 would clarify that an applicant may proceed at its own risk with design and procurement activities subject to ITAAC, and that a licensee may proceed at its own risk with design, procurement, construction, and preoperational testing activities subject to an ITAAC, even though the NRC may not have found that any particular ITAAC has been successfully completed. Paragraph A.2 would require the licensee to notify the NRC that the required inspections, tests, and analyses in the ITAAC have been completed and that the acceptance criteria have been met.

Paragraphs B.1 and B.2 would reiterate the NRC's responsibilities with respect to ITAAC as set forth in 10 CFR 52.99 and 52.103(g).[1] Finally, paragraph B.3 would state that ITAAC do not, by virtue of their inclusion in the DCD, constitute regulatory requirements after the licensee has received authorization to load fuel or has been granted a renewal of its license. However, subsequent modifications to the terms of the COL would have to comply with the design descriptions in the DCD unless the applicable requirements in 10 CFR 52.97 and section VIII of this appendix have been met. As discussed in paragraph III.D of this SOC, the Commission would defer a determination of the applicability of ITAAC and its effect in terms of issue resolution in 10 CFR part 50 licensing proceedings to such time that a part 50 applicant decides to reference this appendix.

J. Records and Reporting

The purpose of section X of this appendix would be to set forth the requirements that would apply to maintaining records of changes to and departures from the generic DCD, which would be reflected in the plant-specific DCD. Section X also would set forth the requirements for submitting reports (including updates to the plant-specific DCD) to the NRC. This section of the appendix would be similar to the requirements for records and reports in 10 CFR part 50, except for minor differences in information collection and reporting requirements.

Paragraph X.A.1 of this appendix would require that a generic DCD and the proprietary and safeguards information referenced in the generic DCD be maintained by the applicant for this rule. The generic DCD was developed, in part, to meet the requirements for incorporation by reference, including availability requirements. Therefore, the proprietary and safeguards information could not be included in the generic DCD because they are not publicly available. However, the proprietary and safeguards information was reviewed by the NRC and, as stated in proposed paragraph VI.B.2 of this appendix, the Commission would consider the information to be resolved within the meaning of 10 CFR 52.63(a)(4). Because this information is not in the generic DCD, the proprietary and safeguards information, or its equivalent, would be required to be provided by an applicant for a license. Therefore, to ensure that this information will be available, a requirement for the design certification applicant to maintain the proprietary and safeguards information was added to proposed paragraph X.A.1 of this appendix. The acceptable version of the proprietary and safeguards information would be identified (referenced) in the version of the DCD that would be incorporated into this rule. The generic DCD and the acceptable version of the proprietary and safeguards information would be maintained for the period of time that this appendix may be referenced.

Paragraphs A.2 and A.3 would place recordkeeping requirements on the applicant or licensee that references this design certification so that its plant-specific DCD accurately reflects both generic changes to the generic DCD and plant-specific departures made under proposed section VIII of this appendix. The term "plant-specific" would be added to paragraph A.2 and other sections of this appendix to distinguish between the generic DCD that would be incorporated by reference into this appendix, and the plant-specific DCD that the applicant would be required to submit under proposed paragraph IV.A of this appendix. The requirement to maintain the generic changes to the generic DCD would be explicitly stated to ensure that these changes are not only reflected in the generic DCD, which would be maintained by the applicant for design certification, but that the

[1] For discussion of the verification of ITAAC, see SECY–00–0092, "Combined License Review Process," dated April 20, 2000.

changes would also be reflected in the plant-specific DCD. Therefore, records of generic changes to the DCD would be required to be maintained by both entities to ensure that both entities have up-to-date DCDs.

Paragraph X.A of this appendix would not place recordkeeping requirements on site-specific information that is outside the scope of this rule. As discussed in paragraph III.D of this SOC, the FSAR required by 10 CFR 52.79 would contain the plant-specific DCD and the site-specific information for a facility that references this rule. The phrase "site-specific portion of the final safety analysis report" in paragraph X.B.3.c of this appendix would refer to the information that is contained in the FSAR for a facility (required by 10 CFR 52.79) but is not part of the plant-specific DCD (required by proposed paragraph IV.A of this appendix). Therefore, this rule would not require that duplicate documentation be maintained by an applicant or licensee that references this rule, because the plant-specific DCD would be part of the FSAR for the facility.

Paragraph X.B.1 would require applicants or licensees that reference this rule to submit reports, which describe departures from the DCD and include a summary of the written evaluations. The requirement for the written evaluations would be set forth in paragraph X.A.1. The frequency of the report submittals would be set forth in paragraph X.B.3. The requirement for submitting a summary of the evaluations would be similar to the requirement in 10 CFR 50.59(d)(2).

Paragraph X.B.2 would require applicants or licensees that reference this rule to submit updates to the DCD, which include both generic changes and plant-specific departures. The frequency for submitting updates would be set forth in paragraph X.B.3. The requirements in paragraph X.B.3 for submitting the reports and updates would vary according to certain time periods during a facility's lifetime. If a potential applicant for a combined license who references this rule decides to depart from the generic DCD prior to submission of the application, then paragraph B.3.a would require that the updated DCD be submitted as part of the initial application for a license. Under proposed paragraph B.3.b, the applicant may submit any subsequent updates to its plant-specific DCD along with its amendments to the application provided that the submittals are made at least once per year. Because amendments to an application are typically made more frequently than once a year, this should not be an excessive burden on the applicant.

Paragraph B.3.b would also require that the reports required by paragraph X.B.1 be submitted semi-annually. This increase in reporting frequency during the period of construction and application review is consistent with Commission guidance. Also, more frequent reporting of design changes during the period of detailed design and construction is necessary to closely monitor the status and progress of the facility. In order to make the finding under 10 CFR 52.103(g), the NRC must monitor the design changes made under proposed section VIII of this appendix. Frequent reporting of design changes would be particularly important in times when the number of design changes could be significant, such as during the procurement of components and equipment, detailed design of the plant before and during construction, and during preoperational testing. After the facility begins operation, the frequency of reporting would revert to the requirement in paragraph B.3.c, which is consistent with the requirements for plants licensed under 10 CFR 50.57.

IV. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following:

Public Document Room (PDR). The NRC's Public Document Room is located at 11555 Rockville Pike, Public File Area O–1 F21, Rockville, MD 20082. Copies of publicly available documents related to this rulemaking can be viewed electronically on public computers in the PDR. The PDR reproduction contractor will make copies of documents for a fee.

Rulemaking Web Site (Web). The NRC's interactive rulemaking Web site is located at *http://ruleforum.llnl.gov.* Selected documents may be viewed and downloaded electronically via this Web site.

Public Electronic Reading Room (ADAMS). The NRC's public Electronic Reading Room is located at *http://www.nrc.gov/reading-rm/adams.html.* Through this site, the public can gain access to ADAMS, which provides text and image files of NRC's public documents.

Document	PDR	Web	ADAMS
AP1000 Design Certification Proposed Rule SECY paper	x	x	ML043230006
AP1000 Environmental Assessment	x	x	ML043230023
AP1000 Design Control Document	x	.....	ML050750293
NUREG–1793, "AP1000 Final Safety Evaluation Report"	x	.....	ML043570339
SECY–99–268, "Final Rule—AP600 Design Certification"	x	.....	ML003708259
Regulatory History of Design Certification	x	.....	ML003761550

V. Plain Language

The Presidential memorandum entitled "Plain Language in Government Writing" (63 FR 31883; June 10, 1998), directed that the Government's writing be in plain language. The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be submitted using one of the methods detailed under the **ADDRESSES** heading of the preamble to this proposed rule.

VI. Voluntary Consensus Standards

The National Technology and Transfer Act of 1995 (Act), Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC proposes to approve the AP1000 standard plant design for use in a combined license (COL) application under 10 CFR part 52 or possibly for a construction permit (CP) application under 10 CFR part 50. Design certifications[2] are not generic rulemakings establishing a generally applicable standard with which all parts

[2] The regulatory history of the NRC's design certification reviews is a package of 100 documents that is available in NRC's (PERR) and in the PDR. This history spans a 15-year period during which the NRC simultaneously developed the regulatory standards for reviewing these designs and the form and content of the rules that certified the designs. estimated core damage frequencies for the AP1000 are very low on an absolute scale. These issues are considered resolved for the AP1000 design.

50 and 52 nuclear power plant licensees must comply. Design certifications are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certification rulemakings are initiated by an applicant for rulemaking, rather than by the NRC. For these reasons, the NRC concludes that the act does not apply to this proposed rule.

VII. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended (NEPA), and the Commission's regulations in 10 CFR part 51, subpart A, that this proposed design certification rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement (EIS) is not required. The basis for this determination, as documented in the environmental assessment, is that this amendment to 10 CFR part 52 would not authorize the siting, construction, or operation of a facility using the AP1000 design; it would only codify the AP1000 design in a rule. The NRC will evaluate the environmental impacts and issue an EIS as appropriate under NEPA as part of the application(s) for the construction and operation of a facility.

In addition, as part of the environmental assessment for the AP1000 design, the NRC reviewed Westinghouse's evaluation of various design alternatives to prevent and mitigate severe accidents in appendix 1B of the AP1000 DCD Tier 2. Based upon review of Westinghouse's evaluation, the Commission finds that: (1) Westinghouse identified a reasonably complete set of potential design alternatives to prevent and mitigate severe accidents for the AP1000 design; (2) none of the potential design alternatives are justified on the basis of cost-benefit considerations; and (3) it is unlikely that other design changes would be identified and justified in the future on the basis of cost-benefit considerations, because the estimated core damage frequencies for the AP1000 are very low on an absolute scale. These issues are considered resolved for the AP1000 design.

The environmental assessment (EA), upon which the Commission's finding of no significant impact is based, and the AP1000 DCD are available for examination and copying at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The NRC has sent a copy of the EA and this proposed rule to every State Liaison Officer and requests their comments on the EA. Single copies of the EA are also available from Lauren M. Quinones-Navarro, Mailstop O–4D9A, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

VIII. Paperwork Reduction Act Statement

This proposed rule contains amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

Type of Submission, New or Revision: Revision.

The Title of the Information Collection: Appendix D to 10 CFR part 52, AP1000 Design Certification, Proposed Rule.

Current OMB Approval Number: 3150–0151.

The Form Number if Applicable: Not applicable.

How Often the Collection is Required: Semi-annually.

Who Will be Required or Asked to Report: Applicant for a combined license.

An Estimate of the Number of Annual Responses: 2 (1 response plus 1 recordkeeper).

The Estimated Number of Annual Respondents: 1.

An estimate of the total number of hours needed annually to complete the requirement or request: Approximately 39 additional burden hours (5 hours reporting plus 34 hours recordkeeping).

Abstract: The NRC is proposing to amend its regulations to certify the AP1000 standard plant design under subpart B of 10 CFR part 52. This action is necessary so that applicants or licensees intending to construct and operate an AP1000 design may do so by referencing the AP1000 design certification rule (DCR). This proposed DCR, as set out in appendix D, is nearly identical to the AP600 DCR in appendix C of 10 CFR part 52. The information collection requirements for part 52 were based largely on the requirements for licensing nuclear facilities under 10 CFR part 50. The applicant for certification of the AP1000 design is Westinghouse Electric Company LLC.

The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collection contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. The OMB clearance package and rule are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 60 days after the signature date of this notice and are also available at the rule forum site, *http://ruleforum.llnl.gov*.

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by May 18, 2005 to the Records and FOIA/Privacy Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV* and to the Desk Officer, John A. Asalone, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0151), Office of Management and Budget, Washington, DC 20503. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. You may also e-mail comments to *John_A._Asalone@omb.eop.gov* or comment by telephone at (202) 395–4650.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

IX. Regulatory Analysis

The NRC has not prepared a regulatory analysis for this proposed rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications are not generic rulemakings in the sense that design certifications do not establish standards or requirements with which all licensees must comply. Rather, design

certifications are Commission approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by applicants for COLs. Furthermore, design certification rulemakings are initiated by an applicant for a design certification, rather than the NRC. Preparation of a regulatory analysis in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC. For these reasons, the Commission concludes that preparation of a regulatory analysis is neither required nor appropriate.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this proposed rulemaking will not have a significant economic impact upon a substantial number of small entities. This proposed rule provides for certification of a nuclear power plant design. Neither the design certification applicant, nor prospective nuclear power plant licensees who reference this design certification rule, fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act, or the Small Business Size Standards set out in regulations issued by the Small Business Administration in 13 CFR part 121. Thus, this rule does not fall within the purview of the act.

XI. Backfit Analysis

The Commission has determined that this proposed rule does not constitute a backfitting as defined in the backfit rule, 10 CFR 50.109 because this design certification does not impose new or changed requirements on existing 10 CFR part 50 licensees, nor does it impose new or change requirements on existing DCRs in appendices A–C of part 52. Therefore, a backfit analysis was not prepared for this rule.

List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Incorporation by reference, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and record keeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendment to 10 CFR part 52.

PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

1. The authority citation for 10 CFR part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

2. In § 52.8, paragraph (b) is revised to read as follows:

§ 52.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 52.15, 52.17, 52.29, 52.35, 52.45, 52.47, 52.51, 52.57, 52.63, 52.75, 52.77, 52.78, 52.79, 52.89, 52.91, 52.99, and appendices A, B, C, and D to this point.

3. A new appendix D to 10 CFR part 52 is added to read as follows:

Appendix D To Part 52—Design Certification Rule for the AP1000 Design

I. Introduction

Appendix D constitutes the standard design certification for the AP1000 [3] design, in accordance with 10 CFR part 52, subpart B. The applicant for certification of the AP1000 design is Westinghouse Electric Company LLC.

II. Definitions

A. *Generic design control document* (generic DCD) means the document containing the Tier 1 and Tier 2 information and generic TS that is incorporated by reference into this appendix.

B. *Generic technical specifications* means the information required by 10 CFR 50.36 and 50.36a for the portion of the plant that is within the scope of this appendix.

C. *Plant-specific DCD* means the document maintained by an applicant or licensee who references this appendix consisting of the information in the generic DCD as modified and supplemented by the plant-specific departures and exemptions made under section VIII of this appendix.

[3] AP1000 is a trademark of Westinghouse Electric Company LLC.

D. *Tier 1* means the portion of the design-related information contained in the generic DCD that is approved and certified by this appendix (Tier 1 information). The design descriptions, interface requirements, and site parameters are derived from Tier 2 information. Tier 1 information includes:

1. Definitions and general provisions;
2. Design descriptions;
3. Inspections, tests, analyses, and acceptance criteria (ITAAC);
4. Significant site parameters; and
5. Significant interface requirements.

E. *Tier 2* means the portion of the design-related information contained in the generic DCD that is approved but not certified by this appendix (Tier 2 information). Compliance with Tier 2 is required, but generic changes to and plant-specific departures from Tier 2 are governed by section VIII of this appendix. Compliance with Tier 2 provides a sufficient, but not the only acceptable, method for complying with Tier 1. Compliance methods differing from Tier 2 must satisfy the change process in section VIII of this appendix. Regardless of these differences, an applicant or licensee must meet the requirement in Paragraph III.B to reference Tier 2 when referencing Tier 1. Tier 2 information includes:

1. Information required by 10 CFR 52.47, with the exception of generic TS and conceptual design information;
2. Information required for a final safety analysis report under 10 CFR 50.34;
3. Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met; and
4. COL action items (COL information), which identify certain matters that shall be addressed in the site-specific portion of the FSAR by an applicant who references this appendix. These items constitute information requirements but are not the only acceptable set of information in the FSAR. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless such items are restated in the FSAR.
5. The investment protection short-term availability controls in section 16.3 of the DCD.

F. *Tier 2** means the portion of the Tier 2 information, designated as such in the generic DCD, which is subject to the change process in paragraph VIII.B.6 of this appendix. This designation

expires for some Tier 2* information under paragraph VIII.B.6.

G. Departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses means:

1. Changing any of the elements of the method described in the plant-specific DCD unless the results of the analysis are conservative or essentially the same; or

2. Changing from a method described in the plant-specific DCD to another method unless that method has been approved by the NRC for the intended application.

H. All other terms in this appendix have the meaning set out in 10 CFR 50.2, 10 CFR 52.3, or section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

III. Scope and Contents

A. Tier 1, Tier 2 (including the investment protection short-term availability controls in section 16.3), and the generic TS in the AP1000 DCD (Revision 14) are approved for incorporation by reference by the Director of the Office of the Federal Register on [date of approval] under 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the generic DCD may be obtained from Ronald P. Vijuk, Manager, Passive Plant Engineering, Westinghouse Electric Company, P.O. Box 355, Pittsburgh, PA 15230–0355. A copy of the generic DCD is also available for examination and copying at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Copies are available for examination at the NRC Library, 11545 Rockville, Maryland, telephone (301) 415–5610, e-mail *LIBRARY@NRC.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/code_of_federal_regulations/ibr_locations.html*.

B. An applicant or licensee referencing this appendix, in accordance with section IV of this appendix, shall incorporate by reference and comply with the requirements of this appendix, including Tier 1, Tier 2 (including the investment protection short-term availability controls in Section 16.3 of the DCD), and the generic TS except as otherwise provided in this appendix. Conceptual design information in the generic DCD and the evaluation of severe accident mitigation design alternatives in appendix 1B of the generic DCD are not part of this appendix.

C. If there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls.

D. If there is a conflict between the generic DCD and either the application for design certification of the AP1000 design or NUREG–1793, "Final Safety Evaluation Report Related to Certification of the AP1000 Standard Design," (FSER), then the generic DCD controls.

E. Design activities for structures, systems, and components that are wholly outside the scope of this appendix may be performed using site-specific design parameters, provided the design activities do not affect the DCD or conflict with the interface requirements.

IV. Additional Requirements and Restrictions

A. An applicant for a license that wishes to reference this appendix shall, in addition to complying with the requirements of 10 CFR 52.77, 52.78, and 52.79, comply with the following requirements:

1. Incorporate by reference, as part of its application, this appendix.

2. Include, as part of its application:

a. A plant-specific DCD containing the same information and utilizing the same organization and numbering as the AP1000 DCD, as modified and supplemented by the applicant's exemptions and departures;

b. The reports on departures from and updates to the plant-specific DCD required by paragraph X.B of this appendix;

c. Plant-specific TS, consisting of the generic and site-specific TS that are required by 10 CFR 50.36 and 50.36a;

d. Information demonstrating compliance with the site parameters and interface requirements;

e. Information that addresses the COL action items; and

f. Information required by 10 CFR 52.47(a) that is not within the scope of this appendix.

3. Physically include, in the plant-specific DCD, the proprietary and safeguards information referenced in the AP1000 DCD.

B. The Commission reserves the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under part 50.

V. Applicable Regulations

A. Except as indicated in paragraph B of this section, the regulations that apply to the AP1000 design are in 10 CFR parts 20, 50, 73, and 100, codified as of [date final rule signed], that are applicable and technically relevant, as described in the FSER (NUREG–1793).

B. The AP1000 design is exempt from portions of the following regulations:

1. 10 CFR 50.34(f)(2)(iv)—Plant Safety Parameter Display Console;

2. 10 CFR 50.62(c)(1)—Auxiliary (or emergency) feedwater system; and

3. 10 CFR part 50, appendix A, GDC 17—Offsite Power Sources.

VI. Issue Resolution

A. The Commission has determined that the structures, systems, components, and design features of the AP1000 design comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in section V of this appendix; and therefore, provide adequate protection to the health and safety of the public. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the AP1000 design.

B. The Commission considers the following matters resolved within the meaning of 10 CFR 52.63(a)(4) in subsequent proceedings for issuance of a COL, amendment of a COL, or renewal of a COL, proceedings held under to 10 CFR 52.103, and enforcement proceedings involving plants referencing this appendix:

1. All nuclear safety issues, except for the generic TS and other operational requirements, associated with the information in the FSER, Tier 1, Tier 2 (including referenced information, which the context indicates is intended as requirements, and the investment protection short-term availability controls in section 16.3 of the DCD), and the rulemaking record for certification of the AP1000 design;

2. All nuclear safety and safeguards issues associated with the information in proprietary and safeguards documents, referenced and in context, are intended as requirements in the generic DCD for the AP1000 design;

3. All generic changes to the DCD under and in compliance with the change processes in sections VIII.A.1 and VIII.B.1 of this appendix;

4. All exemptions from the DCD under and in compliance with the change processes in sections VIII.A.4 and VIII.B.4 of this appendix, but only for that plant;

5. All departures from the DCD that are approved by license amendment, but only for that plant;

6. Except as provided in paragraph VIII.B.5.f of this appendix, all

departures from Tier 2 under and in compliance with the change processes in paragraph VIII.B.5 of this appendix that do not require prior NRC approval, but only for that plant;

7. All environmental issues concerning severe accident mitigation design alternatives (SAMDAs) associated with the information in the NRC's EA for the AP1000 design and appendix 1B of the generic DCD, for plants referencing this appendix whose site parameters are within those specified in the SAMDA evaluation.

C. The Commission does not consider operational requirements for an applicant or licensee who references this appendix to be matters resolved within the meaning of 10 CFR 52.63(a)(4). The Commission reserves the right to require operational requirements for an applicant or licensee who references this appendix by rule, regulation, order, or license condition.

D. Except under the change processes in section VIII of this appendix, the Commission may not require an applicant or licensee who references this appendix to:

1. Modify structures, systems, components, or design features as described in the generic DCD;

2. Provide additional or alternative structures, systems, components, or design features not discussed in the generic DCD; or

3. Provide additional or alternative design criteria, testing, analyses, acceptance criteria, or justification for structures, systems, components, or design features discussed in the generic DCD.

E.1. Persons who wish to review proprietary and safeguards information or other secondary references in the AP1000 DCD, in order to request or participate in the hearing required by 10 CFR 52.85 or the hearing provided under 10 CFR 52.103, or to request or participate in any other hearing relating to this appendix in which interested persons have adjudicatory hearing rights, shall first request access to such information from Westinghouse. The request must state *with particularity*:

a. The nature of the proprietary or other information sought;

b. The reason why the information currently available to the public in the NRC's public document room is insufficient;

c. The relevance of the requested information to the hearing issue(s) which the person proposes to raise; and

d. A showing that the requesting person has the capability to understand and utilize the requested information.

2. If a person claims that the information is necessary to prepare a request for hearing, the request must be filed no later than 15 days after publication in the **Federal Register** of the notice required either by 10 CFR 52.85 or 10 CFR 52.103. If Westinghouse declines to provide the information sought, Westinghouse shall send a written response within ten (10) days of receiving the request to the requesting person setting forth with particularity the reasons for its refusal. The person may then request the Commission (or presiding officer, if a proceeding has been established) to order disclosure. The person shall include copies of the original request (and any subsequent clarifying information provided by the requesting party to the applicant) and the applicant's response. The Commission and presiding officer shall base their decisions solely on the person's original request (including any clarifying information provided by the requesting person to Westinghouse), and Westinghouse's response. The Commission and presiding officer may order Westinghouse to provide access to some or all of the requested information, subject to an appropriate non-disclosure agreement.

VII. Duration of This Appendix

This appendix may be referenced for a period of 15 years from [date 30 days after publication of the final rule in the **Federal Register**], except as provided for in 10 CFR 52.55(b) and 52.57(b). This appendix remains valid for an applicant or licensee who references this appendix until the application is withdrawn or the license expires, including any period of extended operation under a renewed license.

VIII. Processes for Changes and Departures

A. Tier 1 Information

1. Generic changes to Tier 1 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 1 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs A.3 or A.4 of this section.

3. Departures from Tier 1 information that are required by the Commission through plant-specific orders are governed by the requirements in 10 CFR 52.63(a)(3).

4. Exemptions from Tier 1 information are governed by the requirements in 10 CFR 52.63(b)(1) and § 52.97(b). The Commission will deny a request for an exemption from Tier 1, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design.

B. Tier 2 Information

1. Generic changes to Tier 2 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 2 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs B.3, B.4, B.5, or B.6 of this section.

3. The Commission may not require new requirements on Tier 2 information by plant-specific order while this appendix is in effect under §§ 52.55 or 52.61, unless:

a. A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time this appendix was approved, as set forth in section V of this appendix, or to ensure adequate protection of the public health and safety or the common defense and security; and

b. Special circumstances as defined in 10 CFR 50.12(a) are present.

4. An applicant or licensee who references this appendix may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The Commission will deny a request for an exemption from Tier 2, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design. The grant of an exemption to an applicant must be subject to litigation in the same manner as other issues material to the license hearing. The grant of an exemption to a licensee must be subject to an opportunity for a hearing in the same manner as license amendments.

5.a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, Tier 2* information, or the TS, or requires a license amendment under paragraphs B.5.b or B.5.c of this section. When evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a

severe accident issue identified in the plant-specific DCD, requires a license amendment if it would:

(1) Result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the plant-specific DCD;

(2) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of a structure, system, or component (SSC) important to safety and previously evaluated in the plant-specific DCD;

(3) Result in more than a minimal increase in the consequences of an accident previously evaluated in the plant-specific DCD;

(4) Result in more than a minimal increase in the consequences of a malfunction of an SSC important to safety previously evaluated in the plant-specific DCD;

(5) Create a possibility for an accident of a different type than any evaluated previously in the plant-specific DCD;

(6) Create a possibility for a malfunction of an SSC important to safety with a different result than any evaluated previously in the plant-specific DCD;

(7) Result in a design basis limit for a fission product barrier as described in the plant-specific DCD being exceeded or altered; or

(8) Result in a departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses.

c. A proposed departure from Tier 2 affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if—

(1) There is a substantial increase in the probability of a severe accident such that a particular severe accident previously reviewed and determined to be not credible could become credible; or

(2) There is a substantial increase in the consequences to the public of a particular severe accident previously reviewed.

d. If a departure requires a license amendment under paragraph B.5.b or B.5.c of this section, it is governed by 10 CFR 50.90.

e. A departure from Tier 2 information that is made under paragraph B.5 of this section does not require an exemption from this appendix.

f. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an applicant or licensee who references this appendix has not complied with paragraph VIII.B.5 of this appendix when departing from Tier 2 information, may petition to admit into the proceeding such a contention. In addition to compliance with the general requirements of 10 CFR 2.309, the petition must demonstrate that the departure does not comply with paragraph VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC acceptance criterion in the case of a 10 CFR 52.103 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of material fact regarding compliance with paragraph VIII.B.5 of this appendix.

6.a. An applicant who references this appendix may not depart from Tier 2* information, which is designated with italicized text or brackets and an asterisk in the generic DCD, without NRC approval. The departure will not be considered a resolved issue, within the meaning of section VI of this appendix and 10 CFR 52.63(a)(4).

b. A licensee who references this appendix may not depart from the following Tier 2* matters without prior NRC approval. A request for a departure will be treated as a request for a license amendment under 10 CFR 50.90.

(1) Maximum fuel rod average burn-up.

(2) Fuel principal design requirements.

(3) Fuel criteria evaluation process.

(4) Fire areas.

(5) Human factors engineering.

(6) Small-break loss-of-coolant (LOCA) Analysis Methodology.

c. A licensee who references this appendix may not, before the plant first achieves full power following the finding required by 10 CFR 52.103(g), depart from the following Tier 2* matters except under paragraph B.6.b of this section. After the plant first achieves full power, the following Tier 2* matters revert to Tier 2 status and are subject to the departure provisions in paragraph B.5 of this section.

(1) Nuclear Island structural dimensions.

(2) American Society of Mechanical Engineers Boiler & Pressure Vessel Code (ASME Code), Section III, and Code Case–284.

(3) Design Summary of Critical Sections.

(4) American Concrete Institute (ACI) 318, ACI 349, American National Standards Institute/American Institute of Steel Construction (ANSI/AISC)–690, and American Iron and Steel Institute (AISI), "Specification for the Design of Cold Formed Steel Structural Members, Part 1 and 2," 1996 Edition and 2000 Supplement.

(5) Definition of critical locations and thicknesses.

(6) Seismic qualification methods and standards.

(7) Nuclear design of fuel and reactivity control system, except burn-up limit.

(8) Motor-operated and power-operated valves.

(9) Instrumentation and control system design processes, methods, and standards.

(10) Passive residual heat removal (PRHR) natural circulation test (first plant only).

(11) Automatic depressurization system (ADS) and core make-up tank (CMT) verification tests (first three plants only).

(12) Polar Crane Parked Orientation.

(13) Piping design acceptance criteria.

(14) Containment Vessel Design Parameters.

d. Departures from Tier 2* information that are made under paragraph B.6 of this section do not require an exemption from this appendix.

C. Operational Requirements

1. Generic changes to generic TS and other operational requirements that were completely reviewed and approved in the design certification rulemaking and do not require a change to a design feature in the generic DCD are governed by the requirements in 10 CFR 50.109. Generic changes that require a change to a design feature in the generic DCD are governed by the requirements in paragraphs A or B of this section.

2. Generic changes to generic TS and other operational requirements are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs C.3 or C.4 of this section.

3. The Commission may require plant-specific departures on generic TS and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not

required and special circumstances as defined in 10 CFR 2.335 are present. The Commission may modify or supplement generic TS and other operational requirements that were not completely reviewed and approved or require additional TS and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

4. An applicant who references this appendix may request an exemption from the generic TS or other operational requirements. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The grant of an exemption must be subject to litigation in the same manner as other issues material to the license hearing.

5. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an operational requirement approved in the DCD or a TS derived from the generic TS must be changed may petition to admit such a contention into the proceeding. The petition must comply with the general requirements of 10 CFR 2.309 and must demonstrate why special circumstances as defined in 10 CFR 2.335 are present, or demonstrate compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in section V of this appendix. Any other party may file a response to the petition. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific TS or other operational requirements are subject to a hearing as part of the license proceeding.

6. After issuance of a license, the generic TS have no further effect on the plant-specific TS. Changes to the plant-specific TS will be treated as license amendments under 10 CFR 50.90.

IX. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

A.1 An applicant or licensee who references this appendix shall perform and demonstrate conformance with the ITAAC before fuel load. With respect to activities subject to an ITAAC, an applicant for a license may proceed at its own risk with design and procurement activities. A licensee may also proceed at its own risk with design, procurement, construction, and preoperational activities, even though the NRC may not have found that any particular ITAAC has been satisfied.

2. The licensee who references this appendix shall notify the NRC that the required inspections, tests, and analyses in the ITAAC have been successfully completed and that the corresponding acceptance criteria have been met.

3. If an activity is subject to an ITAAC and the applicant or licensee who references this appendix has not demonstrated that the ITAAC has been satisfied, the applicant or licensee may either take corrective actions to successfully complete that ITAAC, request an exemption from the ITAAC under Section VIII of this appendix and 10 CFR 52.97(b), or petition for rulemaking to amend this appendix by changing the requirements of the ITAAC, under 10 CFR 2.802 and 52.97(b). Such rulemaking changes to the ITAAC must meet the requirements of paragraph VIII.A.1 of this appendix.

B.1 The NRC shall ensure that the required inspections, tests, and analyses in the ITAAC are performed. The NRC shall verify that the inspections, tests, and analyses referenced by the licensee have been successfully completed and find that the prescribed acceptance criteria have been met. At appropriate intervals during construction, the NRC shall publish notices of the successful completion of ITAAC in the **Federal Register**.

2. Under 10 CFR 52.99 and 52.103(g), the Commission shall find that the acceptance criteria in the ITAAC for the license are met before fuel load.

3. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not, by virtue of their inclusion within the DCD, constitute regulatory requirements either for licensees or for renewal of the license; except for specific ITAAC, which are the subject of a section 103(a) hearing, their expiration will occur upon final Commission action in such a proceeding. However, subsequent modifications must comply with the Tier 1 and Tier 2 design descriptions in the plant-specific DCD unless the licensee has complied with the applicable requirements of 10 CFR 52.97 and section VIII of this appendix.

X. Records and Reporting

A. Records

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes to Tier 1 and Tier 2. The applicant shall maintain the proprietary and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in section VII of this appendix.

2. An applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made under section VIII of this appendix throughout the period of application and for the term of the license (including any period of renewal).

3. An applicant or licensee who references this appendix shall prepare and maintain written evaluations which provide the bases for the determinations required by section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any period of renewal).

B. Reporting

1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any departures from the plant-specific DCD, including a summary of the evaluation of each. This report must be filed in accordance with the filing requirements applicable to reports in 10 CFR 50.4.

2. An applicant or licensee who references this appendix shall submit updates to its DCD, which reflect the generic changes to and plant-specific departures from the generic DCD made under section VIII of this appendix. These updates shall be filed under the filing requirements applicable to final safety analysis report updates in 10 CFR 50.4 and 50.71(e).

3. The reports and updates required by paragraphs X.B.1 and X.B.2 must be submitted as follows:

a. On the date that an application for a license referencing this appendix is submitted, the application shall include the report and any updates to the generic DCD.

b. During the interval from the date of application for a license to the date the Commission makes its findings under 10 CFR 52.103(g), the report must be submitted semi-annually. Updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

c. After the Commission has made its finding under 10 CFR 52.103(g), the reports and updates to the plant-specific DCD must be submitted, along with updates to the site-specific portion of the final safety analysis report for the facility, at the intervals required by 10 CFR 50.59(d)(2) and 50.71(e)(4), respectively, or at shorter intervals as specified in the license.

Dated at Rockville, Maryland, this 12th day of April, 2005.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 05–7658 Filed 4–15–05; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–352–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 series airplanes. That action would have required replacement of the air turbine starters (ATSs) with modified ATSs. Since the issuance of the NPRM, we have reviewed the requirements of the proposed AD and determined that the same unsafe condition is addressed in another AD. Accordingly, this proposed AD is withdrawn.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–135 and –145 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on December 18, 2003 (68 FR 70475). The proposed rule would have required replacement of the air turbine starters (ATSs) with modified ATSs. That action was prompted by notification from the Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, of an unsafe condition. The DAC advised it had received reports of interference problems between the engine ATSs' output shafts and the engine accessory gear box (AGB) shafts. The proposed actions were intended to prevent a sheared ATS output shaft from allowing oil to flow down the engine AGB shafts and dripping into the engine compartments, and consequent oil fire, in-flight shutdown, and/or rejected take-off.

Actions That Occurred Since the NPRM Was Issued

Since we issued the NPRM, we have determined that the DAC issued two Brazilian airworthiness directives that address that same unsafe condition. The DAC issued Brazilian airworthiness directives 2001–09–04, dated October 10, 2001, and 2003–07–01R1, dated December 23, 2003. We issued a parallel proposed AD for each Brazilian airworthiness directive. One proposed AD, Docket Number 2002–NM–352–AD, was published in the **Federal Register** on December 18, 2003 (68 FR 70475). The other proposed AD, Docket Number 2003–NM–237–AD, was published in the **Federal Register** on February 19, 2004 (69 FR 7707). The final rule for Docket Number 2003–NM–237–AD was published in the **Federal Register** on February 17, 2005 (70 FR 8028) as AD 2005–04–05.

FAA's Conclusions

Upon further evaluation, and based on comments received in response to the proposed AD with Docket Number 2002–NM–352–AD, we determined that it was in the best interest of the FAA and the U.S. operators to combine the requirements of both of our proposed ADs into the final rule for Docket Number 2003–NM–237–AD, AD 2005–04–05. The requirements in AD 2005–04–05 adequately address the identified unsafe condition specified in the proposed AD, Docket Number 2002–NM–352–AD. Accordingly, the proposed AD with Docket Number 2002–NM–352–AD is withdrawn. The DAC and the airplane manufacturer support our decision.

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

Regulatory Impact

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, we withdraw the NPRM, Docket Number 2002–NM–352–AD, which was published in the **Federal Register** on December 18, 2003 (68 FR 70475).

Issued in Renton, Washington, on April 11, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–7672 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20969; Directorate Identifier 2005–NM–017–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model DH.125, HS.125, and BH.125 Series Airplanes; Model BAe.125 Series 800A (C–29A and U–125), 800B, 1000A, and 1000B Airplanes; and Model Hawker 800 (including variant U–125A), and 1000 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Raytheon airplanes identified above. The existing AD currently requires a visual inspection to determine whether adequate clearance exists between the fan venturi motor casing and the adjacent equipment, and adjustments, if necessary; and a visual inspection to detect signs of overheating, degradation of insulating materials, and ingestion of debris into the motor, and replacement of discrepant parts with serviceable parts. This proposed AD would instead require that operators replace the fan venturi with a new or modified part. This proposed AD is prompted by reports that the fan venturi overheated and produced smoke while the airplane was on the ground. We are proposing this AD to prevent heat and fire damage to equipment adjacent to the fan venturi, which could result in smoke in the cabin and/or burning equipment.

DATES: We must receive comments on this proposed AD by June 2, 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 Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085.

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–2005–20969; the directorate identifier for this docket is 2005–NM–017–AD.

FOR FURTHER INFORMATION CONTACT: Philip Petty, Aerospace Engineer, Electrical Systems and Avionics Branch, ACE–119W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4139; fax (316) 946–4107.

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–2005–20969; Directorate Identifier 2005–NM–017–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 May 18, 1994, we issued AD 94–11–03, amendment 39–8919 (59 FR 27231, May 26, 1994), for certain Raytheon Corporate Jets Model DH/BH/HS BAe 125 and Hawker 800 and 1000 series airplanes. That AD requires a visual inspection to determine whether adequate clearance exists between the fan venturi motor casing and the adjacent equipment, and adjustments, if necessary; and a visual inspection to detect signs of overheating, degradation of insulating materials, and ingestion of debris into the motor, and replacement of discrepant parts with serviceable parts. That AD was prompted by reports of smoke emanating from the lavatory due to overheating of the fan venturi motor. We issued that AD to prevent smoke or fire in the cabin while the airplane is in flight.

Actions Since Existing AD Was Issued

Since we issued AD 94–11–03, there have been three additional reports indicating that the fan venturi overheated and produced smoke while the airplane was on the ground. The manufacturer investigated the incidents and found that contamination and corrosion in the fan venturi bearings can jam the rotating assembly and cause the motor to burn out. The airplanes on which the incidents occurred had been inspected and/or repaired in accordance with AD 94–11–03. These further incidents indicate that the actions in AD 94–11–03 may not be adequate.

Relevant Service Information

We have reviewed Raytheon Service Bulletin SB 21–3669, dated December 2004. The service bulletin describes procedures for two options for corrective action:

Option 1: Replacing the fan venturi with a new fan venturi; or

Option 2: Modifying the fan venturi.

The new or modified fan venturi has a larger bearing area with more lubricant to dissipate heat, higher temperature range lubricant, tighter tolerance bearing parts, and thermal protection. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

The Raytheon Service Bulletin refers to Honeywell Service Bulletin 132322–21–4041, Revision 2, dated August 20, 2004, as an additional source of service information for modifying the fan venturi motor assembly. The Honeywell service bulletin is attached to the Raytheon service bulletin.

FAA's Determination and Requirements of the Proposed AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design that may be registered in the U.S. at some time in the future. We are proposing to supersede AD 94–11–03. This proposed AD would not retain the requirements of the existing AD. This proposed AD would require accomplishing the actions specified in the service bulletins described previously.

Explanation of Change to Model Designation

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

Costs of Compliance

There are about 500 airplanes of the affected design worldwide. This proposed AD would affect about 350 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action hour	Work hours	Average labor rate per	Parts	Cost per hour airplane
Option 1: Replacement	4	$65	$12,487	$12,747
Option 2: Modification	8	65	2,269	2,789

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 39–8919 (59 FR 27231, May 26, 1994) and adding the following new airworthiness directive (AD):

Raytheon Aircraft Company: Docket No. FAA–2005–20969; Directorate Identifier 2005–NM–017–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by June 2, 2005.

Affected ADs

(b) This AD supersedes AD 94–11–03, amendment 39–8919 (59 FR 27231, May 26, 1994).

Applicability

(c) This AD applies to Raytheon Model DH.125, HS.125, and BH.125 series airplanes; Model BAe.125 Series 800A (C–29A and U–125), 800B, 1000A, and 1000B airplanes; and Model Hawker 800 (including variant U–125A), and 1000 airplanes, certificated in any category; as identified in Raytheon Service Bulletin SB 21–3669, dated December, 2004.

Unsafe Condition

(d) This AD was prompted by reports indicating that the fan venturi overheated and produced smoke while the airplane was on the ground. We are issuing this AD to prevent heat and fire damage to equipment adjacent to the fan venturi, which could result in smoke in the cabin and/or burning equipment.

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.

Modification or Replacement

(f) Within 1,200 flight hours or 24 months after the effective date of this AD, whichever occurs first, do the action in either paragraph (f)(1) or (f)(2) of this AD in accordance with the Accomplishment Instructions of Raytheon Service Bulletin SB 21–3669, dated December, 2004.

(1) Modify the existing fan venturi part number (P/N) 132322–2–1 by installing an improved motor, P/N 207640–34.

(2) Replace the existing fan venturi P/N 132322–2–1 with a new fan venturi P/N 132322–3–1.

Note 1: Raytheon Service Bulletin SB 21–3669 refers to Honeywell Service Bulletin 132322–21–4041, Revision 2, dated August 20, 2004, as an additional source of service information for doing the modification. The Honeywell service bulletin is attached to the Raytheon service bulletin.

Parts Installation

(g) As of the effective date of this AD, no person may install a fan venturi, P/N 132322–2–1, on any airplane unless the fan venturi has been modified in accordance with paragraph (f)(1) of this AD; or unless the fan venturi has a new P/N in accordance with paragraph (f)(2) of this AD.

Alternative Methods of Compliance (AMOCs)

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

Issued in Renton, Washington, on April 12, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–7673 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20970; Directorate Identifier 2004–NM–53–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 500, 501, 550, S550, 551, and 560 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 Cessna Model 500, 501, 550, S550, 551, and 560 airplanes. This proposed AD would require revising the airplane flight manual (AFM) to prohibit use of the wing fuel boost pumps for defueling under certain conditions; installing a placard; doing other specified investigative and corrective actions as necessary; and modifying the boost pumps. This proposed AD also would require the subsequent removal of the AFM revision and placard. This proposed AD is prompted by a report of a chafed electrical wiring harness, which was arcing inside the fuel tank. We are proposing this AD to prevent potential fuel vapor ignition in a fuel tank, which could result in explosion and loss of the airplane.

DATES: We must receive comments on this proposed AD by June 2, 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.
- By 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 the service information identified in this proposed AD, contact Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or 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–2005–20970; the directorate identifier for this docket is 2004–NM–53–AD.

FOR FURTHER INFORMATION CONTACT: Bryan Easterwood, Aerospace Engineer, Electrical Systems and Avionics Branch, ACE–119W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4132; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2005–20970; Directorate Identifier 2004–NM–53–AD" in the subject line 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 submitted 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 can review 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 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

We have received a report indicating that chafing can exist between the submerged electrical wiring harness on the wing fuel boost pump and an aluminum fuel line inside the wing fuel tank. When troubleshooting a tripped circuit breaker for the fuel boost pump on a Cessna Model 550 airplane, technicians discovered that the electrical wiring harness of the wing fuel boost pump had chafed through the wire bundle insulation and was arcing on an aluminum fuel line inside the wing fuel tank. Subsequent inspections of additional airplanes revealed similar wire chafing on nearly half the inspected airplanes. The resulting potential for arcing and fuel vapor ignition, if not corrected, could result in explosion and loss of the airplane.

The design of the wire routing installation, the type and spacing of electrical wire clamps or lack of clamping, and the fuel pump wire type in the area of the wing fuel boost pump on Model 550 airplanes are the same on Cessna Model 500, 501, S550, 551, and 560 airplanes; therefore, the unsafe condition could exist on all of these airplanes.

Relevant Service Information

We have reviewed the Cessna service bulletins listed in the following table:

SERVICE INFORMATION

Service bulletin	Date	Airplane model(s)	Serial Nos.
SB500–28–12	June 14, 2004	500 and 501	0001–0689
SBS550–28–08	May 7, 2004	S550	0001–0160
SB550–28–14	December 2, 2003	550 and 551	0002–0733
SB550–28–15	January 20, 2004	550	0801–1075
SB560–28–10	April 23, 2004	560	0001–0538
SB560–28–11	March 12, 2004	560	0539–0648

The service bulletins describe procedures for:

- Revising the Limitations section of the airplane flight manual (AFM) to prohibit use of the wing fuel boost pumps for defueling if the individual fuel load in each wing is less than a specified weight;
- Installing a placard that advises the flightcrew of the minimum fuel weight requirements; and
- Inspecting the full length of the wiring of the wing fuel boost pumps to detect chafing through the outer jackets, through the wire braid (shielding), and into the wire insulation.

The service bulletins also describe procedures for corrective and other specified actions, depending on the inspection results, as follows:

- Applying sealant to any damaged areas of the wing fuel boost pump wiring;
- Installing spiral wrap on fuel boost pump wiring; and
- Replacing the fuel boost pump with a new pump, if the wire conductor is exposed and chafing is found through the outer jacket, wire braid, and insulation.

In addition, the service bulletins describe procedures for inspecting for damage of the fuel tube and wing structure, replacing damaged fuel tubes with new fuel tubes, and replacing or repairing damaged wing structure.

The service bulletins also describe procedures for modifying the wing fuel boost pumps by installing clamps on certain tube assemblies and on the boost pump wiring, and ensuring that the wires will not contact any fuel lines or the airplane structure.

The service bulletins specify removing the AFM revision and placard after doing the inspection, corrective and other specified actions, and modification.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and the Service Information."

Differences Between the Proposed AD and the Service Information

This proposed AD specifies the placard text size, which is not provided in the service bulletins. We find it necessary to require this minimum standard on the placard to ensure its readability.

The service bulletins specify revising the AFM immediately (after receipt of the service bulletin), but this proposed AD would allow up to 25 flight hours for this action. In developing an appropriate compliance time for this action, we considered the safety implications and operators' typical maintenance schedules and determined that 25 flight hours will have minimal effect on operators, and no adverse effect on safety.

Although the Accomplishment Instructions of the referenced service bulletins describe procedures for submitting a sheet recording compliance with the service bulletin, this proposed AD would not require that action. We do not need this information from operators.

Costs of Compliance

This proposed AD would affect about 2,397 airplanes worldwide. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Applicable service bulletin	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
SB500–28–12	20	$65	$2,229	$3,529	444	$1,566,876
SBS550–28–08	12	65	102	882	126	111,132
SB550–28–14	8	65	1,992	2,512	469	1,178,128
SB550–28–15	8	65	1,936	2,456	194	476,464
SB560–28–10	12	65	1,949	2,729	428	1,168,012
SB560–28–11	8	65	1,052	1,572	101	158,772

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 adding the following new airworthiness directive (AD):

Cessna Aircraft Company: Docket No. FAA–2005–20970; Directorate Identifier 2004–NM–53–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by June 2, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Cessna airplanes listed in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

Airplane model(s)	Serial numbers
500 and 501 ...	0001 through 0689 inclusive.
S550	0001 through 0160 inclusive.
550 and 551 ...	0002 through 0733 inclusive.
550	0801 through 1075 inclusive.
560	0001 through 0648 inclusive.

Unsafe Condition

(d) This AD was prompted by a report of a chafed electrical wiring harness, which was arcing inside the fuel tank. We are issuing this AD to prevent potential fuel vapor ignition in a fuel tank, which could result in explosion and loss 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.

Service Information

(f) The term "service bulletin" as used in this AD refers to the applicable service bulletin listed in Table 2 of this AD.

TABLE 2.—SERVICE INFORMATION

For Cessna Model—	Having serial numbers—	Use Cessna Service Bulletin—	Dated—
500 and 501 airplanes	0001–0689	SB500–28–12	June 14, 2004.
S550 airplanes	0001–0160	SBS550–28–08	May 7, 2004.
550 and 551 airplanes	0002–0733	SB550–28–14	December 2, 2003.
550 airplanes	0801–1075	SB550–28–15	January 20, 2004.
560 airplanes	0001–0538	SB560–28–10	April 23, 2004.
560 airplanes	0539–0648	SB560–28–11	March 12, 2004.

AFM Revision

(g) Within 25 flight hours after the effective date of this AD: Revise the Limitations section of the applicable Cessna airplane flight manual (AFM) to prohibit use of the wing fuel boost pumps for defueling under certain conditions, by inserting the applicable temporary change identified in the service bulletin.

Placard Installation

(h) Within 25 flight hours after the effective date of this AD: Install a placard close to the fuel quantity gauge, in accordance with the Accomplishment Instructions of the service bulletin. In addition to the specifications in the service bulletin, the letters on the placard must be at least ¼-inch tall.

Inspection and Modification

(i) Within 300 flight hours after the effective date of this AD: Do the actions specified in paragraphs (i)(1) and (i)(2) of this AD in accordance with the Accomplishment Instructions of the service bulletin.

(1) Do a detailed inspection for chafed wiring of the wing fuel boost pumps, and, before further flight thereafter, do all applicable corrective and other specified actions.

(2) Modify the wing fuel boost pumps.

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

(j) Before further flight after the inspection and modification required by paragraph (i) of this AD, remove the AFM temporary change and placard required by paragraphs (g) and (h) of this AD.

Reporting Clarification

(k) Although the service bulletin specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

Issued in Renton, Washington, on April 11, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–7674 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20555; Airspace Docket No. 05–AAL–08]

Proposed Revision of Class E Airspace; Emmonak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise the Class E airspace at Emmonak, AK. The Standard Instrument Approach Procedures (SIAP's) are being amended for the Emmonak airport. Additional Class E airspace is needed to contain aircraft executing instrument approaches at Emmonak Airport. Adoption of this proposal would result in additional Class E airspace upward from 700 feet (ft.) above the surface at Emmonak, AK.

DATES: Comments must be received on or before June 2, 2005.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC

20590–0001. You must identify the docket number FAA–2005–20555/ Airspace Docket No. 05–AAL–08, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Services Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2005–20555/Airspace Docket No. 05–AAL–08." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), by adding Class E airspace at Emmonak, AK. The intended effect of this proposal is to revise Class E airspace upward from 700 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Emmonak, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has amended the SIAPs for the Emmonak Airport. The amended approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Runway (RWY) 16, Amdt 1; (2) RNAV (GPS) RWY 34, Amdt 1; (3) Very High Frequency Omni-range (VOR) RWY 16, Amdt 1; and (4) VOR RWY 34, Amdt 1. Revised Class E controlled airspace extending upward from 700 ft above the surface would be created by this action. The proposed airspace is sufficient to contain aircraft executing the amended instrument procedures for the Emmonak Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to revise Class E airspace sufficient to contain aircraft executing the amended instrument approaches at Emmonak Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Emmonak, AK [Revised]

Emmonak Airport, AK
(Lat. 62°47′07″ N., long. 164°29′28″ W.)
Emmonak VOR/DME
(Lat. 62°47′00″ N., long. 164°29′16″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Emmonak Airport and within 4 miles east and 8 miles west of the 356° radial of the Emmonak VOR/DME extending from the VOR/DME to 16 miles north and within 4 miles east and 8 miles west of the VOR/DME 185° radial extending from the VOR/DME to 16 miles south.

* * * * *

Issued in Anchorage, AK, on April 6, 2005.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Area Office.

[FR Doc. 05–7626 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20557; Airspace Docket No. 05–AAL–10]

Proposed Establishment of Class E Airspace; Kaltag, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Kaltag, AK. Two new Standard Instrument Approach Procedures (SIAP) and two departure procedures are being published for the Kaltag Airport. There is no existing Class E airspace to contain aircraft executing instrument procedures at Kaltag, AK. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Kaltag, AK.

DATES: Comments must be received on or before June 2, 2005.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20557/Airspace Docket No. 05–AAL–10, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Services Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2005–20557/Airspace Docket No. 05–AAL–10." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), which would establish new Class E airspace at Kaltag, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Kaltag, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs and two departure procedures for the Kaltag Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Runway (RWY) 3, original and (2) RNAV GPS RWY 21, original. The new departure procedures are (1) IPOXE

ONE Departure and (2) KACLE ONE Departure. New Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface within the Kaltag Airport area would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures at the Kaltag Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to establish Class E airspace sufficient to contain aircraft executing the new instrument approaches at Kaltag Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Kaltag, AK [New]

Kaltag Airport, AK
(Lat. 64°19′05″ N., long. 158°44′37″ W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of the Kaltag Airport, and that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 65°00′00″ N., long. 159°00′00″ W to lat. 64°20′00″ N., long. 160°15′00″ W., to lat. 64°00′00″ N., long. 160°15′00″ W to lat. 64°00′00″ N., long. 159°00′00″ W. to point of beginning.

* * * * *

Issued in Anchorage, AK, on April 6, 2005.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Area Office.

[FR Doc. 05–7627 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20568; Airspace Docket No. 05–AAL–11]

Proposed Establishment of Class E Airspace; Coldfoot, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Coldfoot, AK. Two new Standard Instrument Approach Procedures (SIAP) and a departure procedure are being published for the Coldfoot Airport. There is no existing Class E airspace to contain aircraft executing the new instrument approaches at Coldfoot, AK. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) above the surface at Coldfoot, AK.

DATES: Comments must be received on or before June 2, 2005.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20568/ Airspace Docket No. 05–AAL–11, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Services Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2005–20568/Airspace Docket No. 05–AAL–11." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), which would establish new Class E airspace at Coldfoot, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Coldfoot, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Coldfoot Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Runway (RWY) 1, original and (2) RNAV GPS -A, original. The Bettles ONE Departure Procedure will also be established. New Class E controlled airspace extending upward from 700 ft. above the surface within the Coldfoot Airport area would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures at the Coldfoot Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to establish Class E airspace sufficient to contain aircraft executing the new instrument approaches at Coldfoot Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Coldfoot, AK [New]

Coldfoot Airport, AK
(Lat. 67°15′08″ N., long. 150°12′14″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Coldfoot Airport and within 2.3 miles each side of the 042° bearing from the airport extending from the 6.7-mile radius to 11.1 miles southwest of the airport.

* * * * *

Issued in Anchorage, AK, on April 6, 2005.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Area Office.

[FR Doc. 05–7628 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20450; Airspace Docket No. 05–AAL–07]

Proposed Establishment of Class E Airspace; Chalkyitsik, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Chalkyitsik, AK. Two new Standard Instrument Approach Procedures (SIAP) are being published for the Chalkyitsik Airport. There is no existing Class E airspace to contain aircraft executing the new instrument approaches at Chalkyitsik, AK. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Chalkyitsik, AK.

DATES: Comments must be received on or before June 2, 2005.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20450/Airspace Docket No. 05–AAL–07, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Services Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2005–20450/Airspace Docket No. 05–AAL–07." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), which would establish new Class E airspace at Chalkyitsik, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Chalkyitsik, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Chalkyitsik Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Runway (RWY) 3, original and (2) RNAV GPS RWY 21, original. New Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface within the Chalkyitsik Airport area would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures at the Chalkyitsik Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to establish Class E airspace sufficient to contain aircraft executing the new instrument approaches at Chalkyitsik Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Chalkyitsik, AK [New]

Chalkyitsik Airport, AK
(Lat. 66°38′42″ N., long. 143°44′24″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Chalkyitsik Airport, and that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 66°25′00″ N., long. 144°00′00″ W to lat. 66°25′00″ N., long. 143°00′00″ W., to lat. 67°00′00″ N., long. 143°00′00″ W to lat. 67°00′00″ N., long. 144°00′00″ W. to point of beginning.

* * * * *

Issued in Anchorage, AK, on April 6, 2005.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Area Office.

[FR Doc. 05–7629 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20556; Airspace Docket No. 05–AAL–09]

Proposed Establishment of Class E Airspace; Kiana, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Kiana, AK. Two new Standard Instrument Approach Procedures (SIAP) and one departure procedure are being published for the Kiana Airport. There is no existing Class E airspace to contain aircraft executing the new instrument procedures at Kiana, AK. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Kiana, AK.

DATES: Comments must be received on or before June 2, 2005.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20556/ Airspace Docket No. 05–AAL–09, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Services Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2005–20556/Airspace Docket No. 05–AAL–09." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation

Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), which would establish new Class E airspace at Kiana, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Kiana, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs and one departure procedure for the Kiana Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Runway (RWY) 6, original and (2) RNAV GPS RWY 24, original. The new departure procedure is the Selawik ONE. New Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface within the Kiana Airport area would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures at the Kiana Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to establish Class E airspace sufficient to contain aircraft executing the new instrument approaches at Kiana Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Kiana, AK [New]

Kiana Airport, AK

(Lat. 66°58′33″ N., long. 160°26′12″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Kiana Airport, and that airspace extending upward from 1,200 feet above the surface within a 30-mile radius of 66°56′28″ N 161°02′38″ W and a 30-mile radius of 67°00′4″ N 159°46′18″ W excluding that airspace within Ambler, Selawik and Nome Class E airspace.

* * * * *

Issued in Anchorage, AK, on April 6, 2005.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Area Office.

[FR Doc. 05–7630 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA 2005–20417; Airspace Docket 05–ANM–06]

Proposed Amendment to Class E Airspace; Wenatchee, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would revise the Class E airspace at Wenatchee, WA. This additional Class E airspace is necessary to accommodate the new Standard Instrument Landing System (ILS) Approach Procedure (SIAP) at Wenatchee/Pangborn Memorial Airport. This change is proposed to improve the safety of IFR aircraft executing the new Standard ILS SIAP at Wenatchee/Pangborn Memorial Airport, Wenatchee, WA.

DATES: Comments must be received by June 2, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA 2005–20417; Airspace Docket 05–ANM–06, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of

Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Western En Route and Oceanic Area Office, Airspace Branch, 1601 Lind Avenue, SW., Renton, VA 98055.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify Docket FAA 2005–20417; Airspace Docket 05–ANM–06, and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Docket FAA 2005–20417; Airspace Docket 05–ANM–06." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Air Traffic Organization, Western En Route and Oceanic Area Office, Airspace Branch, ANM–520, 1601 Lind Avenue, SW., Renton, WA 98055. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

The Proposal

This action would amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Wenatchee, WA. The establishment of a new Standard ILS SIAP requires additional Class E controlled. Additional Class E airspace extending upward from 700 feet or more above the surface of the earth is necessary for the safety of IFR aircraft executing the new Standard ILS SIAP at Wenatchee/Pangborn Memorial Airport, Wenatchee, WA. Controlled airspace is necessary where there is a requirement for IFR services, which include arrival, departure, and transitioning to/from the terminal or en route environment.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ANM WA E5 Wenatchee, WA [Revised]

Wenatchee/Pangborn Municipal Airport, WA
(Lat. 47°23′55″ N., long. 120°12′24″ W.)
Wenatchee VOR/DME
(Lat. 47°23′58″ N., long. 120°12′39″ W.)

That airspace extending upward from 700 feet above the surface of the earth within 4.3 miles south and 9.5 miles north of the 299° radial from the Wenatchee VOR/DME to 17 miles northwest of the VOR/DME, and within 4.3 miles southwest and 8 miles northeast of the 124° radial from the VOR/DME to 21 miles southeast of the VOR/DME, excluding that portion within the Moses Lake, Grant County, and Quincy Airport, WA, Class E airspace areas; that airspace extending upward from 1,200 feet above the surface of the earth bounded by a line beginning at lat. 47°36′00″ N., long. 120°43′00″ W.; to lat. 47°36′00″ N., long. 119°39′30″ W.; to lat. 47°07′00″ N., long. 119°39′30″ W.; to lat. 47°07′00″ N., long. 120°43′00″ W.; to the point of beginning. Excluding that portion within the Moses Lake, Grant County Airport, WA, Class E airspace area.

* * * * *

Issued in Seattle, Washington, on April 1, 2005.

Raul C. Treviño,

Area Director, Western En Route and Oceanic Operations.

[FR Doc. 05–7620 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA 2003–16329; Airspace Docket 02–ANM–01]

Proposed Amendment to Class E Airspace; Cheyenne, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would revise the Class E airspace at Cheyenne, WY. New aircraft routes sequenced through this airspace from the en route

environment to/from Denver's metropolitan airports have made this proposal necessary. This proposed increase of controlled airspace extending upward from 1,200 feet above the surface of earth is necessary for the safety of those aircraft transitioning to/from Denver's metropolitan airports and the en route environment.

DATES: Comments must be received on or before May 18, 2005.

Send comments on this proposal to the Docket Management System, U.S. Department of-Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify Docket FAA 2003–16329; Airspace Docket 02–ANM–01, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone number 1 (800) 647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office Federal Aviation Administration, Air Traffic Organization, Western En Route and Oceanic Area Office, Airspace Branch, ANM–520, 1601 Lind Avenue, SW., Renton, WA 98055.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting written data, views, or arguments, as they may desire. Comments that provide factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Communications should identify Docket FAA 2003–16329; Airspace Docket 02–ANM–01, and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Docket FAA 2003–16329; Airspace Docket 02–ANM–01." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded through the Internet at *http://dms.dog.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

The Proposal

This action proposes to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Cheyenne, WY. This proposal would revise the Class E airspace at Cheyenne, WY, by providing additional controlled airspace extending upward from 1,200 feet above the surface of the earth. The additional airspace is necessary for the safety of aircraft being sequenced by ATC through this airspace from the en route environment and to/from Denver's metropolitan area airports.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11013; 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).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ANM WY E5 Cheyenne WY [Revised]

Cheyenne Airport, Cheyenne WY
(Lat. 41°09′21″ N., long. 104°48′43″ W.)
Cheyenne VORTAC
(Lat. 41°12′39″ N., long. 104°46′23″ W.)

That airspace extending upward from 700 feet above the surface of the earth within 12.2 mile radius of Cheyenne Airport and within 5.3 miles southeast and 7 miles northwest of the Cheyenne VORTAC 029° radial extending from the 12.2 mile radius to 12.2 miles northeast of the VORTAC, and within 16.6 mile radius of the Cheyenne VORTAC from the 268° radial clockwise to the 343° radial; that airspace extending upward from 1,200 feet above the surface of the earth beginning at the intersection of airway V100 and long. 104°00′00″ W., thence south along long. 104°00′00″ W., thence southwest along V207, thence west along V101, thence north along V85, thence east along V100, thence to point of origin; excluding that airspace within Federal Airways.

* * * * * *

Dated: Issued in Seattle, Washington, on April 1, 2005.

Raul C. Traviño,

Area Director, Western En Route and Oceanic Operations.

[FR Doc. 05–7621 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20567; Airspace Docket No. 05–AAL–05]

Proposed Revision of Class E Airspace; Shishmaref, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise the Class E airspace at Shishmaref, AK. Two new Standard Instrument Approach Procedures (SIAP's) are being published for the Shishmaref airport. Additional Class E airspace is needed to contain aircraft executing instrument approaches at Shishmaref Airport. Adoption of this proposal would result in additional Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Shishmaref, AK.

DATES: Comments must be received on or before June 2, 2005.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20567/ Airspace Docket No. 05–AAL–05, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Services Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov*. Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2005–20567/Airspace Docket No. 05–AAL–05." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), by adding Class E airspace at Shishmaref, AK. The intended effect of this proposal is to revise Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Shishmaref, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Shishmaref Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Runway (RWY) 23, original; and (2) RNAV (GPS) RWY 5, original. Revised Class E controlled airspace extending upward from 700 ft and 1,200 ft. above the surface would be created by this action. The proposed airspace is sufficient to contain aircraft executing these two new instrument procedures for the Shishmaref Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs,

describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to revise Class E airspace sufficient to contain aircraft executing the new instrument approaches at Shishmaref Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Shishmaref, AK [Revised]

Shishmaref Airport, AK
(Lat. 66°14′58″ N., long. 166°05′22″ W.)
Shishmaref NDB
(Lat. 66°15′29″ N., long. 166°03′09″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Shishmaref Airport and within 4 miles southeast and 8 miles northwest of the 245° bearing from the Shishmaref NDB extending from the NDB to 16 miles southwest and within 4 miles southeast and 8 miles northwest of the NDB 061° bearing from the Shishmaref NDB extending from the NDB to 16 miles northeast of the NDB, and that airspace extending upward from 1,200 feet above the surface within a 30-mile radius of 66°09′58″ N 166°30:03″ W and within a 30-mile radius of 66°19′55″ N 165°40′32″ W, excluding that airspace beyond 12 miles from the shoreline.

* * * * *

Issued in Anchorage, AK, on April 6, 2005.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Area Office.

[FR Doc. 05–7624 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20643; Airspace Docket No. 05–AAL–13]

Proposed Establishment of Class D Airspace; and Modification of Class E Airspace; Big Delta, Allen AAF Airport, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class D airspace, and to revise Class E airspace at Big Delta, Allen Army Airfield (AAF) Airport on Ft. Greeley, Alaska. The Department of the Army is proposing to establish an Airport Traffic Control Tower (ATCT) at Allen AAF Airport to support operations of the U. S. Army Space and Missile Defense Command. The intended effect of this action is to enhance safety and security by providing air traffic control services to an expected increase in aircraft operating at the airport due to an expanded homeland security mission at Ft. Greeley. New Class D airspace is required to provide ATCT services. Expanded Class E airspace is needed to contain aircraft executing instrument approach and departure procedures and to align with the proposed Class D airspace.

DATES: Comments must be received on or before June 2, 2005.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20643/Airspace Docket No. 05-AAL–13, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Services Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: Jesse.CTR.Patterson@faa.gov. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2005–20643/Airspace Docket No. 05–AAL–13." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), by adding Class D airspace and revising Class E airspace at Big Delta, Allen AAF Airport, at Ft. Greeley, Alaska. The intended effect of this proposal is to revise Class E airspace to contain aircraft in controlled airspace for Instrument Flight Rules (IFR) operations; and to establish Class D airspace for the proposed Allen AAF ATCT to provide airport traffic control services to an expected increase in air traffic with the expanded role of Ft. Greeley in homeland security.

The United States Army Space and Missile Defense Command is the managing agency for Allen AAF Airport. They plan to reopen the Allen AAF ATCT by October, 2005. Class D airspace will be needed for the control of airport traffic when the ATCT opens. The United States Army is taking this action in order to accommodate an expected increase in air traffic, now and in the future, as well as to address security concerns surrounding significant national defense installations at Ft. Greeley.

The new proposed Class D airspace would not impact the ability of VFR aircraft to utilize the flight corridors along the Richardson and Alaska Highways, but will require that pilots of aircraft using these flight corridors below 2,500 above ground level (AGL) contact the Allen AAF Airport ATCT on the appropriate frequency in accordance with Title 14, CFR 91.129. The operation of Restricted Area 2202 A, B, and C will not be affected by this action.

Class E airspace at and above 700 feet AGL is proposed to be expanded to ensure that aircraft executing instrument flight rules (IFR) approaches and departures are contained within controlled airspace. The Class E Surface Area is proposed to be expanded to align with the new Class D airspace. The extension to the Northeast of the Class E Surface Area would be realigned to extend from the revised boundary of the Class E Surface Area.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class D airspace area designations are published in paragraph 5000 of FAA Order 7400.9M, *Airspace Designations and Reporting Points,* dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E surface areas are published in paragraph 6002, the Class E airspace areas designated as an extensions to a Class D or Class E surface area are published in paragraph 6004, and the Class E airspace areas extending upward from 700 feet or more above the surface are published in paragraph 6005 of the same order. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to establish Class D airspace and expand Class E airspace sufficient to contain aircraft executing instrument operations at Big Delta, Allen AAF Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points,* dated August 30, 2004, and effective September 16, 2004, is to be amended as follows:

* * * * *

Paragraph 5000 Class D Airspace

* * * * *

AAL AK D Big Delta, AK [New]

Big Delta, Allen AAF Airport, AK
(Lat. 63°59′40″ N., long. 145°43′18″ W.)
Big Delta VORTAC
(Lat. 64°00′16″ N., long. 145°43′02″ W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 6.3-mile radius of the Allen AAF Airport; excluding the portion within the boundary of restricted area 2002A.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Area

* * * * *

AAL AK E2 Big Delta, AK [Revised]

Big Delta, Allen AAF Airport, AK
(Lat. 63°59′40″ N., long. 145°43′18″ W.)
Big Delta VORTAC

(Lat. 64°00'16" N., long. 145°43'02" W.)

Within a 6.3-mile radius of the Allen AAF Airport; excluding the portion within the boundary of restricted area 2002A

* * * * *

Paragraph 6004 Class E Airspace Designated as an Extension to a Class D or E Surface Area

* * * * *

AAL AK E4 Big Delta, AK [Revised]

Big Delta, Allen AAF Airport, AK
(Lat. 63°59'40" N., long. 145°43'18" W.)
Big Delta VORTAC
(Lat. 64°00'16" N., long. 145°43'02" W.)

That airspace extending upward from the surface within 3 miles north and 2.6 miles south of the Big Delta VORTAC 039° radial extending from the 6.3-mile radius of the Allen AAF Airport to 10.3 miles northeast of the airport

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet of More Above the Surface of the Earth

* * * * *

AAL AK E5 Big Delta, AK [Revised]

Big Delta, Allen AAF Airport, AK
(Lat. 63°59'40" N., long. 145°43'18" W.) Big Delta VORTAC
(Lat. 64°00'16" N., long. 145°43'02" W.)

That airspace extending upward from 700 feet above the surface within an 8.6-mile radius of the Allen AAF Airport; and within 3 miles north and 2.6 miles south of the Big Delta VORTAC 039° radial extending from the 8.6-mile radius of the Allen AAF Airport to 10.3 miles northeast of the airport.

* * * * *

Issued in Anchorage, AK, on April 6, 2005.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Area Office.

[FR Doc. 05–7625 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 241 and 249

[Docket No. OST–1998–4043]

RIN 2105–AC71

Aviation Data Modernization

AGENCY: Office of the Secretary of Transportation (OST), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: In response to several petitions, the Department of Transportation (the Department) is extending the comment period for 90 days until July 18, 2005, for its NPRM on aviation data modernization published in the **Federal Register** on February 17, 2005. In the NPRM, DOT proposed to revise the rules governing the nature, scope, source, and means for collecting and processing aviation traffic data.

DATES: Submit comments by July 18, 2005. To the extent possible, we will consider comments received after this date in developing a final rule.

ADDRESSES: You may submit comments identified by the docket number OST–1998–4043 by any of the following methods: Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments. Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site. Fax: 1–202–493–2251. Mail: Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001. Hand Delivery: To the Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

Instructions: You must include the docket number (OST–98–4043) or the Regulatory Identification Number (RIN 2105–AC71) for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that the Department received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided, and will be accessible to Internet users. Please see the Privacy Act section of this document.

FOR FURTHER INFORMATION CONTACT: Richard Pittaway, Office of Aviation Analysis, 400 Seventh St. SW., Room 6401, Washington, DC 20590–0001, (202) 366–8856, or *rick.pittaway@ost.dot.gov*.

SUPPLEMENTARY INFORMATION: The Department of Transportation (the Department) is extending until July 18, 2005, the period for interested persons to submit comments on the February 14, 2005 NPRM published in the **Federal Register** on February 17, 2005 (70 FR 8140). In the NPRM, the Department proposed to revise the rules governing the nature, scope, source, and means for collecting and processing aviation traffic data. Those reporting requirements are known as the: Origin—Destination Survey of Airline Passenger Traffic (O&D Survey); and Form 41, Schedule T–100—U.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-flight Market and Form 41, Schedule T–100(f)—Foreign Air Carrier Traffic Data by Nonstop Segment and On-flight Market (collectively, the T–100/T–100(f)). Current traffic statistics no longer adequately measure the size, scope and strength of the air travel industry. This NPRM proposes to simplify the requirements placed upon Carriers reporting the O&D Survey. The proposed changes to the O&D Survey would eliminate the ambiguity in the identification of the Participating Carrier and eliminate the need for manual collection processes by designating the Issuing Carrier as the Participating Carrier. It would also increase accuracy by expanding the volume of data to 100 percent of Ticketed Itineraries, thus making the data more useful by collecting broader information about the Ticketed Itinerary sale and the scheduled itinerary details. The changes to the T–100/T–100(f) being considered, would improve the quality of the data by maximizing the congruence of the O&D Survey and the T–100/T–100(f).

On April 1, 2005, the Air Transport Association of America, Inc. (ATA) filed a motion (OST–1998–4043–71) requesting a 90 day extension of the date on which comments related to the NPRM are due. On April 4, 2005, the Airlines Reporting Corporation (ARC) filed a request (OST–1998–4043–72) for 90 day extension of the comment period and supported the request of ATA. In its answer (OST–1998–4043–73) filed on April 5, 2005, the Airline Tariff Publishing Company supported the motion of ATA for a 90 day extension of the comment period. On behalf of its 47 members, the Regional Airline Association (RAA) filed an answer (OST–1998–4043–74) on April 6, 2005, supporting ATA's motion for a 90 day extension of the comment period. On April 7, 2005, the Airports Council International—North America (ACI–NA) filed an answer (OST–1998–4043–75) supporting ATA's motion for a 90 day extension of the comment period. American Airlines, Inc. (AA) filed its own motion (OST–1998–4043–76) on April 7, 2005, also requesting a 90 day extension of the comment period.

In their motions, both ATA and AA discussed the length and complexity of the NPRM and the need for affected parties to understand and evaluate the implications of the proposed rulemaking. ATA noted that this rulemaking is likely to be a "once-in-a-generation" undertaking and that "such a comprehensive reexamination of air

carrier reporting requirements will not recur for a long time."

RAA observed that "[t]he length and complexity of the NPRM require more time for a proper analysis of the proposal" and ATPCO asserted that "[a] 90 day extension is reasonable given the scope of the suggested changes and the need for careful consideration of implications of those changes prior to the submission of comments on the NPRM." ACI–NA agreed, stating that "granting ATA's motion would give DOT a more extensive, thorough and considered record on which to base its decisions without unduly delaying the rulemaking process." ARC noted that "an extension will enable the parties to submit comments that more fully respond to the NPRM but will not unduly delay the rulemaking process."

Because it appears that an extension of the comment period to allow additional time for commenters to address the proposals in the NPRM would be beneficial and in the public interest, we are allowing an additional 90 days for submission of comments, which should be sufficient to accommodate commenters' need for additional time.

Electronic Access: You can view and download this NPRM and any of the comments by going to the website of the Department's Docket Management System *http://dms.dot.gov/*. On that page, click on "simple search." On the next page, type in the last four digits of the docket number shown on the first page of this document, 4043. Then click on "search." An electronic copy of this document also may be downloaded from *http://regulations.gov* and from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.archives.gov/federal_register/index.html* and the Government Printing Office's database at: *http://www.gpoaccess.gov/fr/index.html*. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department'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*.

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

Jeffrey Rosen,

General Counsel.

[FR Doc. 05–7772 Filed 4–14–05; 12:07 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–125443–01]

RIN 1545–AY92

Revisions to Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Revisions of Information Reporting Regulations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to proposed regulations and notice of public hearing that were published in the **Federal Register** on March 30, 2005 (70 FR 16189). This regulation relates to the withholding of income tax under sections 1441 and 1442 on certain U.S. source income paid to foreign persons and related requirements governing collection, deposit, refunds, and credits of withheld amounts under sections 1461 through 1463.

FOR FURTHER INFORMATION CONTACT: Ethan Atticks, (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections are under sections 1441 and 1442 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–125443–01), which was the subject of FR Doc. 05–6060, is corrected as follows:

1. On page 16189, column 3, in the preamble under the caption "DATES", lines five and six, the language "hearing scheduled for July 13, 2005, at 10 a.m. must be received by June 22," is corrected to read "hearing scheduled for July 20, 2005, at 10 a.m. must be received by June 29,".

2. On page 16192, column 2, in the preamble under the paragraph heading "*Comments and Public Hearing*", second paragraph, line two, the language "for July 13, 2005, beginning at 10 a.m." is corrected to read "for July 20, 2005, beginning at 10 a.m.".

3. On page 16192, column 3, in the preamble under the paragraph heading "*Comments and Public Hearing*", first full paragraph, line 8, the language "Wednesday, June 8. A period of 10" is corrected to read "Wednesday, June 29, 2005. A period of 10".

Guy R. Traynor,

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

[FR Doc. 05–7637 Filed 4–15–05; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7900–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the RCA Del Caribe Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 2 is issuing this notice of intent to delete the RCA Del Caribe Superfund Site (Site), located in Barceloneta, Puerto Rico, from the National Priorities List (NPL) and requests public comment on this action. The NPL is appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. The EPA and the Commonwealth of Puerto Rico, through the Puerto Rico Environmental Quality Board, have determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate. In the "Rules and Regulations" section of today's **Federal Register**, we are

publishing a direct final notice of deletion of the RCA Del Caribe Superfund Site without prior notice of this action because we view this as a noncontroversial revision and anticipate no significant adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no significant adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive significant adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments. If, after evaluating public comments, EPA decides to proceed with deletion, we will do so in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

DATES: Comments concerning this Site must be received by May 18, 2005.

ADDRESSES: Written comments should be addressed to: Adalberto Bosque, Remedial Project Manager, Caribbean Environmental Protection Division, U.S. Environmental Protection Agency, Region II, Centro Europa Building, Suite 417, 1492 Ponce de León Avenue, San Juan, Puerto Rico 00907.

FOR FURTHER INFORMATION CONTACT: Mr. Adalberto Bosque, Remedial Project Manager, U.S. Environmental Protection Division, Caribbean Environmental Protection Division, Centro Europa Building Suite 417, 1492 Ponce de León Avenue, Santurce, Puerto Rico 00907. (787) 977–5825; fax number (787) 289–7104; e-mail address: *bosque.adalberto@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9675; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: March 30, 2005.

George Pavlou,

Acting Deputy Regional Administrator, Region 2.

[FR Doc. 05–7573 Filed 4–15–05; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 70, No. 73
Monday, April 18, 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

April 12, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA—Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not reqiured to respond to the collection of information unless it displays a currently valid OBM control number.

Forest Service

Title: Understanding Value Trade-Offs Regarding Fire Hazard Reduction.

OMB Control Number: 0596–NEW.

Summary of Collection: The Forest Service, Bureau of Land Management, Bureau of Indian Affairs, National Park Service, Fish and Wildlife Service, and many State agencies with fire protection responsibilities are planning to embark on an ambitious and costly fuels reduction program without a clear understanding of the public's opinion on which treatments are most effective or even desirable. The Forest Service (FS) and university research will contact recipients of a phone/mail questionnaire to help forest and fire managers understand value trade-offs regarding fire hazard reduction programs in the wildland-urban interface. Through the questionnaire, researchers will evaluate the responses of Florida residents to different scenarios related to fire hazard reduction programs, determine how effective residents think the programs are, and calculate how much residents would be willing to pay to implement the alternatives presented to them.

Need and Use of the Information: The collective information will help researchers provide better information to natural resources, forest, and fire managers when they are contemplating the kind and type of fire hazard reduction program to implement to achieve forest land management planning objectives. Without the information the agencies with fire protection responsibilities will lack the capability to evaluate the general public understanding of proposed fuels reduction projects and programs or their willingness to pay for implementing such programs.

Description of Respondents: Individuals or households.

Number of Respondents: 1,500.

Frequency of Responses: Reporting: Other (One time only).

Total Burden Hours: 913.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–7649 Filed 4–15–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), re-certified the trade adjustment assistance (TAA) petition that was filed by a group of shrimp producers in Arizona and initially certified on April 5, 2004. Shrimp producers who produce and market their shrimp in Arizona will be eligible to apply for fiscal year 2005 benefits during a 90-day period beginning on April 4, 2005. The application period closes on July 5, 2005.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that continued increases in imports of like or directly competitive products contributed importantly to a decline in the average price of shrimp in Arizona by 33.7 percent during the 2003 marketing period (January–December 2003), compared to the 1997–2001 base period. Eligible producers may request technical assistance from the Extension Service at no cost and receive an adjustment assistance payment, if certain program criteria are satisfied. Producers in fiscal year 2005 who did not receive technical assistance under the fiscal year 2004 TAA program must obtain the technical assistance from the Extension Service by September 30, 2005, in order to be eligible for financial payments.

Producers of raw agricultural commodities wishing to learn more about TAA and how they may apply should contact the Department of Agriculture at the addresses provided below for General Information.

Producers Certified as Eligible For TAA, Contact: Farm Service Agency service centers.

For General Information About TAA, Contact: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: April 5, 2005.

Kenneth J. Roberts,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 05–7645 Filed 4–15–05; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), denied a petition for trade adjustment assistance (TAA) for avocados that was filed on March 8, 2005, by a group of Florida avocado producers.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that the price series in the petition was based on a January–December marketing year. The recognized avocado marketing year by the National Agricultural Statistics Service begins June 1 and ends February 28. In addition, the price series in the petition could not be evaluated since it did not reflect the entire 2004 season and was not valid for the entire state of Florida. Based on these two factors, the petition was not certified.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: April 5, 2005.

Kenneth J. Roberts,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 05–7647 Filed 4–15–05; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today terminated the certification of a petition for trade adjustment assistance (TAA) that was filed by a group of shrimp producers in Florida certified on April 5, 2004. Florida shrimp producers are no longer eligible for TAA benefits in fiscal year 2005.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that U.S. imports of shrimp fell by 11.4 million pounds between 2003 and 2004, a decline of 2.1 percent. Therefore, imports were no longer a contributing factor for program eligibility. An increase in imports is required for re-certifying a petition for TAA.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: April 5, 2005.

Kenneth J. Roberts,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 05–7646 Filed 4–15–05; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), re-certified the trade adjustment assistance (TAA) petition that was filed by the Tropical Fruit Growers of South Florida, Inc., representing a group of fresh lychee producers in Florida initially certified on April 5, 2004. Lychee producers in Florida who produce and market their lychees in Florida will be eligible to apply for fiscal year 2005 benefits during a 90-day period beginning on April 4, 2005. The application period closes on July 5, 2005.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that continued increases in imports of like or directly competitive products contributed importantly to a decline in the average price of lychees in Florida by 62.0 percent during the 2004 marketing period (January-December 2004), compared to the 1998–2002 base period. Eligible producers may request technical assistance from the Extension Service at no cost and receive an adjustment assistance payment, if certain program criteria are satisfied. Producers in fiscal year 2005 who did not receive technical assistance under the fiscal year 2004 TAA program must obtain the technical assistance from the Extension Service by September 30, 2005, in order to be eligible for financial payments.

Producers of raw agricultural commodities wishing to learn more about TAA and how they may apply should contact the Department of Agriculture at the addresses provided below for General Information.

Producers Certified as Eligible For TAA, Contact: Farm Service Agency service centers.

For General Information About TAA, Contact: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: April 5, 2005.

Kenneth J. Roberts,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 05–7648 Filed 4–15–05; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: North Central Idaho Resource Advisory Committee, Kamiah, Idaho, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: 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 2000 (Pub. L. 106–393) the Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Wednesday, May 4, 2005 in Whitebird, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on May 4, at the Hoot's Cafe Banquet Room, 1 Mile North of Whitebird Hwy 95, Whitebird, Idaho, begins at 10 a.m. (PST). Agenda topics will include discussion of potential projects. A public forum will begin at 2:30 p.m. (PST).

FOR FURTHER INFORMATION CONTACT: Ihor Mereszczak, Staff Officer and Designated Federal Officer, at (208) 935–2513.

Dated: April 8, 2005.

Ihor Mereszczak,

Acting Forest Supervisor.

[FR Doc. 05–7633 Filed 4–15–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Project Proposal/Possible Action, (5) Web site Update, (6) National RAC Meeting Report, (7) How to Allocate Funds in the Future, (8) Taking Proposals, (9) General Discussion, (10) Next Agenda.

DATES: The meeting will be held on April 25, 2005, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–1815; E-MAIL *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by April 22, 2005 will have the opportunity to address the committee at those sessions.

Dated: April 11, 2005.

James F. Giachino,

Designated Federal Official.

[FR Doc. 05–7635 Filed 4–15–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–812]

Furfuryl Alcohol from Thailand: Notice of Extension of Time Limit for Preliminary Results of 2003–2004 Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 18, 2005.

FOR FURTHER INFORMATION CONTACT: Andrew Smith at (202) 482–1276, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 2004, the Department of Commerce ("the Department") published a notice of initiation of administrative review of the antidumping duty order on furfuryl alcohol from Thailand covering the period July 1, 2003 through June 30, 2004. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 69 FR 52857 (August 30, 2004). On February 14, 2005, the Department published a notice of extension of time limit for the 2003–2004 preliminary results of antidumping administrative review. *See Furfuryl Alcohol from Thailand: Notice of Extension of Time Limit for Preliminary Results of 2003–2004 Antidumping Administrative Review* 70 FR 7469 (February 14, 2005). The preliminary results for this review are currently due no later than May 4, 2005.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

We are currently analyzing complicated sales and cost information that has required numerous supplemental questionnaire responses. In particular, our analysis of the allocation of input costs, indirect selling expenses, and credit expenses requires additional time and makes it impracticable to complete the preliminary results of this review within the originally anticipated time limit (*i.e.*, May 4, 2005). Therefore, the Department is extending the time limit for completion of the preliminary results to no later than August 1, 2005, in accordance with section 751(a)(3)(A) of the Act. The deadline for the final results of this administrative review continues to be 120 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 12, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–1810 Filed 4–15–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–813]

Honey From Argentina: Notice of Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with 19 CFR 351.213(b)(1), the American Honey Producers Association and the Sioux Honey Association (Petitioners), timely requested an administrative review of the countervailing duty order on Honey from Argentina entered, or withdrawn from warehouse, for consumption on or after January 1, 2004 and on or before December 31, 2004. We initiated this review on January 31, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 4818 (January 31, 2005) (*Initiation Notice*). We are now rescinding this administrative review because Petitioners have timely withdrawn their request for review in accordance with 19 CFR 351.213(d)(1). No other parties requested a review.

EFFECTIVE DATE: April 18, 2005.

FOR FURTHER INFORMATION CONTACT: Dara Iserson or Thomas Gilgunn at (202) 482–4052 and (202) 482–4236, respectively; AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of

Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department of Commerce (the Department) published a countervailing duty order on honey from Argentina. *See Notice of Countervailing Duty Orders: Honey from Argentina*, 66 FR 63673 (December 10, 2001). On December 30, 2004, Petitioners requested an administrative review of the countervailing duty order for honey from Argentina produced/exported during the period January 1, 2004, through December 31, 2004. In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the review on January 31, 2004. *See Initiation Notice*. On February 22, 2005, Petitioners withdrew their request for review.

Rescission of Countervailing Duty Administrative Review

The Department's regulations at 19 CFR 351.213(d)(1) provide that the Department will rescind an administrative review if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Petitioners withdrew their request for an administrative review on February 22, 2005, which is within the 90-day deadline. No other party requested a review of the order. Therefore, the Department is rescinding this administrative review for the period January 1, 2004, through December 31, 2004.

The Department will instruct U.S. Customs and Border Protection (CBP) to liquidate shipments of honey from Argentina entered, or withdrawn from warehouse, for consumption on or after January 1, 2004 and on or before December 31, 2004 at the cash deposit rate in effect on the date of entry.

Notification

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO material 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 sanctions.

This notice is issued and published in accordance with 19 CFR 351.213(d)(4) and sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: April 11, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–1811 Filed 4–15–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Corrected Notice of Stay of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Corrected Notice of Stay of the Determination Under Section 129(a)(4) of the Uruguay Round Agreements Act made by the International Trade Commission, respecting Softwood Lumber Products from Canada (Secretariat File No. USA–CDA–2005–1904–03).

SUMMARY: Pursuant to the Notice of Consent Motion to Stay Panel Proceedings by the complainants, the panel review is stayed pending the outcome of the ongoing Extraordinary Challenge Committee proceeding. A panel has not been appointed to this panel review. This panel review is stayed as of March 22, 2005. The previous notice is withdrawn.

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 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 was requested and stayed pursuant to these Rules. The previous notice of stay is withdrawn.

Dated: April 12, 2005.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E5–1801 Filed 4–15–05; 8:45 am]

BILLING CODE 3510–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 050318079–5079–01; I.D. 041205E]

RIN 0648–AS32

2006 Mid-Atlantic Fishery Management Council Set-Aside Program

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

ACTION: Notice.

SUMMARY: NMFS announces that for fishing year 2006 (January 1- December 31, 2006) the Mid-Atlantic Fishery Management Council (Council) may set aside up to 3 percent of the total allowable landings (TAL) in certain Mid-Atlantic fisheries to be used for research endeavors under a research set-aside (RSA) program. NMFS is soliciting proposals for research activities concerning the summer flounder, scup, black sea bass, *Loligo* squid, *Illex* squid, Atlantic mackerel, butterfish, bluefish, and tilefish fisheries. Projects funded under an RSA allocation (or award) must enhance the understanding of the fishery resource or contribute to the body of information on which management decisions are made.

DATES: Applications must be received on or before 5 p.m. eastern standard time on May 18, 2005.

ADDRESSES: Electronic application submissions must be transmitted on-line through *http://www.grants.gov*. Paper applications must be sent to NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Complete information about this program and application instructions are contained in the Federal Funding Opportunity notice at *http://www.grants.gov*.

FOR FURTHER INFORMATION CONTACT: Additional information may be obtained

from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, by phone 302–674–2331 ext. 19, or by fax 302–674–5399; Shannon Lyons, Assistant Fishery Plan Coordinator, Mid-Atlantic Fishery Management Council, by phone 302–674–2331 ext. 11, or by email at *slyons@mafmc.org*; or Paul Perra, Fishery Policy Analyst, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930, by phone 978–281–9153, by fax 978–281–9135, or by e-mail at *paul.perra@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access:

Application information is available at *www.grants.gov*. Electronic copies of the Standard Forms for submission of research proposals may be found on the Internet in a PDF (Portable Document Format) version at *http://www.rdc.noaa.gov/%7Egrants/appkit.html* under the title "Grants Management Division- Application Toolkit." Applicants without Internet access can contact Rich Maney, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930, or by phone 978–281–9265, by fax 978–281–9117, or by e-mail at *rich.maney@noaa.gov*.

Program Description

The RSA program provides a mechanism to fund research and compensate vessel owners through the sale of fish harvested under the research quota. Vessels participating in an approved research project may be authorized by the Northeast Regional Administrator, NMFS, to harvest and to land species in excess of any imposed trip limit or during fishery closures. Landings from such trips are sold to generate funds that help defray the costs associated with research projects. No Federal funds are provided for research under this notification. NMFS and the Council will give priority to funding research proposals in the following general subject areas: (1) Bycatch and discard reduction; (2) mesh and gear selectivity; (3) fishing impact on habitat; (4) cooperative stock assessment surveys; (5) improved recreational fishery data; (6) tagging studies; and (7) other research relevant to the Mid-Atlantic fisheries as further discussed in the full funding opportunity announcement, found at the Grants.Gov web site.

Funding Availability

No Federal funds are provided for research under this notification, but rather the opportunity to fish with the catch sold to generate income. The Federal Government may issue an Experimental Fishing Permit (EFP) or Letter of Acknowledgment (LOA), as applicable, which may provide special fishing privileges in response to research proposals selected under this program. The Federal Government shall not be liable for any costs incurred in the conduct of the project. In the past two to five awards have been issued. During the 2004 fishing year, the income generated ranged from $37,210 to $227,507, with an average of $120,652.

Funds generated from the RSA landings shall be used to cover the cost of the research activities, including vessel costs, and to compensate boats for expenses incurred during the collection of the set-aside species. For example, the funds may be used to pay for gear modifications, monitoring equipment, additional provisions (e.g., fuel, ice, food for scientists), or the salaries of research personnel. The Federal Government is not liable for any costs incurred by the researcher or vessel owner should the sale of the excess catch not fully reimburse the researcher or vessel owner for his/her expenses.

The Council, in consultation with the Atlantic States Marine Fisheries Commission, will incorporate the level of RSA (amounts or percentages) for each of the set-aside species for the 2006 fishing year into the Council's recommendations for annual quota specifications. NMFS will consider the recommended level of RSA as part of the associated rulemaking process.

The actual level of RSA quota available to applicants for the 2006 fishing year will depend on the TAL level specified by the Council at its quota-setting meetings in June and August 2005, and the percentage (0 to 3 percent) of the TAL recommended by the Council and approved by NMFS as the level of RSA available for 2006.

To help researchers develop proposals for the 2006 fishing year, the Table 1 (below) provides guidance on the general magnitude of RSA and estimated values that a researcher might expect to be available for fishing year 2006. Table 1 is based on proposed RSA levels available and the actual allocated RSA amounts for these fisheries for the 2005 fishing year. The table is intended only as a guide, to be used when developing research proposals for the 2006 fishing year; it does not necessarily reflect the actual RSA quota that will be allocated for fishing year 2006. Based on Council recommendations, NMFS may choose to adopt less than 3 percent of TAL as a set-aside, or decide not to adopt any set-aside for a given fishery. The estimated values of the set-aside allocations will vary depending on market considerations prevailing at the time the research trips are conducted. In October 2002, the Council voted to set the RSA for tilefish at zero until a completed stock assessment exists. However, tilefish RSA projects may be considered upon the completion of a stock assessment and/or by utilizing RSA quota from other species. The 2006 final specifications used to determine the amount of set-aside for each species will be published separately.

TABLE 1. EXAMPLES OF RSA AMOUNTS BASED ON 2005 FMP SPECIFICATIONS

Allocation Species	Amount Available* (lb)	2005 RSA Amount (lb)	2005 RSA Est. Value
Summer Flounder	909,000	353,917	$569,806
Scup	495,000	303,675	$182,205
Black Sea Bass	246,000	109,500	$221,190
Loligo Squid	1,124,357	502,350	$378,250
Illex Squid	1,797,328	none requested	NA
Atlantic Mackerel	7,605,948	none requested	NA
Butterfish	111,179	none requested	NA
Bluefish	925,590	363,677	$105,466
Tilefish	0	0	NA

*Amount available based on proposed 2005 FMP specifications.

Program Priorities

Projects funded under an RSA allocation (or award) must enhance understanding of the fishery resource or contribute to the body of information on which management decisions are made. Research and additional fishing voyages to obtain fish for compensation, may be conducted as specified in the EFP or LOA, as applicable, in or outside of a closed area, within the time frame of a commercial quota closure, and onboard a fishing or other type of vessel including recreational and/or commercial vessels.

The Council and NMFS will give priority to funding research proposals in areas identified as research priorities by the Council and Atlantic States Marine Fisheries Commission (Commission) for the 2006 fishing year.

Statutory Authority

Grants are issued pursuant to sections 303(b)(11), 402(e), and 404(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1853(b)(11), 16 U.S.C. 1881a(e), and 16 U.S.C. 1881(c), respectively.

Eligibility

Eligible applicants are institutions of higher education, hospitals, other nonprofits, commercial organizations, individuals, State, local and Native American tribal governments. Federal agencies and institutions are not eligible to receive Federal assistance under this notice. Additionally, employees of any Federal agency or Regional Fishery Management Council are ineligible to submit an application under this program. However, Council members who are not Federal employees may submit an application.

DOC/NOAA supports cultural and gender diversity and encourages women and minority individuals and groups to submit applications to the RSA program. In addition DOC/NOAA is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that work in underserved areas. DOC/NOAA encourages proposals involving any of the above institutions.

DOC/NOAA encourages applications from members of the fishing community and applications that involve fishing community cooperation and participation.

Cost Sharing Requirements

None required.

Evaluation and Selection Procedures

NMFS will solicit written technical evaluations from the Council members who make up the Research Set-Aside Committee (Committee) and three or more appropriate private and public sector experts to determine the technical merit of the proposal and to provide a rank score of the project based on the criteria described in the Evaluation Criteria section of this document. Following completion of the technical evaluation, NMFS will convene a review panel, including the Committee and technical experts, to review and individually critique the scored proposals to enhance NOAA's understanding of the proposals. Initial successful applicants may be required, in consultation with NMFS, to further refine/modify the study methodology as a condition of project approval. No consensus recommendations will be made by the Committee members, technical experts, or by the review panel.

Evaluation Criteria

1. *Importance and/or relevance of the proposed project:* This criterion ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, state or local activities. (25 points)

2. *Technical/scientific merit:* This criterion assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives. (25 points)

3. *Overall qualifications of the project:* This criterion assesses whether the applicant, and team members, possess the necessary education, experience, training, facilities and administrative resources to accomplish the project. (15 points)

4. *Project costs:* This criterion evaluates the budget to determine if it is realistic and commensurate with the project needs and time frame. (25 points)

5. *Outreach and education:* This criterion assesses whether the project involves a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources. (10 points)

The merit review ratings shall provide a rank order to the Selecting Official for final funding recommendations. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors:

1. Availability of funding.

2. Balance/distribution of funds:

a. Geographically

b. By type of institutions

c. By type of partners

d. By research areas

e. By project types

3. Whether this project duplicates other projects funded or considered for funding by NOAA or other federal agencies.

4. Program priorities and policy factors.

5. Applicant's prior award performance.

6. Partnerships and/or participation of targeted groups.

7. Adequacy of information necessary to conduct a NEPA analysis and determination.

Key program policy factors (see 4 above) to be considered by the Selecting Official are: (1) The time of year the research activities are to be conducted; (2) the ability of the proposal to meet the applicable experimental fishery requirements; (3) redundancy of research projects; and (4) logistical concerns. Therefore, the highest scoring projects may not necessarily be selected for an award. All approved research must be conducted in accordance with provisions approved by NOAA and provided in an LOA or EFP issued by NMFS. Unsuccessful applications will be returned to the submitter. Successful applications will be incorporated into the award document.

For proposals that request exemptions from existing regulations (e.g., possession limits, closed seasons), the impacts of the proposed exemptions must be analyzed. The Council will analyze these impacts as part of the impacts of the proposed specifications for the upcoming fishing year in the annual quota specification packages it submits to NMFS. However, those individuals with proposals that include vessel activities extending beyond the scope of the analysis provided by the Council may be required to provide additional analysis before issuance of an EFP. Applicants who request regulatory exemptions beyond the scope of the Council analysis may be required to adhere to the regulations governing the issuance of an EFP by NMFS. As appropriate, NMFS will consult with the Council and successful applicants to secure the information required for granting an exemption if issuance of an EFP is necessary for the research to be conducted. No research or RSA harvest quota will be allowed until NMFS notifies the applicant that the applicant's EFP request is approved.

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by NEPA, for applicant projects or proposals which are seeking NOAA federal assistance opportunities, including special fishing privileges. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA website: *http://www.nepa.noaa.gov/* including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf* and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm.*

Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). NEPA analysis for RSA projects is normally conducted by the Council through the Council's annual fishery management specifications process for RSA species. If the Council's NEPA analysis is not adequate, applicants may be required to provide additional specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying and implementing feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for the denial of an application.

Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) are applicable to this solicitation.

Universal Identifier

Applicants should be aware that, they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002, (67 FR 66177) **Federal Register** for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the internet *http://www.dunandbradstreet.com.*

Executive Order 12372

Applications under this program are subject to Executive Order 12372 "Intergovernmental Review of Federal Programs."

Limitation of Liability

Funding for programs listed in this notice is contingent upon the availability of Fiscal Year 2005 appropriations. In no event will NOAA or the Department of Commerce be responsible for application preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF-LLL, and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

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

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: April 13, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 05–7722 Filed 4–15–05; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 05–C0008]

Nautilus, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Nautilus, Inc., containing a civil penalty of $950,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 3, 2005.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 05–C0008, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7587.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: April 4, 2005.

Todd A. Stevenson,

Secretary.

In the Matter of Nautilus, Inc.

Settlement Agreement and Order

1. This Settlement Agreement is made by and between the staff ("the staff") of

the U.S. Consumer Product Safety Commission ("the Commission") and Nautilus, Inc. ("Nautilus" or "Respondent"), a corporation, in accordance with 16 CFR 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act ("CPSA"). This Settlement Agreement and the incorporated and attached Order settle the staff's allegations set forth below.

I. The Parties

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*

3. Nautilus is a corporation organized and existing under the laws of the State of Washington with its principal corporate offices located at 1400 NE 136th Avenue, Vancouver, WA 98661. Nautilus manufactures and sells, either through retailers or direct sales methods, such as infomercials, health and fitness products under several brand names, including Bowflex.

II. Allegations of the Staff

A. Bowflex Power Pro Fitness Machines-Backboard Bench

4. Between January 1995 and December 2003, Nautilus manufactured and/or sold in commerce nationwide approximately 420,000 Bowflex Power Pro Fitness Machines equipped with a Lat Tower and a backboard bench.

5. The Bowflex Power Pro Fitness Machine is sold to, and/or is used by, consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise and is, therefore, a "consumer product" as defined in section 3(a)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2052(a)(1). Respondent is a "manufacturer" and "retailer" of the Bowflex Power Pro exercise equipment, which is "distributed in commerce" as those terms are defined in sections 3(a)(4), (6), (11), and (12) of the CPSA, 15 U.S.C. 2052(a)(4), (6), (11), and (12).

6. The Bowflex Power Pro Fitness Machine is an item of exercise equipment that uses 10 to 14 resistance rods, a pulley system, and a backboard bench. The Bowflex Power Pro's backboard bench can break apart and collapse unexpectedly during normal and foreseeable use of the exercise equipment. If a backboard bench breaks apart and collapses unexpectedly during use, it may cause the consumer to fall and suffer serious injuries.

7. Between December 1998 and July 2002, Nautilus learned of about 25 reports of consumers sustaining injuries when the Power Pro's backboard bench broke apart and collapsed unexpectedly during use of the exercise equipment. Nautilus knew of lacerations requiring sutures, back, neck, and spinal injuries.

8. In June 2000, after learning of about eight reported incidents of the Bowflex Power Pro Fitness Machine's backboard bench breaking apart and collapsing unexpectedly during use, Nautilus reinforced the backboard bench by adding a steel plate.

9. On July 1, 2002, the Commission's National Injury Information Clearinghouse forwarded to Nautilus an in-depth investigation report. In this report, a consumer alleged the backboard bench broke apart and collapsed unexpectedly during use. The consumer suffered injuries to his back, tongue, and teeth. In its letter, the Clearinghouse advised Nautilus about the CPSA's reporting requirement and the procedures for submitting a report to the Commission. At the time it received this letter from the Clearinghouse, Nautilus knew of at least 27 incident reports of which 25 claimed injuries resulting from the Bowflex Power Pro's backboard bench collapsing and breaking apart unexpectedly during use, but did not report the defect or risk to the Commission.

10. As the facts described in paragraphs 4 through 9 above show, Nautilus obtained information which reasonably supported the conclusion that the Bowflex Power Pro exercise equipment described in paragraph 4 above contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, but failed to report such information to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. 2064(b)(2) and (3).

11. By failing to furnish information as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), Nautilus violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

12. Nautilus committed this failure to timely report to the Commission "knowingly" as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), subjecting Nautilus to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

B. Bowflex Power Pro and Bowflex Ultimate Fitness Machines-Seat Pin

13. Between January 1995 to April 2004, Bowflex manufactured and/or sold in commerce nationwide approximately 420,000 Bowflex Power Pro Fitness Machines with a Lat Tower and approximately 102,000 Bowflex Ultimate Fitness Machines, respectively. Each of these items of equipment is equipped with a seat pin that is used to reposition the seat for different types of exercises.

14. The Bowflex Power Pro and Bowflex Ultimate Fitness Machines are sold to, and/or are used by, consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise and are, therefore, "consumer products" as defined in section 3(a)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2052(a)(1). Respondent is a "manufacturer" and "retailer" of the Bowflex Power Pro and Bowflex Ultimate, which are "distributed in commerce" as those terms are defined in sections 3(a)(4), (6), (11), and (12) of the CPSA, 15 U.S.C. 2052(a)(4), (6), (11), and (12).

15. The Bowflex Power Pro and Ultimate Fitness Machines are items of exercise equipment with resistance rods, pull down pulleys, and a bench. The seat pins on the Bowflex Power and Ultimate Fitness Machines can disengage or break unexpectedly during normal and foreseeable use. If a seat pin disengages or breaks unexpectedly during use, it may cause the seat to move suddenly and cause the consumer to fall and suffer serious injuries.

16. Between August 5, 2002, and April 16, 2004, the date Nautilus submitted a full report to the Commission, Nautilus learned of about 32 reports of consumers sustaining injuries when the Bowflex Power Pro's and Ultimate's seat pins disengaged or broke unexpectedly during use. Injuries reported included a blood clot, a laceration requiring sutures, pulled ligaments, and back, disc, and neck injuries.

17. As a result of the Commission's investigation of the Power Pro's backboard bench, Nautilus reviewed its products and reported on April 16, 2004, the defect associated with the fitness machines identified in paragraph 13 above.

18. As the facts described in paragraphs 13 through 17 above show, Nautilus obtained information which reasonably supported the conclusion that the Bowflex Power Pro and Ultimate Fitness Machine described in paragraph 13 above contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, but failed to report such information in a timely manner to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. 2064(b)(2) and (3).

19. By failing to furnish the information to the Commission in a

timely manner as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), Nautilus violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

20. Nautilus committed this failure to timely report to the Commission "knowingly" as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), thus subjecting Nautilus to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

C. Bowflex Power Pro Fitness Machine-Incline Support Bracket

21. Between January 1995 and April 2004, Nautilus manufactured and/or sold in commerce nationwide approximately 260,000 Bowflex Power Pro exercise equipment without a Lat Tower, which were equipped with an incline support bracket.

22. The Bowflex Power Pro Fitness Machine is sold to, and/or is used by, consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise and is, therefore a "consumer product" as defined in section 3(a)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2052(a)(1). Respondent is a "manufacturer" and "retailer" of the Bowflex Power Pro Fitness Machine, which is "distributed in commerce" as those terms are defined in sections 3(a)(4), (6), (11), and (12) of the CPSA, 15 U.S.C. 2052(a)(4), (6), (11), and (12).

23. The incline support bracket of the Bowflex Power Pro Fitness Machine can break or bend unexpectedly during normal and foreseeable use of the exercise equipment. If an incline support bracket breaks or bends unexpectedly during use, it may cause the consumer to fall and suffer serious injuries.

24. Between May 7, 2001, and April 16, 2004, the date Nautilus submitted a full report to the Commission, Nautilus was aware of approximately 28 reports of consumers sustaining injuries when the include support bracket of the Bowflex Power Pro Fitness Machine broke or bent unexpectedly during use of the exercise equipment. Injuries reported included lacerations requiring sutures, fractures, back pain, and numbness. Nautilus reported after completing the product review described in paragraph 17 above.

25. In August 2002, Nautilus made a running change to the material used in the incline support bracket to make it more robust and resistant to accidental breakage, but did not report the defect or risk to the Commission.

26. As the facts described in paragraphs 21 through 25 above show, Nautilus obtained information which reasonably supported the conclusion that the Bowflex Power Pro Fitness Machine described in paragraph 21 above contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, but failed to report such information in a timely manner to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. 2064(b)(2) and (3).

27. By failing to furnish the information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), Nautilus violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

28. Nautilus committed this failure to timely report to the Commission "knowingly" as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), thus subjecting Nautilus to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

III. Nautilus' Response

29. Nautilus denies the staff's allegations that it violated the CPSA as set forth in paragraphs 4 through 27 above.

30. Nautilus believed that injury reports about the backboard bench and incline support breakage were consistent with the type of injuries associated when exercising with the type of exercise equipment identified in paragraphs 4, 13, and 21. With respect to the seat pin, Nautilus believed that the reports of seat pin disengagement did not reflect a product defect, but instead reflected consumer error in removing and repositioning the seat pin. The product change made in August 2002 to the incline support bracket was to address warranty claims, not a recognized risk of injury.

31. Nautilus denies that a defect in any of its products caused injury to any person, or that it knowingly violated the reporting requirements of the CPSA. Nautilus is entering into this Agreement to resolve the staff's claims without the expense and distraction of litigation. By agreeing to this settlement, Nautilus does not admit any of the allegations set forth above in this Agreement, or any fault, liability or statutory or regulatory violation.

IV. Agreement of The Parties

32. The Consumer Product Safety Commission has jurisdiction over this matter and over Nautilus under the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*

33. This Agreement is entered into for settlement purposes only and does not constitute an admission by Nautilus or a determination by the Commission that the products referenced in paragraphs 4 through 26 contain or contained a defect or defects which could create a substantial product hazard or create an unreasonable risk of serious injury or death, or that nautilus knowingly violated the CPSA's reporting requirements.

34. In settlement of the staff's allegations, Nautilus agrees to pay a civil penalty in the amount of $950,000.00 as set forth in the incorporated Order.

35. This Settlement Agreement and Order resolves the failures to report set forth in paragraphs 4 through 29, above.

36. Upon final acceptance of this Agreement by the Commission and issuance of the Final order, Respondent knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with the CPSA and the underlying regulations, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

37. Upon provisional acceptance of this Agreement by the Commission, this Agreement shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written objections within 15 days, the Agreement will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

38. The Commission may publicize the terms of the Settlement Agreement and Order.

39. The Commission's Order in this matter is issued under the provisions of the CPSA, 15 U.S.C. 2051 *et seq.*, and that a violation of this Order may subject Nautilus to appropriate legal action.

40. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations apart from those contained in this Settlement Agreement and Order may not be used to vary of contradict its terms.

41. The provisions of this Settlement Agreement and Order shall apply to Nautilus and each of its successors and assigns.

42. This Settlement Agreement and Order shall expire and have no force or effect if it is not provisionally accepted by the Commission on or before April 2nd, 2005.

Respondent, Nautilus, Inc.

Dated: March 28, 2005.

Wayne Bolio,

Senior Vice President-Law and General Counsel, Nautilus, Inc., 1400 NE, 136th Avenue, Vancouver, WA 98661.

March 28, 2005.

Erika Z. Jones,

Esquire, Attorney for Nautilus, Inc., Mayer, Brown, Rowe & Maw LLP, 1909 K Street, NW., Washington, DC.

Commission Staff.

John Gibson Mullan,

Assistant Executive Director, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207–0001.

Eric L. Stone,

Director, Legal Division, Office of Compliance.

March 28, 2005.

Dennis C. Kacoyanis,

Trial Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Respondent Nautilus, Inc. and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Nautilus, Inc.; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered that the Settlement Agreement be, and hereby is, accepted; and it is

Further Ordered that upon final acceptance of the Settlement Agreement and Order, Nautilus, Inc. shall pay to the Commission a civil penalty in the amount of $950,000 within twenty (20) days after service upon Respondent of this Final Order of the Commission.

Provisionally accepted and Provisional Order issued on the 4th date of April, 2005.

By Order of the Commission.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commisison.

[FR Doc. 05–7682 Filed 4–15–05; 8:45 am]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

New Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted a proposed new public information collection requests (ICR) entitled Field Network Pilot Study Field Guidance to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Kelly Arey, (202) 606–5000, ext. 197. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: *Katherine_Astrich@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose 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, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on December 10, 2004. This comment period ended on February 8, 2005. No public comments were received.

Description: The Corporation has contracted with the Nelson A. Rockefeller Institute of Government to carry out a Field Network Pilot Study to learn how the Corporation's goals and requirements regarding sustainability, capacity building, and performance measurement are affecting the AmeriCorps program and the nonprofit organizations where AmeriCorps members serve. The Pilot Study will consider how grantee and subgrantee organizations are selected; how the Corporation communicates with grantees and subgrantees; how local contexts and available funding opportunities vary from state to state; and how the Corporation's goals and requirements fit into the context of the grantees' and subgrantees' own policies and the many diverse responsibilities they face. The Field Network Pilot Study Field Guidance will be used to assess the impact of the Corporation's policies around sustainability, capacity building, and the performance measurement initiative. Independent, local field researchers will be employed in collecting the information. During the data-gathering phase of the Pilot Study, the researchers will refer to background information about the Corporation, its programs, and the Field Network method.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Field Network Pilot Study Field Guidance.

OMB Number: None.

Agency Number: None.

Affected Public: Non-profit institutions, Government.

Total Respondents: 105.

Frequency: Once.

Average Time Per Response: 3 hours.

Estimated Total Burden Hours: 315 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: April 4, 2005.

Robert Grimm,

Director, Research and Policy Development.

[FR Doc. 05–7707 Filed 4–15–05; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the

"Corporation"), has submitted a public information collection request (ICR) entitled AmeriCorps Annual Progress Reporting Modules to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Ms. Kim Mansaray at (202) 606–5000, ext. 249. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register:**

(1) By fax to: (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: *Katherine_T._Astrich@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose 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, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on February 1, 2005. This comment period ended April 4, 2005. No public comments were received from this notice.

Description: The Corporation is seeking approval of the document entitled AmeriCorps Annual Progress Reporting Modules currently approved through emergency clearance. These progress reporting modules provide programs, grantees and the Corporation with useful output and outcome information about member enrollment and member service activities. They help track whether a program has met or is on track to meet its goals.

Type of Review: New information collection; currently approved through emergency clearance.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Annual Progress Reporting Modules.

OMB Number: 3045–0101.

Agency Number: None.

Affected Public: State government and non-profit organizations that are eligible to apply to the Corporation for grant funds.

Total Respondents: 857.

Frequency: Quarterly.

Average Time Per Response: .35 hour.

Estimated Total Burden Hours: 16,417 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: April 5, 2005.

Kim Mansaray,

Chief of Staff, AmeriCorps State and National Program.

[FR Doc. 05–7708 Filed 4–15–05; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0031]

Federal Acquisition Regulation; Submission for OMB Review; Contractor Use of Government Supply Sources

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

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning contractor use of Government supply sources. A request for public comments was published at 70 FR 5971, February 4, 2005, No comments were received.

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

DATES: Submit comments on or before May 18, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No.9000–0031, Contractor Use of Government Supply Sources, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Nelson, Contract Policy Division, GSA (202) 501–1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

When it is in the best interest of the Government and when supplies and services are required by a Government contract, contracting officers may authorize contractors to use Government supply sources in performing certain contracts.

The information informs the schedule contractor that the ordering contractor is authorized to use this Government supply source and fills the ordering contractor's order under the terms of the Government contract.

B. Annual Reporting Burden

Respondents: 300.
Responses Per Respondent: 7.
Annual Responses: 2,100.
Hours Per Response: .25.
Total Burden Hours: 525.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4775. Please cite OMB Control No. 9000–0031, Contractor Use of Government Supply Sources, in all correspondence.

Dated: April 7, 2005

Julia B. Wise

Director, Contract Policy Division.

[FR Doc. 05–7615 Filed 4–15–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0032]

Federal Acquisition Regulation; Submission for OMB Review; Contractor Use of Interagency Motor Pool Vehicles

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

ACTION: Notice of request for public comments regarding an extension to an existing clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contractor Use of Interagency Motor Pool Vehicles. A request for public comments was published at 70 FR 5971, February 4, 2005. No comments were received.

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

DATES: Submit comments on or before May 18, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Motor Pool Vehicles, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Nelson, Contract Policy Division, GSA (202) 501–1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

If it is in the best interest of the Government, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, interagency motor pool vehicles and related services. Contractors' requests for vehicles must obtain two copies of the agency authorization, the number of vehicles and related services required and period of use, a list of employees who are authorized to request the vehicles, a listing of equipment authorized to be serviced, and billing instructions and address.

A written statement that the contractor will assume, without the right of reimbursement from the Government, the cost or expense of any use of the motor pool vehicles and services not related to the performance of the contract is necessary before the contracting officer may authorize cost-reimbursement contractors to obtain interagency motor pool vehicles and related services.

The information is used by the Government to determine that it is in the Government's best interest to authorize a cost-reimbursement contractor to obtain, for official purposes only, interagency motor pool vehicles and related services, and to provide those vehicles.

B. Annual Reporting Burden

Respondents: 70.
Responses Per Respondent: 2.
Annual Responses: 140.
Hours Per Response: .5.
Total Burden Hours: 70.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Motor Pool Vehicles, in all correspondence.

Dated: April 7, 2005

Julia B. Wise

Director, Contract Policy Division

[FR Doc. 05–7616 Filed 4–15–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0059]

Federal Acquisition Regulation; Submission for OMB Review; North Carolina Sales Tax Certification

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

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning North Carolina sales tax certification. A request for public comments was published at 70 FR 5970, on February 4, 2005. No comments were received.

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

DATES: Submit comments on or before May 18, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Streets, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jerry Olson, Contract Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

The North Carolina Sales and Use Tax Act authorizes counties and incorporated cities and towns to obtain each year from the Commissioner of Revenue of the State of North Carolina a refund of sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure in North Carolina. However, to substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, or equipment by a contractor, the Government must secure from the contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales or use taxes paid. Similar certified statements by subcontractors must be obtained by the general contractor and furnished to the Government. The information is used as evidence to establish exemption from State and local taxes.

B. Annual Reporting Burden

Respondents: 424.

Responses Per Respondent: 1.

Annual Responses: 424.

Hours Per Response: .17.

Total Burden Hours: 72.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0059, North Carolina Sales Tax Certification, in all correspondence.

Dated: April 7, 2005

Julia B. Wise

Director, Contract Policy Division.

[FR Doc. 05–7617 Filed 4–15–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Institute of Pathology Scientific Advisory Board

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following open meeting:

Name of Committee: Scientific Advisory Board (SAB).

Dates of Meeting: May 19–20, 2005.

Place: The Armed Forces Institute of Pathology, 14th St. & Alaska Ave., NW., Building 54, Washington, DC 20306–6000.

Time: 8:30 a.m.–4:45 p.m. (May 19, 2005). 8 a.m.–12 p.m. (May 20, 2005).

FOR FURTHER INFORMATION CONTACT: Mr. Ridgely Rabold, Office of the Principal Deputy Director (PDD), AFIP, Building 54, Washington, DC 20306–6000, phone (202) 782–2553, e-mail: *rabold@afip.osd.mil.*

SUPPLEMENTARY INFORMATION:

General function of the board: The SAB provides scientific and professional advice and guidance on programs, policies and procedures of the AFIP.

Agenda: The Board will hear status reports form the AFIP Director, Principal Deputy Director, and each of the pathology sub-specialty departments, which the Board members will visit during the meeting.

Open board discussions: Reports will be presented on all visited departments, The reports will consist of findings, recommended areas of further research, improvement, and suggested solutions. New trends and/or technologies will be discussed and goals established. The meeting is open to the public.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–7609 Filed 4–15–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Prophylactic and Therapeutic Monoclonal Antibodies

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 10/987,533 entitled "Prophylactic and Therapeutic Monoclonal Antibodies," filed November 12, 2004. Foreign rights are also available (PCT/US04/38480). The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA–J, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: In this application are described monoclonal antibodies which specifically recognize V antigen of Y pestis and epitopes recognized by these monoclonal antibodies. Also provided are mixtures of antibodies of the present invention, as well as methods of using individual antibodies or mixtures thereof for the detection, prevention, and/or therapeutical treatment of plague infections in vitro and in vivo.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–7608 Filed 4–15–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Programmatic Environmental Impact Statement for Community Relocation, Newtok, AK

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Engineer District, Alaska, intends to prepare a Draft Programmatic Environmental Impact Statement (DEIS) to evaluate the feasibility of erosion protection measures for the community of Newtok, Alaska. Newtok, population 284 (2000 census), is a coastal community situated on the west bank of the Newtok River, just north of the Ninglick River and approximately 9 miles northwest of Nelson island, The Ninglick River connects the Bering Sea with the Baird Inlet, located farther upstream from Newtok. The village is located 94 miles

northwest of Bethel, in the Yukon-Kuskokwim Delta region of Western Alaska. The north, east, and south boundaries of the community are contiguous with the Yukon Delta National Wildlife Refuge.

The Newtok community is approximately 735 feet to the south of the encroaching Ninglick River, which is eroding toward the village at an average rate of 64 feet per year. Thermal degradation of the riverbank is causing shoreline sloughing.

A typical soil profile has deep-frozen silts layered with peat at the surface. Permafrost continuously underlies a 2-foot active layer (sometimes thicker when a greater layer of peat is present). The shoreline is highly vulnerable to flooding, especially during spring ice jams in the river or during severe westerly windstorms on the Bering Sea.

The programmatic DEIS will determine whether Federal action is warranted and will define alternative actions for Congressional consideration. Site specific alternatives will be addressed in more detail in a second tier of the EIS process.

FOR FURTHER INFORMATION CONTACT: Lizette Boyer (907) 753–2637, Alaska District, U.S. Army Corps of Engineers, Environmental Resources Section (CEPOA–EN–CW–ER), P.O. Box 6898, Elmendorf AFB, AK 99506–0898. E-mail: *Lizette.P.Boyer@poa02.usace.army.mil.*

SUPPLEMENTARY INFORMATION: This study is authorized under section 203, 33 U.S.C. Tribal Partnership Program. The community of Newtok has existed on the present town site since 1949 when they moved from Old Kealavik, 3 miles away. The people of Newtok share a strong cultural heritage with the Nelson Island communities; their ancestors have lived on the Bering Sea coast for at least 2,000 years. Relative isolation from outside influences has enabled the area to retain its traditions and customs.

The programmatic DEIS will consider various erosion protection alternatives, including relocation of the community and construction of erosion protection structures in Newtok to prevent land and property losses. The feasibility of extensive bank protection will be analyzed and compared with relocation alternatives. Relocation would mean the abandonment of the Newtok community town site near the river. Relocation alternatives include moving the people of Newtok to a larger hub community such as Bethel where they would be incorporated into the fabric of that community; moving the population to a smaller, closer community such as one of the three existing communities on Nelson Island (Toksook, Nightmure or Tununak), which would involve developing additional or shared infrastructure in those locations, or constructing a new town at a site on the north end of Nelson Island called Takikchak. The community is intent on relocating to Takikchak. The Newtok Native Corporation owns the Takikchak townsite. A portion of the land was conveyed to the Newtok Native Corporation from the Yukon Delta Fish and Wildlife Refuge in 2003 in accordance with Pub. L. 108–129. The Nelson Island area is within their traditional subsistence corridors.

Issues: The programmatic DEIS will consider the need of Newtok to preserve its community identity and the potential impacts of the alternatives on the cultural resources and infrastructure of the community. In addition, the programmatic DEIS will address the importance of maintaining the community's traditional subsistence lifestyles, while providing modern infrastructure and housing. Issues associated with relocation to an existing community include property and business losses, impacts of social/cultural changes, and impacts on the infrastructure capacity of the receiving location. Issues associated with relocation and construction of a new townsite include engineering constructability criteria and environmental suitability. Constructability criteria include geologic stability, availability of fill material, and potable water sources. Environmental issues include effects to endangered species and wildlife habitat, and justifiable and practicable mitigation measures. Other resources and concerns will be identified through scoping, public involvement, and interagency coordination.

Scoping. A copy of this notice and additional public information will be sent to interested parties to initiate scoping. All parties are invited to participate in the scoping process by identifying any additional concerns, issues, studies, and alternatives that should be considered. A scoping meeting will be held in Newtok, Alaska, in summer 2005 at a place and time to be announced. The programmatic DEIS is scheduled for release in 2007.

Guy R. McConnell,

Chief, Environmental Resources Section.

[FR Doc. 05–7607 Filed 4–15–05; 8:45 am]

BILLING CODE 3710–NL–M

ELECTION ASSISTANCE COMMISSION

Proposed Voluntary Guidance on Implementation of Statewide Voter Registration Lists

AGENCY: United States Election Assistance Commission (EAC).

ACTION: Notice; proposed guidance and request for comments.

SUMMARY: The EAC is proposing voluntary policy guidance on the interpretation of section 303(a) of the Help America Vote Act of 2002 (HAVA). HAVA was enacted to set standards for the administration of Federal elections. Included in the new standards is a requirement that each State develop and maintain a single, statewide list of registered voters. The voluntary guidance proposed by EAC will assist the States in understanding and interpreting HAVA's standards regarding statewide voter registration lists.

DATES: Submit written or electronic comments on this draft guidance on or before 5 p.m. e.d.t. on May 25, 2005.

ADDRESSES: Send comments to Juliet Thompson, General Counsel, via mail to U.S. Election Assistance Commission, 1225 New York Avenue, Suite 1100, Washington, DC 20005; via fax to 202–566–1392; or via e-mail to *guidance@eac.gov*. An electronic copy of the proposed guidance may be found on the EAC's Web site: *http://www.eac.gov*.

FOR FURTHER INFORMATION CONTACT: Juliet Thompson, General Counsel, Washington, DC, (202) 566–3100, Fax: (202) 566–1392.

Proposed Voluntary Guidance on Implementation of Statewide Voter Registration Lists

I. Introduction

The Help America Vote Act of 2002 (HAVA) requires the Chief Election Official in each State to implement a "single, uniform, official, centralized, interactive computerized statewide voter registration list." That list is to be "defined, maintained, and administered at the State level" and must contain the "name and registration information of every legally registered voter in the State."

The details of implementing these statewide voter registration lists were left to the States. However, Congress authorized the United States Election Assistance Commission (EAC) to issue voluntary guidance to assist the States with interpreting and implementing the provisions of HAVA as they relate to the requirement for a statewide voter

registration list. It is important to note, however, that the EAC does not have legal authority to interpret HAVA beyond providing voluntary guidance in assisting States and local governments to meet the requirements of HAVA. The civil enforcement of Title III of HAVA is expressly assigned to the United States Department of Justice (DOJ).

Although it is clear that a single, uniform, official, centralized, interactive computerized voter registration list is one that is technically and functionally able to perform tasks described in sections 303(a)(1)(A)(i) through 303(a)(1)(A)(vii) of HAVA, clarification is needed as to how and to what extent each of these functions must be accomplished by the statewide voter registration list. The following is interpretative guidance that clarifies the meaning of certain portions of section 303(a) of HAVA (42 U.S.C. 15483(a)).

The guidance also serves to encourage state and local election officials to work together to define and assume their appropriate responsibilities for meeting this HAVA requirement, as well as to engage other relevant stakeholders in this process.

The guidance set forth below as developed by the EAC through a process which involved holding a public meeting regarding the statewide voter registration lists as well as convening a working group of state and local election officials to assist with identifying the issues and solutions involved with implementing a statewide voter registration list. EAC held a public meeting wherein it received testimony from four state election officials whose states have implemented statewide voter registration lists, either prior to or since the passage of HAVA. Subsequently, EAC, assisted by the National Academies, convened a two-day working group meeting wherein state and local election officials discussed issues that persist in the implementation of this HAVA requirement. The working group received technical assistance from technology experts invited by the Academies and representatives of the country's motor vehicle administrators. EAC used these discussions as a basis for developing the guidance that is presented below.

The following guidance on statewide voter registration lists is restricted to issues of policy related to the development and implementation of a single, uniform, official, centralized interactive computerized statewide voter registration list. EAC and the working group of state and local election officials will continue to explore technical issues related to the maintenance and upgrade of these database systems, with assistance from the National Academies. Additional guidance and/or best practices related to these technology issues will be developed, presented for comment, and adopted in the coming months.

II. Scope and Definitions

1. Is guidance regarding statewide voter registration lists or Section 303(a) of HAVA mandatory?

No. The guidance issued here by EAC is voluntary. States can choose to adopt this guidance as interpretative of HAVA's requirement for a statewide voter registration list.

2. Who would benefit from this guidance?

This guidance is targeted to assist the States and local governments in fulfilling their requirements under Section 303(a) of HAVA. This guidance may help election officials understand HAVA's intent to comprise a single, uniform statewide voter registration list and the responsibilities that HAVA places on all election officials to assure that the names and information contained in the statewide voter registration list are accurate.

3. To whom is Section 303(a) of HAVA applicable?

The provisions of Section 303(a) apply to all States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands except those that on or after the date of enactment of HAVA had no requirement for registration of voters with respect to elections for Federal office. Currently, only North Dakota has no voter registration requirement.

4. Does this guidance in any way alter, interpret, or effect the requirements of the National Voter Registration Act of 1993?

No. Nothing in this guidance should be construed to alter, interpret or effect, in any way whatsoever, the requirements of the National Voter Registration Act of 1993, including requirements and timeframes with respect to the administration of voter registration and/or the process States must follow in removing names of registrants from the voting rolls.

5. Who is a local election official?

A local election official is the person or persons who have primary legal responsibility for determining the eligibility of an individual to vote and maintaining and updating the voter registration information of eligible voters in his/her voter registration jurisdiction.

6. Who is responsible for implementing the provisions of Section 303(a) of HAVA?

The State through the State's Chief Election Official is responsible for ensuring that the State has a single, uniform, official, centralized, interactive computerized statewide voter registration list. However, local election officials also have certain responsibilities outlined in Section 303(a) of HAVA, particularly with regard to entering voter registration information into the statewide voter registration list on an expedited basis.

7. What is the official list of voters pursuant to Section 303(a) of HAVA?

The official list is the list defined, maintained and administered by the State through the State's Chief Election Official.

III. Guidance on Statewide Voter Registration Lists

8. What types of databases meet the requirements of HAVA to generate a single, uniform voter registration list?

HAVA requires State and local election officials to use and access the same statewide voter registration list for purposes of conducting voter registration and voting in an election for Federal office. While databases hosted on a single, central platform (*e.g.*, mainframe and/or client servers) are most closely akin to the requirements of HAVE, a database which gathers its information from local voter registration databases or servers may also meet the single, uniform list requirement as long as the statewide voter registration list is defined, maintained and administered by the State (*e.g.*, the State establishes uniform software for use by all local databases) and the statewide voter registration list contains the name and registration information of every legally registered voter in the State with a unique identifier (*i.e.*, the last four digits of a Social Security Number, driver's license number, or a unique number assigned by the election official).

9. How frequently must the statewide voter registration list be synchronized with any local databases to assure that the statewide voter registration list is the single source for the names and registration information of all legally registered voters in the State?

At a minimum, the statewide voter registration list should be synchronized with local voter registration databases at least once every 24 hours to assure that the statewide voter registration list

contains the names and registration information for all legally registered voters in the State and that local election officials throughout the State have immediate electronic access to such information, as appropriate.

10. How should the statewide voter registration list be coordinated with other agency databases?

HAVA makes accurate voter registration lists a priority. States should coordinate the statewide voter registration list with other state agency databases (*e.g.*, voter registration agencies as defined by NVRA) that may contain information relevant to the statewide voter registration list.

Additionally, coordination between the statewide voter registration list and other government sources of information (*e.g.*, death and felony records) is equally critical. States should take steps to provide for regular coordination of their statewide voter registration lists with death and felony records so as to assure that the statewide voter registration list is current.

Moreover, section 303(a) of HAVA requires States to match information received on voter registration forms against drivers license and social security databases for the purpose of verifying the accuracy of the information received from all new voter registrants. Under Section 303(b), such validation provides an exemption to the voter identification requirements for first-time registrants by mail if the information matches.

11. Who should have immediate electronic access to the statewide voter registration list?

At a minimum, local election officials must have immediate electronic access to the statewide voter registration list. This means that the local official must have access through some electronic connection to the official statewide voter registration list when needed to process voter registrations, assist voters, input or change data, or determine eligibility of an individual to vote. The level of access given to each user should be appropriate to the function of the user and should be established collaboratively by the State and local election officials. However, all voter registration information obtained by any local election official must be electronically entered into the statewide voter registration list on an expedited basis at the time the information is provided to the local official.

Dated: April 12, 2005.

Gracia Hillman,

Chair, Election Assistance Commission.

[FR Doc. 05–7713 Filed 4–15–05; 8:45 am]

BILLING CODE 6820–YN–M

DEPARTMENT OF ENERGY

[Docket No. EA–302]

Application To Export Electric Energy; Duke Energy Marketing America, L.L.C.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Duke Energy Marketing America, L.L.C. (DEMA) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before May 18, 2005.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Systems (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On March 23, 2005, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from DEMA to transmit electric energy from the United States to Canada. DEMA is wholly owned by Duke Energy North America, LLC (a subsidiary of Duke Energy Corporation). DEMA does not own, operate or control any electric power generation, transmission or distribution facilities. DEMA has requested an electricity export authorization with a 5-year term. The electric energy which DEMA proposes to export to Canada would be purchased from electric utilities and Federal power marketing agencies within the U.S.

DEMA proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power/Excel, Vermont Electric Power Company and Vermont Electric Transmission Company.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by DEMA, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the DEMA application to export electric energy to Canada should be clearly marked with Docket EA–302. Additional copies are to be filed directly with Gordon J. Smith, John & Hengerer, 1200 17th Street, NW., Suite 600, Washington, DC 20036–3013 and David W. Wright, Duke Energy Marketing America, L.L.C., 5400 Westheimer Ct., Houston, Texas 77056.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home page at *http://www.fe.de.gov*. Upon reaching the Fossil Energy home page, select "Electricity Regulation," and then "Pending Procedures" from the options menus.

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

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Fossil Energy.

[FR Doc. 05–7693 Filed 4–15–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Dockets No. EA–176–B]

Application To Export Electric Energy; Sempra Energy Trading Corporation

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Sempra Energy Trading Corporation (SET) has applied to renew its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before May 18, 2005.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On March 25, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA–176 authorizing SET to transmit electric energy from the United States to Mexico as a power marketer. On May 3, 2000, in Order No. EA–176–A, FE renewed SET's authorization to export electric energy to Canada for a five-year term that will expire on May 3, 2005.

On April 5, 2005, SET filed an application with FE for renewal of the export authority contained in Order No. EA–176–A for an additional five-year term. SET proposes to export electric energy to Mexico and to arrange for the delivery of those exports over the international transmission facilities presently owned by San Diego Gas & Electric, El Paso Electric Company, Central Power & Light Company, Sharyland Utilities, and Comision Federal de Electricidad, the national electric utility of Mexico.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the dates listed above.

Comments on the SET application to export electric energy to Mexico should be clearly marked with Docket EA–176–B. Additional copies are to be filed directly with Michael A. Goldstein, Esq. Senior Vice President and General Counsel, Sempra Energy Trading Corporation, 56 Commerce Road, Stamford, CT 06902.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy home page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select "Electricity Regulation," and then "Pending Proceedings" from the options menus.

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

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Fossil Energy.

[FR Doc. 05–7696 Filed 4–15–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register.**

DATES: Thursday, May 5, 2005, 6 p.m. to 9 p.m.

ADDRESSES: College Hill Library, Room L–107, Front Range Community College, 3705 W. 112th Avenue, Westminster, Colorado.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Executive Director, Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO 80403; telephone (303) 966–7855; fax (303) 966–7856.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Presentation and Discussion on the Draft Rocky Flats Remedial Investigation/Feasibility Study Report.

2. Update on the Independent Validation and Verification of Rocky Flats Cleanup.

3. Discussion of Comments on the Memorandum of Understanding between the Departments of Energy and Interior for the Rocky Flats National Wildlife Refuge.

4. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the office of the Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO 80403; telephone (303) 966–7855. Hours of operations are 7:30 a.m. to 4 p.m., Monday through Friday. Minutes will also be made available by writing or calling Ken Korkia at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC on April 13, 2005.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–7695 Filed 4–15–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–66–000, et al.]

Morgan Stanley Capital Group Inc., et al.; Electric Rate and Corporate Filings

April 11, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Morgan Stanley Capital Group Inc., South Eastern Electric Development Corporation, South Eastern Generating Corporation

[Docket No. EC05–66–000]

Take notice that on April 6, 2005, Morgan Stanley Capital Group Inc. (MSCG), South Eastern Electric Development Corporation (SEEDCO), and South Eastern Generating Corporation (SEGCO) (collectively, Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization for MSCG's acquisition from a third-party of securities in each of SEEDCO and SEGCO. The Applicants have requested privileged treatment of certain information and documentation submitted with the application.

Comment Date: 5 p.m. eastern time on April 27, 2005.

2. Avista Energy, Inc.

[Docket No. ER96–2408–023]

Take notice that on April 4, 2005, Avista Energy, Inc., submitted proposed revisions to its First Revised Rate Schedule FERC No. 1 in compliance with the Commission's order issued March 3, 2005 in Docket No. ER99–1435–003, *et al.*, 110 FERC ¶ 61,216 (2005).

Comment Date: 5 p.m. eastern time on April 25, 2005.

3. Spokane Energy, LLC

[Docket No. ER98–4336–012]

Take notice that on April 4, 2005, Spokane Energy, LLC submitted proposed revisions to its First Revised Rate Schedule FERC No. 1 in compliance with the Commission's order issued March 3, 2005 in Docket No. ER99–1435–003, *et al.*, 110 FERC ¶ 61,216 (2005).

Comment Date: 5 p.m. eastern time on April 25, 2005.

4. Avista Corporation

[Docket No. ER99–1435–011]

Take notice that on April 4, 2005, Avista Corporation submitted proposed revisions to its FERC Electric Tariff Fifth Revised Volume No. 9 in compliance with the Commission's order issued March 3, 2005 in Docket No. ER99–1435–003, *et al.*, 110 FERC ¶ 61,216 (2005).

Comment Date: 5 p.m. eastern time on April 25, 2005.

5. Avista Turbine Power, Inc.

[Docket No. ER00–1814–006]

Take notice that on April 4, 2005, Avista Turbine Power, Inc. submitted proposed revisions to its First Revised Rate Schedule No. 1 in compliance with the Commission's order issued March 3, 2005 in Docket No. ER99–1435–003, *et al.*, 110 FERC ¶ 61,216 (2005).

Comment Date: 5 p.m. eastern time on April 25, 2005.

6. PJM Interconnection, L.L.C.; Virginia Electric and Power Company

[Docket No. ER04–829–005]

Take notice that on April 4, 2005, Virginia Electric and Power Company tender for filing changes to the PJM South Transmission Owner Agreement in compliance with the Commission's order issued March 4, 2005, 110 FERC ¶ 61,234 (2005).

Comment Date: 5 p.m. eastern time on April 25, 2005.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER05–215–002]

Take notice that on April 4, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an unexecuted Interconnection Agreement between the Midwest ISO, Prairie State Generation Company, LLC and Illinois Power Company.

The Midwest ISO states that the filing was served on the parties to the Interconnection Agreement.

Comment Date: 5 p.m. eastern time on April 25, 2005.

8. Arroyo Energy LP; Mohawk River Funding IV, L.L.C.; Utility Contract Funding, L.L.C.; Thermo Cogeneration Partnership, L.P.; Cedar Brakes I, L.L.C.; Cedar Brakes II, L.L.C.

[Docket Nos. ER05–375–001, ER02–1582–002, ER02–2102–003, ER02–1785–002, ER00–2885–004, ER01–2765–003]

Take notice that on April 4, 2005, Arroyo Energy LP, Mohawk River Funding IV, L.L.C., Utility Contract Funding, L.L.C., Thermo Cogeneration Partnership. L.P., Cedar Brakes I, L.L.C. and Cedar Brakes II, L.L.C. (collectively, the Filing Entities) filed a Notification of Change of Status notifying the Commission that each of the Filing Entities had become affiliated with, or that there were applications pending that would result in them being affiliated with, entities that sell energy an/or capacity in wholesale electricity markets.

The Filing Entities state that copies of the filing were served on the parties on the official service list in these proceedings.

Comment Date: 5 p.m. eastern time on April 25, 2005.

9. El Paso Electric Company

[Docket No. ER05–427–001]

Take notice that on April 4, 2005, El Paso Electric Company (EPE) submitted a compliance filing pursuant to the Commission's letter order issued March 4, 2005 in Docket No. ER05–427–000.

Comment Date: 5 p.m. eastern time on April 25, 2005.

10. Niagara Mohawk Power Corporation

[Docket No. ER05–775–000]

Take notice that on April 4, 2005, Niagara Mohawk Power Corporation, a National Grid company (Niagara Mohawk), submitted Notices of Cancellation for the following service agreements under Niagara Mohawk's FERC Electric Tariff, Volume No. 3: Service Agreement Nos. 1 through 28 (inclusive), 30, 31, 32, 34, 35, 37, 38, 39, 59, 64, 65, 72, 78, 79, 80, 86, 90, 96, 101, 124, 125, 126, 128, 131, 134, 143, 145, 148, 150, 152, 162, 163, 167, 173, 182, 184, 188, 190, 194, 201, 206, 212, and 222. Niagara Mohawk states that these service agreements should be cancelled because they have terminated by their own terms and the parties to the agreements no longer take service from Niagara Mohawk.

Niagara Mohawk states that a copy of this filing has been served upon the parties to the various agreements, New York Independent System Operator, and the New York State utility commission.

Comment Date: 5 p.m. eastern time on April 25, 2005.

11. Florida Keys Electric Cooperative Association, Inc.

[Docket No. ER05–776–000]

Take notice that on April 4, 2005, Florida Keys Electric Cooperative Association, Inc. (FKEC) tendered for filing a revised rate for non-firm transmission service provided to Keys Energy Services, Key West, Florida (KES) in accordance with the terms and conditions of the Long-Term Joint Investment Transmission Agreement between KFEC and KES.

FKEC states that the filing has been served on KES and the Florida Public Service Commission.

Comment Date: 5 p.m. eastern time on April 25, 2005.

12. Puget Sound Energy, Inc.

[Docket No. ER05–778–000]

Take notice that on April 4, 2005, Puget Sound Energy, Inc. (PSE) tendered for filing a Non-Standard Provisions Agreement under the Western System Power Pool Agreement between PSE and Calpine Energy Management, L.P. (CEM). PSE requests an effective date of June 6, 2005.

PSE states that the filing was served on CEM.

Comment Date: 5 p.m. eastern time on April 25, 2005.

13. UAE Mecklenburg Cogeneration LP

[Docket No. ER05–779–000]

Take notice that on April 4, 2005, Virginia Electric and Power Company tender for filing a Notice of Cancellation of the market-based rate tariff of UAE Mecklenburg Cogeneration LP. Virginia Electric and Power Company requests an effective date of August 19, 2004.

Comment Date: 5 p.m. eastern time on April 25, 2005.

14. James H. Hance, Jr.

[Docket No. ID–4237–000]

Take notice that on April 4, 2005, James H. Hance, Jr., filed an application for authorization under section 305(b) of the Federal Power Act to hold interlocking positions in Duke Energy Corporation and Sprint Corporation.

Comment Date: 5 p.m. eastern time on April 25, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–1806 Filed 4–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program—Eastern Division—Notice of Proposed Transmission and Ancillary Services Rates—Rate Order No. WAPA–122

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Transmission and Ancillary Services Rates.

SUMMARY: The Western Area Power Administration (Western) is proposing a minor transmission and ancillary services rate adjustment for the Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP—ED). The P–SMBP—ED transmission and ancillary service rate schedules will expire on September 30, 2005. The proposed rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of required investment within the allowable periods. Western will prepare a brochure providing detailed information on the rates to all interested parties. Western intends to conduct the public participation according to the minor rate adjustment process as defined in the Department of Energy's (DOE) Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions. Western expects the proposed rates to go into effect October 1, 2005, and remain in effect through September 30, 2010. Publication of this **Federal Register** notice begins the formal process for the proposed rates.

DATES: The consultation and comment period begins today and will end May 18, 2005. Western will accept written comments anytime during the consultation and comment period.

ADDRESSES: Send written comments to Robert J. Harris, Regional Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, or e-mail at *UGP_ISRate@wapa.gov.* Western will post information about the rate process on its Web site at *http://www.wapa.gov/ugp/rates/2005ISRateAdj/default.htm.* Western will post official comments received via letter and e-mail to its Web site after the close of the comment period. Western must receive written comments by the end of the consultation and comment period to ensure they are considered in Western's decision process.

FOR FURTHER INFORMATION CONTACT: Mr. Jon R. Horst, Rates Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, telephone (406) 247–7444, e-mail *horst@wapa.gov.*

SUPPLEMENTARY INFORMATION: The Deputy Secretary of Energy approved Rate Schedules UGP–FPT1, UGP–NFPT1, UGP–NT1, UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, and UGP–AS6 for P–SMBP—ED firm and non-firm transmission rates and ancillary services rates on August 1, 1998, Rate Order No. WAPA–79. The Federal Energy Regulatory Commission (Commission) confirmed and approved the rate schedules on November 25, 1998, under FERC Docket No. EF98–5031–000. These rate schedules were then extended through September 30, 2005, by Rate Order No. WAPA–100, which was confirmed and approved by the Commission on December 16, 2003, under FERC Docket No. EF03–5032–000. The rate schedules for Rate Order No. WAPA–79 and Rate Order No. WAPA–100 contain formulary rates that are recalculated yearly using the fixed charge rate methodology. The proposed formulary rates will continue to use the fixed charge rate methodology and will continue to be recalculated from yearly updated financial and load data. However, the Generator Step Up Transformers are proposed for removal from the transmission revenue requirement. After the approval of the original transmission and ancillary service rates for P–SMBP—ED the Commission decided that Generator Step Up Transformers should not be included in transmission rates for jurisdictional utilities. Consistent with Western's goal to observe Commission precedent to the extent consistent with its mission and permitted by law and

regulation, the transmission and ancillary services rates are being modified. The removal of the Generator Step Up Transformers will produce less than a 1-percent change in the annual revenues for the P–SMBP—ED under Rate Order No. WAPA–100 based on the 2004–2005 rate calculation. Therefore, Western intends to conduct the public participation according to a minor rate adjustment process as defined in the DOE Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions. Western intends for the proposed rate to go into effect October 1, 2005, and remain in effect through September 30, 2010.

Under Rate Schedule UGP–FPT1, the 2004–2005 existing rate for Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service is $2.72 per kilowattmonth (kWmonth). The proposed rate for Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service is $2.69/KWmonth. Under Rate Schedule UGP–NFPT1, the existing rate calculation for Non-Firm Point-to-Point Transmission Service is 3.73 mills per kilowatthour (kWh). The proposed rate for Non-Firm Point-to-Point Transmission Service is 3.68 mills per kWh. Under Rate Schedule UGP–NT1 the existing annual revenue requirement for Network Integration Transmission Service is $128,017,923. The proposed annual revenue requirement for Network Integration Transmission service is $126,741,576.

Under Rate Schedule UGP–AS1, the existing rate for Scheduling System Control and Dispatch (Scheduling and Dispatch) Service is $49.29/schedule/day. The proposed rate for Scheduling and Dispatch Service is $49.77/schedule/day. Under Rate Schedule UGP–AS2, the existing rate for Reactive Supply and Voltage Control from Generation Sources (Reactive) Service is $0.06/kWmonth. The propose rate for Reactive Service is $0.07/kWmonth. Under Rate Schedule UGP–AS3, the existing rate calculated for Regulation and Frequency Response (Regulation) Service is $0.04/kWmonth. The proposed rate for Regulation Service is $0.05/kWmonth. Under Rate Schedule UGP–AS4, there is no change in the rate for Energy Imbalance Service between the existing and the proposed rates. Under Rate Schedules UGP–AS5 and UGP–AS6, the existing rate calculated for Reserves is $0.11/kWmonth. The proposed rate for Reserves is $0.12/kWmonth.

The impact to total transmission rates, including firm/non-firm/network and ancillary services is less than a 1-percent change in annual revenues. The proposed rates will result in a decrease of 0.5765 percent in annual revenues. The revenue requirements for the individual services and comparison values are outlined in the following table.

Service	Existing revenue requirement	Proposed revenue requirement	Percentage change
Transmission	$128,017,923	$126,741,576	−0.9970
Scheduling and Dispatch	3,373,281	3,406,102	0.9729
Reactive	2,736,253	3,065,568	12.0352
Reserves	1,895,268	2,009,276	6.0154
Regulation	1,065,771	1,075,623	0.9243

Legal Authority

Because the proposed removal of Generator Step Up Transformers results in less than a 1-percent change in annual transmission revenues for the P–SMBP—ED under Rate Order WAPA–100, the proposed rates constitute a minor rate adjustment as defined by 10 CFR part 903. Consistent with these regulations, Western has elected not to hold either a public information forum or a public comment forum. After review and consideration of public comments related to the proposed rate extension, Western will submit proposed rates to the Deputy Secretary of Energy for approval on an interim basis.

Western is establishing Integrated System Transmission and Ancillary Service Rates for P–SMBP—ED under the Department of Energy Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s); and other acts specifically applicable to the projects involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985 (50 FR 37835).

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents that Western initiates or uses to develop the proposed rates are available for inspection and copying at the Upper Great Plains Regional Office, located at 2900 4th Avenue North, Billings, Montana. Many of these documents and supporting information are also available on its Web site under the "2005 IS Rate Adjustment" section located at *http://www.wapa.gov/ugp/rates/2005ISRateAdj/default.htm.*

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. This action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR part 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: April 1, 2005.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 05–7694 Filed 4–15–05; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7900–9]

Mid/Atlantic Visibility Union (MANE–VU) Annual Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the 2005 Annual Board Meeting of the Mid-Atlantic Northeast/ Visibility Union (MANE–VU). This meeting will deal with appropriate matters relating to Regional Haze and visibility improvement in Federal Class I areas within MANE–VU.

DATES: The meeting will be held on May 5, 2005 starting at 9 a.m. (e.s.t.).

ADDRESSES: The Lucerne Inn, Route 1A, Lucerne-in-Mane, Dedham, Maine 04429; (207) 843–5123.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, Associate Director, Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103; (215) 814–2100. For Documents and Press Inquiries Contact: Ozone Transport Commission (OTC), 444 North Capitol Street NW., Suite 638, Washington, DC 20001; (202) 508–3840; e-mail: *ozone@otcair,org*; Web site *http://www.otcair,org.*

SUPPLEMENTARY INFORMATION: The Mid-Atlantic/Northeast Visibility Union MANE–VU's was formed in 2001, in response to EPA's issuance of the Regional Haze rule. MANE–VU's members include Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, the Penobscot Indian National, the St. Regis Mohawk Tribe along with EPA and Federal Land Managers. This meeting will be open to the public.

Type of Meeting: Open.

Agenda: Copies of the final agenda are available from the OTC office (202) 508–3840, by e-mail: *ozone@otcair.org* or via the OTC Web site at *http://www.otcair.org.*

Dated: April 13, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–7719 Filed 4–15–05; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0024; FRL–7703–6]

Utah State Plan for Certification of Applicators of Restricted Use Pesticides; Notice of Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In the **Federal Register** of January 10, 2005, EPA issued a notice of intent to approve an amended Utah Plan for the certification of applicators of restricted use pesticides. In the notice EPA solicited comments from the public on the proposed action to approve the amended Utah Plan. The amended Certification Plan Utah submitted to EPA contained several changes to its current Certification Plan. The proposed amendments add new subcategories as well as a Memorandum of Understanding regarding future implementation of an EPA federal pesticide certification program for the Navajo Indian Country. No comments were received and EPA hereby approves the amended Utah Plan.

ADDRESSES: The amended Utah Certification Plan can be reviewed at the locations listed under Unit I.B. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Pesticide Program, 8P–P3T, Environmental Protection Agency, Region VIII, 999 18th St., Suite 300, Denver, CO 80202–2466; telephone number: (303) 312–6617; e-mail address: *barron.barbara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those involved in agriculture and anyone involved with the distribution and application of pesticides for agricultural purposes. Others involved with pesticides in a non-agricultural setting may also be affected. In addition, it may be of interest to others, such as, those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0024. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically.

Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

In addition to the sources listed in this unit, you may obtain copies of the amended Utah Certification Plan, other related documents, or additional information by contacting:

1. Barbara Barron at the address listed under **FOR FURTHER INFORMATION CONTACT**.

2. Jeanne Kasai, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3240; e-mail address: *kasai.jeanne@epa.gov*.

II. What Action is the Agency Taking?

EPA is approving the amended Utah Certification Plan. This approval is based upon the EPA review of the Utah Plan and finding it in compliance with FIFRA and 40 CFR part 171. Further, there were no public comments submitted regarding the **Federal Register** notice of January 10, 2005 (70 FR 1708, FRL–7344–9). The amended Utah Certification Plan is therefore approved.

List of Subjects

Environmental protection, Education, Pesticides and pests.

Dated: March 28, 2005.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 05–7720 Filed 4–15–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 2, 2005.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Bedell, Donald C., Sikeston, Missouri; to acquire voting shares of First Community Bancshares, Inc., and thereby indirectly acquire voting shares of First Community Bank of Batesville, both in Batesville, Arkansas.

Board of Governors of the Federal Reserve System, April 12, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–7653 Filed 4–17–05; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0080]

General Services Administration Acquisition Regulation; Information Collection; Contract Financing

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding contract financing. A request for public comments was published at 69 FR 62898, October 28, 2004. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: May 18, 2005.

FOR FURTHER INFORMATION CONTACT: Jerry Olson, Contract Policy Division, at telephone (202) 501–3221 or via e-mail to *jerry.olson@gsa.gov*.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB No. 3090–0080, Contract Financing, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

GSAR clause 552.232–72 requires building services contractors to submit a release of claims before final payment is made.

B. Annual Reporting Burden

Respondents: 2000
Responses Per Respondent: 1
Hours Per Response: .1
Total Burden Hours: 200
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0080, Contract Financing, in all correspondence.

Dated: April 12, 2005.

Julia Wise,

Director, Contract Policy Division.

[FR Doc. 05–7691 Filed 4–15–05; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Select Panel on Preconception Care: Meeting

Name: Select Panel on Preconception Care.

Times and Dates: 12 noon–4:30 p.m., June 22, 2005. 8 a.m.–4:30 p.m., June 23, 2005.

Place: Marriott Century Center, 2000 Century Blvd NE. Atlanta, GA 30345. (404) 325–0000, fax (404) 325–4920.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 65 people.

Purpose: The purpose of this meeting is to seek the individual input of invited panelist, along with that of their peers, in drafting national recommendations for preconception care. The Select Panel on Preconception Care will consist of

nationally recognized experts from a variety of disciplines—all which focus on preconception interventions aimed at promoting women's health and reducing adverse perinatal outcomes. The group will include experts in obstetrics, family practice, pediatrics, public health, nursing, reproductive health, toxic exposures, and chronic and infectious disease.

Matters To Be Discussed: Agenda items include: a review and discussion of relevant issues arising out of the National Summit on Preconception Care; the identification of priority areas for the development of recommendations; discussion of recommended interventions both before the first pregnancy and between pregnancies (*i.e.*, preconception and interconception care), and on population-based and individual-level interventions; and the reconvening of the Panel to finalize recommendations. Additional agenda items include: updates from organizational representatives (*i.e.*, March of Dimes, American College of Obstetrics and Gynecology) on current initiatives; an update on activities from CDC preconception care workgroup representatives, future topics and scheduling the next meeting.

Agenda items are subject to change as priorities dictate.

For Further Information Conctact: Christopher S. Parker, MPH, MPA, Designated Federal Official, National Center on Birth Defects and Developmental Disabilities, CDC, 1600 Clifton Road, NE., (E–86), Atlanta, Georgia 30333, telephone 404/498–3098, and fax 404/498–3820.

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 the CDC and ATSDR.

Dated: April 11, 2005.

Diane Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–7681 Filed 4–15–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services ("HHS") gives notice of a decision to designate a class of employees at the Mallinckrodt Chemical Company, Destrehan Street Plant, in Saint Louis, Missouri as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On April 11, 2005, the Secretary of HHS designated the following class of employees as an addition to the SEC:

Employees of the Department of Energy (DOE) or DOE contractors or subcontractors employed by the Uranium Division of Mallinckrodt Chemical Works, Destrehan Street Facility, during the period from 1942 through 1948 and whom were employed for a number of work days aggregating at least 250 work days either solely under this employment or in combination with work days within the parameters (excluding aggregate work day requirements) established for other classes of employees included in the SEC.

This designation will become effective on May 12, 2005, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

Dated: April 13, 2005.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 05–7697 Filed 4–15–05; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–209]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health, and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Laboratory Personnel Report (Clinical Laboratory Improvement Amendments of 1988(CLIA)) and Supporting Regulations in 42 CFR 493.1357, 493.1363, 493.1405, 493.1406, 493.1411, 493.1417, 493.1423, 493.1443, 493.1449, 493.1455, 493.1461, 493.1462, 493.1469, 493.1483, 493.1489, and 493.1491; *Use:* This form is used by the State agency to determine a laboratory's compliance with personnel qualifications under CLIA. This information is needed for a laboratory's certification and recertification; Form Number: CMS–209 (OMB#: 0938–0151); *Frequency:* Biennially; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 21,000; *Total Annual Responses:* 10,500; *Total Annual Hours:* 5,250.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/regulations/pra/*, or E-mail your request,

including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Christopher Martin, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 8, 2005.

Jimmy L. Wickliffe,

CMS Paperwork Reduction Act Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group.

[FR Doc. 05–7744 Filed 4–15–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Community Services; Community Services Block Grant Program; Community Economic Development; Discretionary Grant Program—Operational Projects

Announcement Type: Initial.

Funding Opportunity Number: HHS–2005–ACF–OCS–EE–0019.

CFDA Number: 93.570.

Due Date for Applications: Application is due June 17, 2005.

Executive Summary: The Community Services Block Grant (CSBG) Act of 1981, as amended, (Section 680 (a)(2) of the Community Opportunities, Accountability, and Training and Educational Services Act of 1998), authorizes the Secretary of the U.S. Department of Health and Human Services to make grants to provide technical and financial assistance for economic development activities designed to address the economic needs of low-income individuals and families by creating employment and business development opportunities. Pursuant to this Announcement, OCS will award operational project grants to Community Development Corporations (CDCs) that are experienced in implementing economic development projects. The primary purpose of the Operational Projects (OPs) is to assist eligible CDCs, including American Indian and Native Alaskan, and faith based organizations that are CDCs that have in place: (1) Written commitments for all projected non-Community Economic Development (CED) funding, (2) project operations, (3) site control for their economic development projects and (4) referral sources (from which low-income individuals will be referred to the project). Low-income beneficiaries of such projects include those who are living in poverty as determined by the HHS Guidelines on Poverty (at *http://aspe.hhs.gov/poverty/poverty.shtml*). They may be unemployed; public assistance recipients, including recipients of Temporary Assistance for Needy Families (TANF), individuals transitioning from the prison system into the community, at-risk youth, custodial and non-custodial parents; residents living in public housing; persons with disabilities; and persons who are homeless. Operational Projects are designed to encourage rural and urban community development corporations to create projects intended to provide employment and business development opportunities for low-income people through business or commercial development. The opportunities must aim to improve the quality of the economic and social environment of TANF recipients; low-income residents including displaced workers; individuals transitioning from the prison system into the community; at-risk youth; non-custodial parents, particularly those of children receiving TANF assistance; individuals residing in public housing; individuals who are homeless; and individuals with disabilities. Grant funds under this announcement are intended to provide resources to eligible applicants (CDCs) but also have the broader objectives of arresting tendencies toward dependency, chronic unemployment, and community deterioration in urban and rural areas. Eligible applicants must submit a business plan that shows the economic feasibility of the venture. Applicants for an OP must have in place written commitments for all projected non-CED funding required for the project. Written proof of commitments from third parties must be submitted with the application. Letters of support, only, are insufficient. The application must also clearly document in detail the extent to which site control has been acquired.

I. Funding Opportunity Description

The Community Services Block Grant (CSBG) Act of 1981, as amended, (Section 680 (a)(2) of the Community Opportunities, Accountability, and Training and Educational Services Act of 1998), authorizes the Secretary of the U.S. Department of Health and Human Services to make grants to provide technical and financial assistance for economic development activities designed to address the economic needs of low-income individuals and families by creating employment and business development opportunities. Pursuant to this Announcement, OCS will award Operational Project grants to Community Development Corporations (CDCs) that are experienced in implementing economic development projects. CDCs participating in the Weed and Seed Program under the Department of Justice are encouraged to apply for funding for their revitalization effort.

The primary purpose of the Operational Projects (OPs) is to assist eligible CDCs that have in place (1) written commitments for all projected non-CED funding, (2) project operations, (3) site control for their economic development project and (4) referral sources (which low-income individuals will be referred to the project). Eligible applicants must submit a business plan that shows the economic feasibility of the venture. Applicants for an OP must have in place written commitments for all projected non-CED funding required for the project. Written proof of commitments from third parties must be submitted with the application. Letters of support, only, are insufficient. The application must also detail the extent to which site control has been acquired. Low-income beneficiaries of such projects include those who are living in poverty as determined by the HHS Guidelines on Poverty at *http://aspe.hhs.gov/poverty/poverty.shtml.*

They may be unemployed, public assistance recipients, including recipients of Temporary Assistance for Needy Families (TANF), at-risk youth, custodial and non-custodial parents, public housing residents, persons with disabilities and persons who are homeless.

Operational Projects are designed to encourage rural and urban community development corporations to create projects intended to provide employment and business development opportunities for low-income people through business or commercial development. Generally, the opportunities must aim to improve the quality of the economic and social environment of TANF recipients; low-income residents including displaced workers; persons transitioning from prison back into the community; ex-offenders; at-risk youth; non-custodial parents, particularly those of children receiving TANF assistance; individuals residing in public housing; individuals who are homeless; and individuals with disabilities. Grant funds under this announcement are intended to provide

resources to eligible applicants (CDCs) but also have the broader objectives of arresting tendencies toward dependency, chronic unemployment, and community deterioration in urban and rural areas.

Project Goals

CED projects should further HHS goals of strengthening American families and promoting their self-sufficiency, and OCS goals of promoting healthy families in healthy communities. The CED Program is particularly directed toward public-private partnerships that develop employment and business opportunities for low-income people and revitalize distressed communities.

Project Scope

Projects may include business start-ups, business expansions, development of new products and services, and other newly-undertaken physical and commercial activities. Projects must result in creation of new jobs. Each applicant must describe the project scope including the low-income community to be served, business activities to be undertaken and the types of jobs to be created.

Definitions of Terms

The following definitions apply:

—Beneficiaries—Low-income individuals (as defined in the most recent annual revision of the Poverty Income Guidelines published by the U.S. Department of Health and Human Services) who receive direct benefits and low-income communities that receive direct benefits.

—Budget Period—The time interval into which a grant period is divided for budgetary and funding purposes.

—Business Start-up Period—Time interval within which the grantee completes preliminary project tasks. These tasks include but are not limited to assembling key staff, executing contracts, administering lease-out or build-out of space for occupancy, purchasing plant and equipment and other similar activities. The Business Start-Up Period typically takes three to six months from the time OCS awards the grant or cooperative agreement.

—Cash contributions—The recipient's cash outlay, including the outlay of money contributed to the recipient by the third parties.

—Community Development Corporation (CDC)—A private, non-profit corporation governed by a board of directors consisting of residents of the community and business and civic leaders, which has as a principal purpose planning, developing, or managing low-income housing or community development activities, may include American Indian and Native Alaskan and faith-based organizations that are CDCs.

—Community Economic Development (CED)—A process by which a community uses resources to attract capital and increase physical, commercial, and business development, as well as job opportunities for its residents.

—Construction projects—Projects that involve the initial building or large scale modernization or permanent improvement of a facility.

—Cooperative Agreement—An award instrument of financial assistance when substantial involvement is anticipated between the awarding office, (the Federal government) and the recipient during performance of the contemplated project.

—Developmental/Research Phase—The time interval during the Project Period that precedes the Operational Phase. Grantees accomplish preliminary activities during this phase including establishing third party agreements, mobilizing monetary funds and other resources, assembling, rezoning, and leasing of properties, conducting architectural and engineering studies, constructing facilities, etc.

—Displaced worker—An individual in the labor market who has been unemployed for six months or longer.

—Distressed community—A geographic urban neighborhood or rural community of high unemployment and pervasive poverty.

—Employment education and training program—A program that provides education and/or training to welfare recipients, at-risk youth, public housing tenants, displaced workers, homeless and low-income individuals and that has demonstrated organizational experience in education and training for these populations.

—Empowerment Zone and Enterprise Community Project Areas (EZ/EC)—Urban neighborhoods and rural areas designated as such by the Secretaries of Housing and Urban Development and Agriculture.

—Equity investment—The provision of capital to a business entity for some specified purpose in return for a portion of ownership using a third-party agreement as the contractual instrument.

—Faith-Based Community Development Corporation—A community development corporation that has a religious character.

—Hypothesis—An assumption made in order to test a theory. It should assert a cause-and-effect relationship between a program intervention and its expected result. Both the intervention and its result must be measured in order to confirm the hypothesis. The following is a hypothesis: "Eighty hours of classroom training will be sufficient for participants to prepare a successful loan application." In this example, data would be obtained on the number of hours of training actually received by participants (the intervention), and the quality of loan applications (the result), to determine the validity of the hypothesis (that eighty hours of training is sufficient to produce the result).

—Indirect Costs—This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

—Intervention—Any planned activity within a project that is intended to produce changes in the target population and/or the environment and that can be formally evaluated. For example, assistance in the preparation of a business plan is an intervention.

—Job creation—New jobs, *i.e.*, jobs not in existence prior to the start of the project, that result from new business start-ups, business expansion, development of new services industries, and/or other newly-undertaken physical or commercial activities.

—Job placement—Placing a person in an existing vacant job of a business, service, or commercial activity not related to new development or expansion activity.

—Letter of commitment—A signed letter or agreement from a third party to the applicant that pledges financial or other support for the grant activities contingent only on OCS accepting the applicant's project proposal.

—Loan—Money lent to a borrower under a binding pledge for a given purpose to be repaid, usually at a stated rate of interest and within a specified period.

—Low-Income Beneficiaries—Individuals whose family's taxable income for the preceding year did not exceed 150 percent of the poverty level amount.

—Non-profit Organization—An organization, including faith-based and community-based, that provides proof of non-profit status described in the "Additional Information on

Eligibility" section of this announcement.

—Operational Phase—The time interval during the Project Period when businesses, commercial development or other activities are in operation, and employment, business development assistance, and so forth are provided.

—Outcome evaluation—An assessment of project results as measured by collected data that define the net effects of the interventions applied in the project. An outcome evaluation will produce and interpret findings related to whether the interventions produced desirable changes and their potential for being replicated.

—Poverty Income Guidelines—Guidelines published annually by the U.S. Department of Health and Human Services that establish the level of poverty defined as low-income for individuals and their families. The guideline information is posted on the Internet at the following address: *http://aspe.hhs.gov/poverty/poverty.shtml.*

—Process evaluation—The ongoing examination of the implementation of a program. It focuses on the effectiveness and efficiency of the program's activities and interventions (for example, methods of recruiting participants, quality of training activities, or usefulness of follow-up procedures). It should answer the questions such as: Who is receiving what services and are the services being delivered as planned? It is also known as formative evaluation, because it gathers information that can be used as a management tool to improve the way a program operates while the program is in progress. It should also identify problems that occurred, how the problems were resolved and what recommendations are needed for future implementation.

—Pre-Development Phase—The time interval during the Project Period when an applicant or grantee plans a project, conducts feasibility studies, prepares a business or work plan and mobilizes non-OCS funding.

—Program income—Gross income earned by the grant recipient that is directly generated by an activity supported with grant funds.

—Project Period—The total time for which a project is approved for OCS support, including any approved extensions.

—Revolving loan fund—A capital fund established to make loans whereby repayments are re-lent to other borrowers.

—Self-employment—The employment status of an individual who engages in self-directed economic activities.

—Self-sufficiency—The economic status of a person who does not require public assistance to provide for his/her needs and that of his/her immediate family.

—Sub-award—An award of financial assistance in the form of money, or property, made under an award by a recipient to an eligible sub-recipient or by a sub-recipient to a lower tier sub-recipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in 45 CFR part 74. (**Note:** Equity investments and loan transactions are not sub-awards.)

—Technical assistance—A problem-solving event generally using the services of a specialist. Such services may be provided on-site, by telephone or by other communications. These services address specific problems and are intended to assist with immediate resolution of a given problem or set of problems.

—Temporary Assistance for Needy Families (TANF)—The Federal block grant program authorized in Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193). The TANF program transformed "welfare" into a system that requires work in exchange for time-limited assistance.

—Third party—Any individual, organization or business entity that is not the direct recipient of grant funds.

—Third party agreement—A written agreement entered into by the grantee and an organization, individual or business entity (including a wholly owned subsidiary), by which the grantee makes an equity investment or a loan in support of grant purposes.

—Third party in-kind contributions—Non-cash contributions provided by non-Federal third parties. These contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and especially identifiable to the project or program.

—Weed and Seed Program—US Department of Justice's Weed and Seed program was developed to demonstrate an innovative and comprehensive approach to law enforcement and community revitalization.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Priority Area Funding: $16,000,000.

Anticipated Number of Awards: 50 to 55.

Ceiling on Amount of Individual Awards Per Project Period: $700,000.

Floor on Amount of Individual Awards Per Project Period: None.

Average Projected Award Amount: $700,000.

Length of Project Periods: Applications for Operational Projects, either exclusively for construction purposes or non-construction purposes will be incrementally funded. Proposed projects must be for project periods of either three (3) or five (5) years with twelve month budget periods. Applicants can request up to $300,000 for the first year of funding. The application must include separate budgets for each of the project years with a supporting workplan that reflects the same period. For three (3) year projects, the second and third year funding cannot exceed $200,000 per year, not to exceed the balance of the total requested funding amount. For five (5) year projects, funding cannot exceed $100,000 per year, not to exceed the balance of the total requested funding amount. However, all grant funds for the subsequent years are subject to the satisfactory project performance and that the project continues to be in the best interest of the government in addition to the availability of appropriated OCS funds.

Note that the President's 2006 budget does not include or propose funding for the Community Economic Development program.

III. Eligibility Information

1. Eligible Applicants

Non-profits having a 501(c)(3) status with the IRS, other than institutions of higher education Non-profits that do not have a 501(c)(3) status with the IRS, other than institutions of higher education.

Additional Information on Eligibility

Applicants must be a private, non-profit Community Development Corporation (CDC) experienced in developing and managing economic development projects. For purposes of this grant program, the CDC must be governed by a Board of Directors consisting of residents of the community and business and civic leaders. The CDC must have as a principal purpose planning, developing, or managing low-income housing or community development activities.

Applicants must document their eligibility as a CDC for the purposes of this grant program. The application must include a list of governing board members along with their designation as a community resident, or business or civic leader. In addition, the application must include documentation that the organization has as a primary purpose planning, developing or managing low-income housing or community development activities. This documentation may include incorporation documents or other official documents that identify the organization. Applications that do not include proof of CDC status in the application will be disqualified. Applications that do not include proof of non-profit status in the application will be disqualified.

Faith-based organizations that meet the statutory requirements are eligible to apply for these grants.

2. Cost Sharing/Matching

None.

3. Other

All applicants must have a Dun & Bradstreet number. On June 27, 2003 the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a Dun & Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com*.

Non-profit organizations applying for funding are required to submit proof of their non-profit status.

Proof of non-profit status is any one of the following:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code.
- A copy of a currently valid IRS tax exemption certificate.
- A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earning accrue to any private shareholders or individuals.
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.
- Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *www.acf.hhs.gov/programs/ofs/forms.htm*.

Disqualification Factors

Applications that exceed the ceiling amount will be considered non-responsive and will not be considered for funding under this announcement.

Any application that fails to satisfy the deadline requirements referenced in Section IV.3 will be considered non-responsive and will not be considered for funding under this announcement.

IV. Application and Submission Information

1. Address to Request Application Package

Debbie Brown, Administration for Children and Families, Office of Community Services Operations Center, 1515 Wilson Blvd., Suite 100, Arlington, VA 22209, (202)401–3446, *OCSGRANTS@acf.hhs.gov*.

2. Content and Form of Application Submission

Application Content

Each application must include the following components:

1. Table of Contents

2. Project Summary/Abstract—one or two paragraphs, not to exceed 350 words, that describe the community in which the project will be implemented, beneficiaries to be served, type(s) of business(es) to be developed, type(s) of jobs to be created, projected cost-per-job, any land or building to be purchased or building constructed, resources leveraged and intended impact on the community. Note: Please see Section V.1. Criteria, for instructions on preparing the project summary/abstract and the full project description.

3. Completed Standard Form 424—that has been signed by an official of the organization applying for the grant who has legal authority to obligate the organization. Under Box 11, indicate the Priority Area for which the application is written (This announcement is for Priority Area 1—Operational Projects).

4. Standard Form 424A—Budget Information—Non-Construction Programs.

5. Standard Form 424B—Budget Information—Construction Programs.

6. Narrative Budget Justification—for each object class category required under Section B, Standard Form 424A. Applicants are encouraged to use job titles and not specific names in developing the application budget. However, the specific salary rates or amounts for staff positions identified must be included in the application budget.

7. Project Narrative—A narrative that addresses issues described in the "Application Review Information" and the "Review and Selection Criteria" sections of this announcement.

8. Private, Non-profit Community Development Corporation—Applicants must provide proof of status as a community development corporation as required by statute and as described under "Additional Information on Eligibility."

9. Sufficiency of Financial Management System—Because CED funds are Federal, all grantees must be capable of meeting the requirements of 45 CFR part 74 concerning their financial management system.

10. Business Plan—Applicants for the OP grant announcement must submit a business plan covering the following elements: For incubator or microenterprise development projects, the business plan covers the project, not the individual business plans of beneficiaries.

The business plan is a major component of the application which is used by OCS and the Office of Grants Management (OGM) to determine the feasibility of a business venture or other economic development project. It addresses all the relevant elements as follows:

Applications for Operational Projects—must submit a business plan. For microenterprise development projects, the business plan covers the project, not the individual business plans of beneficiaries. The business plan is a major component of the application used by the Office of Community

Services and the Office of Grants Management to determine the feasibility of a business venture or other economic development project. OCS applicants to must address all the relevant elements as follows:

(1) EXECUTIVE SUMMARY (limit to 2 pages)

(2) Description of the type of business.

(3) Description of the industry, current status and prospects.

(4) Products and services, including detailed descriptions of: (a) Products or services to be sold; (b) Proprietary position of any product, e.g., patents, copyright, trade secrets; (c) Features of the product or service that may give it an advantage over the competition;

(5) Market Research: This section describes the research conducted to assure that the business has a substantial market to develop and achieve sales in the face of competition. This includes researching: (a) Customer base: describe the actual and potential purchases for the product or service by market segment; (b) Market size and trends: describe the site of the current total market for the product or service offered; (c) Competition: Provide an assessment of the strengths and weaknesses of the competition in the current market; (d) Estimated market share and sales: Describe the characteristics of the product or service that will make it competitive in the current market;

(6) Marketing Plan: The marketing plan details the product, pricing, distribution, and promotion strategies that will be used to achieve the estimated market share and sales projections. The marketing plan must describe what is to be done, how it will be done and who will do it. The plan addresses overall marketing, strategy, packaging, service and warrant, pricing, distribution and promotion.

(7) Design and Development Plans: If the product, process or service of the proposed venture requires any design and development before it is ready to be placed on the market, describe the nature, extent and cost of this work. The section covers items such as development status and tasks, difficulties and risks, product improvement and new products and costs.

(8) Operations Plan: An operations plan describes the kind of facilities, site location, space, capital equipment and labor force (part-time and/or full-time and wage structure) that are required to provide the company's product or service.

(9) Management Team: This section describes the technical managerial and business skills and experience to be brought to the project. This is a description of key management personnel and their primary duties; compensation and/or ownership; the organizational structure and placement of this proposed project within the organization; the board of directors; management assistance and training needs; and supporting professional services.

(10) Overall Schedule: This section is the implementation plan which shows the timing and interrelationships of the major events or benchmarks necessary to launch the venture and realize its objectives. This includes a month-by-month schedule of activities such as product development, market planning, sales programs, production and operations and an annual schedule of the requested budget. If the proposed project is for construction, this section lays out timeframes for conduct of predevelopment, architectural, engineering and environmental and other studies, and acquisition of permits for building, use and occupancy that are required by the project.

(11) Job Creation: This section describes the job creation activities and projections expected as a result of this project. This includes a description of the strategy that will be used to identify and hire individuals who are low-income, including those on TANF. This section includes the following: (a) The number of permanent jobs that will be created during the project period, with particular emphasis on jobs for low-income individuals. (b) For low-income individuals, the number of jobs that will be filled by low-income individuals (this must be at least 60 percent of all jobs created); the number of jobs that have career development opportunities and a description of those jobs; the number of jobs that will be filled by individuals receiving TANF; the annual salary expected for each person employed. (c) For low-income individuals who become self-employed, the number of self-employed and other ownership opportunities created; specific steps to be taken including ongoing management support and technical assistance provided by the grantee or a third party to develop and sustain self-employment after the businesses are in place; and expected net profit after deductions of business expenses. **Note:** OCS will not recognize job equivalents nor job counts based on economic multiplier functions; jobs must be specifically identified.

(12) Financial Plan: The financial plan demonstrates the economic supports underpinning the project. It shows the project's potential and the timetable for financial self-sufficiency. The following exhibits must be submitted for the first three years of the business' operation: (a) Profit and Loss Forecasts—quarterly for each year; (b) Cash Flow Projections—quarterly for each year; (c) Pro forma balance sheets—quarterly for each year; (d) Sources and Use of Funds Statement for all funds available to the project and projected to be available; (e) Brief summary discussing any further capital requirements and methods or projected methods for obtaining needed resources.

(13) Critical Risks and Assumptions: This section covers the risks faced by the project and assumptions surrounding them. This includes a description of the risks and critical assumptions relating to the industry, the venture, its personnel, the product or service market appeal, and the timing and financing of the venture.

(14) Community Benefits: This section describes other economic and non-economic benefits to the community such as development of a community's physical assets; provision of needed, but currently unsupplied, services or products to the community; or improvement in the living environment.

All third party agreements must include written commitments as follows: From third party (as appropriate):

(1) Low-income individuals will fill a minimum of 60 percent of the jobs to be created from project activities as a result of the injection of grant funds.

(2) The grantee will have the right to screen applicants for jobs to be filled by low-income individuals and to verify their eligibility.

(3) If the grantee's equity investment equals 25 percent or more of the business' assets, the grantee will have representation on the board of directors.

(4) Reports will be made to the grantee regarding the use of grant funds on a quarterly basis or more frequently, if necessary.

(5) Procedures will be developed to assure that there are no duplicate counts of jobs created.

(6) That the third party will maintain documentation related to the grant objectives as specified in the agreement and will provide the grantee and HHS access to that documentation. From the grantee: (1) Detailed information on how the grantee will provide support and technical assistance to the third party in areas of recruitment and retention of low-income individuals. (2) How the grantee will provide oversight of the grant-supported activities of the third party for the life of the agreement. Detailed information must be provided on how the grant funds will be used by

the third party by submitting a Sources and Uses of Funds Statement.

A third party agreement covering an equity investment must contain, at a minimum, the following:

(1) Purpose(s) for which the equity investment is being made.

(2) The type of equity transaction (e.g. stock purchase).

(3) Cost per share and basis on which the cost per share is derived.

(4) Number of shares being purchased.

(5) Percentage of CDC ownership in the business.

(6) Term or duration of the agreement.

(7) Number of seats on the board, if applicable.

(8) Signatures of the authorized officials of the grantee and third party organization.

A third party agreement covering a loan transaction must contain, at a minimum, the following information:

(1) Purpose(s) for which the loan is being made.

(2) Interest rates and other fees.

(3) Terms of the loan.

(4) Repayment schedules.

(5) Collateral security.

(6) Default and collection procedures.

(7) Signatures of the authorized officials of the lender and borrower.

All third party agreements must be accompanied by a signed statement from a Certified or Licensed Public Accountant as to the sufficiency of the third party's financial management system in accordance with 45 CFR 74 and financial statements for the third party organization for the prior three years. If such statements are not available because the organization is a newly formed entity, the application must include a statement to this effect. The grantee is responsible for ensuring that grant funds expended by it and the third party are expended in compliance with Federal regulations of 45 CFR Part 74 and OMB Circular A–122.

You may submit your application to us in either electronic or paper format. To submit an application electronically, please use the *www.Grants.gov/Apply* site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. ACF will not accept grant applications via email or facsimile transmission.

Please note the following if you plan to submit your application electronically via Grants.gov:

- Electronic submission is voluntary, but strongly encouraged.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov*
- You must search for the downloadable application package by the CFDA number.

Applicants that are submitting their application in paper format should submit an original and two copies of the complete application. The original and each of the two copies must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *www.acf.hhs.gov/programs/ofs/forms.htm.*

Standard Forms and Certifications

The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Section V Application Review Information. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement.

Applicants seeking financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF–424A, Budget Information—Non-Construction Programs; SF–424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Applicants must sign and return the standard forms with their application.

Applicants must furnish prior to award an executed copy of the Standard Form LLL, Certification Regarding Lobbying, when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must also understand they will be held accountable for the smoking prohibition included within Pub. L. 103–227, Title XII Environmental Tobacco Smoke (also known as the PRO–KIDS Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification form. Complete the standard forms and the associated certifications and assurances based on the instructions on the forms. The forms and certifications may be found at: *www.acf.hhs.gov/programs/ofs/forms.htm.*

Please see Section V.1. Criteria, for instructions on preparing the full project description.

3. Submission Dates and Times

Due Date for Applications: June 17, 2005.

Explanation of Due Dates: The closing time and date for receipt of applications is referenced above. Applications received after 4:30 p.m. eastern time on the closing date will be classified as late.

Deadline: Applications shall be considered as meeting an announced

deadline if they are received on or before the deadline time and date referenced in Section IV.6. Applicants are responsible for ensuring applications are mailed or submitted electronically well in advance of the application due date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., eastern time, at the address referenced in Section IV.6., between Monday and Friday (excluding Federal holidays).

ACF cannot accommodate transmission of applications by facsimile. Therefore, applications transmitted to ACF by fax will not be accepted regardless of date or time of submission and time of receipt.

Receipt acknowledgement for application packages will not be provided to applicants who submit their package via mail, courier services or by hand delivery. However, applicants will receive an electronic acknowledgement for applications that are submitted via Grants.gov.

Late Applications: Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Any application received after 4:30 p.m. eastern time on the deadline date will not be considered for competition.

Applicants using express/overnight mail services should allow two working days prior to the deadline date for receipt of applications. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

Checklist: You may use the checklist below as a guide when preparing your application package.

What to submit	Required content	Required form or format	When to submit
Project Abstract	See Sections IV.2 and V.	Found in Sections IV.2 and V	By application due date.
Project Description	See Sections IV.2 and V.	Found in Sections IV.2 and V	By application due date.
Budget Narrative/Justification.	See Sections IV.2 and V.	Found in Sections IV.2 and V	By application due date.
SF424	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.
SF–LLL Certification Regarding Lobbying.	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By date of award.
Certification Regarding Environmental Tobacco Smoke.	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By date of award.
Assurances	See Section IV.2		By application due date.
Private, Nonprofit Community Development Corporation Status.	See Section IV	Found in Section IV	By application due date.

Additional Forms: Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *www.acf.hhs.gov/programs/ofs/forms.htm.*

What to submit	Required content	Location	When to submit
Survey for Private, Non-Profit Grant Applicants.	See form	May be found on *www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. Intergovernmental Review:

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 1, 2004, the following jurisdictions have elected to participate in the Executive Order process: Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Illinois, Iowa, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, New York, North Dakota, Rhode Island, South Carolina, Texas, Utah, West Virginia, Wisconsin, American Samoa, Guam, North Mariana Islands, Puerto Rico, and Virgin Islands. As these jurisdictions have elected to participate in the Executive Order process, they have established SPOCs. Applicants from participating jurisdictions should contact their SPOC, as soon as possible, to alert them of prospective applications and receive instructions. Applicants must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2).

A SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process

recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 4th floor, Washington, DC 20447.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Although the remaining jurisdictions have chosen not to participate in the process, entities that meet the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. Therefore, applicants from these jurisdictions, or for projects administered by federally-recognized Indian Tribes, need take no action in regard to E.O. 12372.

The official list, including addresses, of the jurisdictions that have elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. Funding Restrictions

Grant awards will not allow reimbursement of pre-award costs.

Cost-Per-Job: OCS will not fund projects with a cost-per-job in CED funds that exceed $10,000. An exception will be made if the project includes purchase of land or a building, or major renovation or construction of a building. In this instance, the applicant must explain the factors that raise the cost beyond $10,000. In no instance, will OCS allow for more than $15,000 cost-per-job in CED funds. Cost-per-job is calculated by dividing the number of jobs to be created into the amount of the CED grant request.

National Historic Preservation Act: If an applicant is proposing a project which will affect a property listed in, or eligible for, inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the National Historic Preservation Act of 1996, as amended. If there is any question as to whether the property is listed in, or eligible for, inclusion in the National Register of Historic Places, the applicant must consult with the State Historic Preservation Officer and describe in the narrative the content of such consultation.

Sub-Contracting or Delegating Projects: OCS will not fund projects where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. The applicant must have a substantive role in the implementation of the project for which funding is requested. This prohibition does not bar the making of sub-grants or sub-contracting for specific services or activities necessary to conduct the project.

Number of Projects in Application: Except for the retail development initiative under the Operational Projects announcement, each application may include only one proposed project.

Prohibited Activities: OCS will not consider applications that propose to establish Small Business Investment Corporations or Minority Enterprise Small Business Investment Corporations.

OCS will not fund projects that are primarily education and training projects. In projects where participants must be trained, any funds proposed for training must be limited to specific job-related training to those individuals who have been selected for employment in the grant supported project. Projects involving training and placement for existing vacant positions will be disqualified from competition.

OCS will not fund projects that would result in the relocation of a business from one geographic area to another resulting in job displacement.

An application that exceeds the upper value of the dollar range specified will be considered non-responsive.

6. Other Submission Requirements

Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date. Applications should be mailed to: Administration for Children and Families, Office of Community Service Operations Center, 1515 Wilson Blvd., Suite 100, Arlington, VA 22209, Attention: Barbara Ziegler-Johnson.

Hand Delivery: An applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m. eastern time, Monday through Friday.

Applications should be delivered to: Administration for Children and Families, Office of Community Services Operations Center, 1515 Wilson Blvd., Suite 100, Arlington, VA 22209, Attention: Barbara Ziegler-Johnson.

Electronic Submission: www.Grants.gov. Please see Section IV. 2 for guidelines and requirements when submitting applications electronically.

V. Application Review Information

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0139 which expires 4/30/2007.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Criteria

Introduction

Applicants are required to submit a full project description shall prepare the project description statement in accordance with the following instructions while being aware of the specified evaluation criteria. The text options give a broad overview of what your project description should include while the evaluation criteria identifies the measures that will be used to evaluate applications.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In

developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived.

Describe the population to be served by the program and the number of new jobs that will be targeted to the population served. Explain how the project will reach the targeted population, how it will benefit participants including how it will support individuals to become more economically self-sufficient.

Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished.

When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reasons for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technical innovations, reductions in cost or time or extraordinary social and community involvement. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in, for example such terms as the "number of people served." When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates. If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF." List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Evaluation Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners, such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. If the applicant is a non-profit organization, submit proof of non-profit status in its application.

The non-profit agency can accomplish this by providing: (a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; (b) a copy of a currently valid IRS tax exemption certificate; (c) a statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals; (d) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; (e) any of the items immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Budget and Budget Justification

Provide a budget with line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. Also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Evaluation Criteria: The following evaluation criteria appear in weighted descending order. The corresponding score values indicate the relative importance that ACF places on each evaluation criterion; however, applicants need not develop their applications precisely according to the order presented. Application components may be organized such that a reviewer will be able to follow a seamless and logical flow of information (e.g. from a broad overview of the project to more detailed information about how it will be conducted).

In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

Approach (35 Points)

(1) The business plan is the most important document. It must be sound and feasible. The project must be able to be implemented soon after a grant award is made. The business plan meets the requirements of this program announcement and development of business and job creation will occur during project period. (0–10 points)

(2) The application includes documentation of site control. (0–10)

(3) Executed third party agreements meet the requirements set forth above. (0–10)

(4) The required financial documents are contained in the application and clearly describe proposed use of CED funds and demonstrate the project is viable. (0–5)

Organizational Profiles (15 Points)

(1) Organizational profile. The application demonstrates the management capacity, organizational structure and successful record of accomplishment relevant to business development, commercial development, physical development, and/or financial services and that it has the ability to mobilize other financial and in-kind resources. (0–10 points)

(2) Staff skills, resources and responsibilities. The application describes in brief resume form the experience and skills of the project director who is not only well qualified, but whose professional capabilities are relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description that indicates that the responsibilities to be assigned to the project director are relevant to the successful implementation of the project. (0–5 points)

Third-Party Agreements (20 point)

Public-Private Partnerships. (1) Mobilization of resources: The application documents it has mobilized from public and/or private sources the proposed balance of non-CED funding required to fully implement the project. Lesser contributions will be given consideration based upon the value documented. (0–10 points)

Note 1: Cash resources such as cash or loans contributed from all project sources (except for those contributed directly by the applicant) are documented by letters of commitment from third parties making the contribution.

Note 2: The value of in-kind contributions for personal property is documented by an inventory valuation for equipment and a certified appraisal for real property. Also, a copy of a deed or other legal document is required for real property.

Note 3: Anticipated or projected program income such as gross or net profits from the project or business operations will not be recognized as mobilized or contributed resources.

(2) *Integration/coordination of services:* The application demonstrates a commitment to, or agreements with, local agencies responsible for administering child support enforcement, employment education, and training programs to ensure that welfare recipients, at-risk youth, displaced workers, public housing tenants, homeless and low-income individuals, and low-income custodial and non-custodial parents will be trained and placed in the newly created jobs. The application includes written agreements from the local TANF or other employment education and training offices, and child support enforcement agency indicating what actions will be taken to integrate/coordinate services that relate directly to the project for which funds are being requested. (0–5 points)

The agreements include: (1) The goals and objectives that the applicant and the TANF or other employment education and training offices and/or child support enforcement agency expect to achieve through their collaboration; (2) the specific activities/actions that will be taken to integrate/coordinate services on an on-going basis; (3) the target population that this collaboration will serve; (4) the mechanism(s) to be used in integrating/coordinating activities; (5) how those activities will be significant in relation to the goals and objectives to be achieved through the collaboration; and (6) how those activities will be significant in relation to their impact on the success of the OCS-funded project. (0–3 points) The application provides documentation that illustrates the organizational experience is related to the employment, education and training program. (0–2 point)

Results or Benefits Expected (14 points)

(1) Results or Benefits Expected. Application proposes to produce permanent and measurable results including, but not limited to, employment and business development opportunities that reduce poverty, reduce the need for TANF assistance in the community and thus enable families to be economically self-sufficient. (0–3 points)

(2) Community empowerment and coordination. Application documents that applicant is an active partner in either a new or ongoing comprehensive community revitalization project such as: a federally-designated Empowerment Zone, Enterprise Community or Renewal Community project that has clear goals of strengthening economic and human development in target neighborhoods; a State or local-government supported comprehensive neighborhood revitalization project; or a private sector supported community revitalization project. (0–3 points)

(3) Cost-per-job. During the project period, the proposed project will create new, permanent jobs or maintain existing permanent jobs for low-income residents at a cost-per-job not to exceed $10,000 in OCS funds unless the project involves construction or significant renovation. (0–5 points)

(4) Career development opportunities. The application documents that the jobs to be created for low-income people have career development opportunities that will promote self-sufficiency. (0–3 points)

Objectives and Need for Assistance (10 points)

The application documents that the project addresses a vital need in a distressed community. "Distressed community" is defined as a geographic urban neighborhood or rural community with high unemployment and pervasive poverty. The application documents that both the unemployment rate and poverty level for the targeted neighborhood or community must be equal to or greater than the state or national level. (0–5 points)

The application cites the most recent available statistics from published sources, *e.g.*, the recent U.S. Census or updates, the State, county, city, election district and other information are provided in support of its contention. (0–2 points)

The application shows how the project will respond to stated need. (0–3 points)

Evaluation (6 points)

Sound evaluations are essential to the Community Economic Development Program. OCS requires applicants to include in their applications a well thought through outline of an evaluation plan for their project. The outline should explain how the applicant proposes to answer the key questions about how effectively the project is being/was implemented; whether the project activities, or interventions, achieved the expected immediate outcomes, and why or why not (the process evaluation); and whether and to what extent the project achieved its stated goals, and why or why not (the outcome evaluation). Together, the process and outcome evaluations should answer the question: "What did this program accomplish and why did it work/not work?"

Applicants are not being asked to submit a complete and final evaluation plan as part of their application; but they must include:

(1) A well thought through outline of an evaluation plan that identifies the principal cause-and-effect relationships to be tested, and that demonstrates the applicant's understanding of the role and purpose of both process and outcome evaluations. (0–2 points)

(2) A reporting format based on the grantee's demonstration of its activities (interventions) and their effectiveness, to be included in the grantee's semi-annual program progress report, which will provide OCS with insights and lessons learned, as they become evident, concerning the various aspects of the work plan, such as recruitment, training, support, public-private partnerships, and coordination with other community resources, as they may be relevant to the proposed project. (0–2 points)

(3) The identity and qualifications of the proposed third-party evaluator, of if not selected, the qualifications that will be sought in choosing an evaluator, which must include successful experience in evaluating community development programs, and the planning and/or evaluation of programs designed to foster self-sufficiency in low-income populations. (0–2 points)

The competitive procurement regulations (45 CFR, part 74, Sec. 74.40–74.48, especially Sec. 74.43) apply to service contracts such as those for evaluators.

It is suggested that applicants use no more than three pages for this Element, plus the resume or position description for the evaluator, which should be included in an appendix.

2. Review and Selection Process

No grant will be made under this announcement on the basis of an incomplete application.

Initial OCS Screening: Each application submitted to OCS will be screened to determine whether it was received by the closing date and time.

Applications received by the closing date and time will be screened for completeness and conformity with the requirements listed in this announcement. Late applications or those exceeding the funding limit will be returned to the applicants with a notation that they were unacceptable and will not be reviewed.

OCS Evaluation of Applications: Applications that pass the initial OCS screening will be reviewed and rated by a panel based on the program elements and review criteria presented in relevant sections of this program announcement.

The review criteria are designed to enable the review panel to assess the quality of a proposed project and determine the likelihood of its success. The criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. The review panel awards points only to applications that are responsive to the program elements and relevant review criteria within the context of this program announcement.

The OCS Director and the program staff use the reviewer scores when considering competing applications. Reviewer scores will weigh heavily in funding decisions, but will not be the only factors considered.

Applications generally will be considered in order of the average scores assigned by the review panel. Because other important factors are taken into consideration, highly ranked applications are not guaranteed funding. These other considerations include, for example: the timely and proper completion by the applicant of projects funded with OCS funds granted in the last five years; comments of reviewers and government officials; staff evaluation and input; amount and duration of the grant requested and the proposed project's consistency and harmony with OCS goals and policy; geographic distribution of applications; previous program performance of applicants; compliance with grant terms under previous HHS grants, including the actual dedication of the applicant to acquiring additional funding and other committed resources as set forth in project applications; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowance on previous OCS or other Federal agency grants.

Approved but Unfunded Applications

Applications that are approved but unfunded may be held over for funding in the next funding cycle, pending the availability of funds, for a period not to exceed one year.

VI. Award Administration Information

1. Award Notices

The successful applicants will be notified through the issuance of a Financial Assistance ward document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided (if applicable), and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing.

2. Administrative and National Policy Requirements

Grantees are subject to the requirements in 45 CFR Part 74 (non-governmental) or 45 CFR Part 92 (governmental).

Direct Federal grants, subaward funds, or contracts under this Program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this Program. Regulations pertaining to the prohibition of Federal funds for inherently religious activities can be found on the HHS Web site at *http://www.os.dhhs.gov/fbci/waisgate21.pdf.*

3. Reporting Requirements

Program Progress Reports: Semi-Annually.

Financial Reports: Semi-Annually.

Grantees will be required to submit program progress and financial reports (SF 269) throughout the project period. Program progress and financial reports are due 30 days after the reporting period. In addition, final programmatic and financial reports are due 90 days after the close of the project period.

VII. Agency Contacts

Program Office Contact

Debbie Brown, Administration for Children and Families, Office of Community Services Operations Center, 1515 Wilson Blvd., Suite 100, Arlington, VA 22209, (202) 401–3446, *OCSGRANTS@acf.hhs.gov.*

Grants Management Office Contact

Barbara Ziegler-Johnson, Administration for Children and Families, Office of Community Services Operations Center, 1515 Wilson Blvd., Suite 100, Arlington, VA 22209, (202) 401-4646, *OCSGRANTS@acf.hhs.gov.*

VIII. Other Information

Notice: Beginning with FY 2006, The Administration for Children and Families (ACF) will no longer publish grant announcements in the **Federal Register**. Beginning October 1, 2005 applicants will be able to find a synopsis of all ACF grant opportunities and apply electronically for opportunities via: *www.Grants.gov.* Applicants will also be able to find the complete text of all ACF grant announcements on the ACF Web site located at: *http://acf.hhs.gov/grants/index.html.*

Direct Federal grants, subaward funds, or contracts under this Program

shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this Program. Regulations pertaining to the prohibition of Federal funds for inherently religious activities can be found on the HHS Web site at: *http://www.os.dhhs.gov/fbci/waisgate21.pdf.*

The FY 2006 President's Budget does not include or propose funding for the Economic Development Discretionary Grant Program. Future funding is based on the availability of funds.

Additional information about this program and its purpose can be located on the following Web site: *http://www.acf.hhs.gov/programs/ocs.*

Please reference Section IV.3 for details about acknowledgement of received applications.

Dated: April 7, 2005.

Josephine Robinson,

Director, Office of Community Services.

[FR Doc. 05–7475 Filed 4–15–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Community Services; Community Food and Nutrition Program

Announcement Type: Initial.

Funding Opportunity Number: HHS–2005–ACF–OCS–EN–0024.

CFDA Number: 93.571.

Due Date for Applications: Application is due June 17, 2005.

Executive Summary: The Community Services Block Grant (CSBG) Act, as amended, authorizes the Secretary of Health and Human Services to make funds available under several programs to support program activities that will result in direct benefits targeted to low-income people. This program announcement covers the grant authority found at Section 681 of the Community Services Block Grant Act, (The Act) (Pub. L. 97–35) as amended by the Community Opportunities, Accountability, and Training and Educational Services Act of 1998 (Pub. L. 105–285), Community Food and Nutrition Program. The Act authorizes the Secretary to award grants on a competitive basis to eligible entities for community-based, local, statewide and national programs including programs benefiting Indians (as defined in section 677(e) of the CSBG Act) and migrant farm workers.

Grant funds are provided to: (1) Coordinate private and public food assistance resources, wherever the grant recipient involved determines such coordination to be inadequate, to better serve low-income populations; (2) assist low-income communities to identify potential sponsors of child nutrition programs and to initiate such programs in underserved or unserved areas; and (3) develop innovative approaches at the State and local level to meet the nutrition needs of low-income individuals. Office of Community Services views this program as a capacity building program, rather than a food delivery program.

OCS encourages eligible applicants with programs addressing obesity to submit applications. Eligible applicants with programs benefiting Native Americans and migrant or seasonal farm workers are also encouraged to submit applications.

Public and non-profit agencies, faith-based and community-based organizations reaching underserved populations are encouraged to apply.

I. Funding Opportunity Description

The Community Services Block Grant (CSBG) Act, as amended, authorizes the Secretary of Health and Human Services to make funds available under several programs to support program activities that will result in direct benefits targeted to low-income people. This program announcement covers the grant authority found at Section 681 of the Community Services Block Grant Act, (The Act) (Pub. L. 97–35) as amended by the Community Opportunities, Accountability, and Training and Educational Services Act of 1998 (Pub. L. 105–285), Community Food and Nutrition Program (CFNP). The Act authorizes the Secretary to award grants on a competitive basis to eligible entities for community-based, local, statewide and national programs including programs benefiting Indians (as defined in section 677(e) of the CSBG Act) and migrant farm workers.

The main objective of the CFNP is to link low-income people to food and nutrition programs. Grant funds are provided to: (1) Coordinate private and public food assistance resources, wherever the grant recipient involved determines such coordination to be inadequate, to better serve low-income populations; (2) assist low-income communities to identify potential sponsors of child nutrition programs and to initiate such programs in underserved or unserved areas; and (3) develop innovative approaches at the State and local level to meet the nutrition needs of low-income individuals. OCS views this program as a capacity building program, rather than a food delivery program.

Definitions of Terms

The following definitions apply:

Budget Period— The interval of time into which a grant period of assistance (project period) is divided for budgetary and funding purposes.

Capacity-Building— Refers to activities that assist eligible entities to improve or enhance their overall or specific capability to plan, deliver, manage and evaluate programs efficiently and effectively to produce intended results for low-income individuals. This may include upgrading internal financial management or computer systems, establishing new external linkages with other organizations, adding or refining a program component or replicating techniques or a program piloted in another local community, or making other cost-effective improvements.

Displaced Worker—An individual who is in the labor market but has been unemployed for six months or longer.

Eligible Entity—Public and private non-profit agencies, including organizations benefiting Indians and migrant and seasonal farm workers. Faith-based organizations are eligible to apply for these Community Food and Nutrition Program grants. Community-based organizations are eligible to apply for these Community Food and Nutrition Program grants.

Empowerment Zone and Enterprise Communities—Those communities designated as such by the Secretary of Agriculture or the Secretary of Housing and Urban Development.

Indian Tribe—A tribe, band, or other organized group of Native American Indians recognized in the State or States in which it resides, or considered by the Secretary of the Interior to be an Indian tribe or an Indian organization.

Innovative Project—One that departs from, or significantly modifies, past program practices and tests a new approach.

Migrant Farm Worker—An individual who works in agricultural employment of a seasonal or other temporary nature who is required to be absent from his/her place of permanent residence in order to secure such employment.

Non-profit Organization—Refers to an organization, including faith-based and community-based organizations, which meets the requirement for proof of non-profit status in the "Eligibility 3. Other" section of this announcement and has

demonstrated experience in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities.

Poverty Income Guidelines—Guidelines published annually by the U.S. Department of Health and Human Services (HHS). HHS establishes the level of poverty defined as low-income for individuals and their families. The guideline information is posted on the Internet at the following address: *http://www.aspe.hhs.gov/poverty*.

Program Income—Gross income earned by the grant recipient that is generated by an activity supported with grant funds.

Project Period—The total time for which a project is approved for support, including any approved extensions.

Seasonal Farm Worker—Any individual employed in agricultural work of a seasonal or other temporary nature who is able to remain at his/her place of permanent residence while employed

Self-Sufficiency—A condition where an individual or family does not need, and is not eligible to receive, TANF assistance under Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Part A of Title IV of the Social Security Act.)

Underserved Area—(as it pertains to child nutrition programs) A locality in which less than one-half of the low-income children eligible for assistance participate in any child nutrition program.

Program Purpose, Scope and Focus

The Department of Health and Human Services (HHS) is committed to improving the overall health and nutritional well-being of all individuals, including low-income persons, through improved preventive health care and promotion of personal responsibility.

HHS also recognizes that improving the health and nutrition status of low-income persons can be improved by access to healthy, nutritious foods and by other means. HHS encourages community efforts to improve the coordination and integration of health and social services for all low-income families, and to identify opportunities for collaborating with other programs and services for this population. Such collaboration can increase a community's capacity to leverage resources and promote an integrated approach to health and nutrition through existing programs and services.

Projects funded under this program must focus on one or more legislatively-mandated program activities: (a) Coordination of private and public food assistance resources, wherever the grant recipient involved determines such coordination to be inadequate, to better serve low-income populations; (b) assistance to low-income communities in identifying potential sponsors of child nutrition programs and initiating such programs in unserved or underserved areas; and (c) development of innovative approaches at the state and local level to meet the nutrition needs of low-income individuals.

Additionally, in carrying out such activities, projects funded under this program should (1) be designed and intended to provide nutrition benefits, including those which incorporate the benefits of disease prevention, to a targeted low-income group of people; (2) provide outreach and public education to inform eligible low-income individuals and families of other nutritional services available to them under the various Federally-assisted programs; (3) carry out targeted communications and social marketing to improve dietary behavior and increase program participation among eligible low-income populations: populations to be targeted can include displaced workers, elderly people, children, and the working poor, and (4) consult with and/or inform local officials that administer other food programs such as W.I.C. and Food Stamps, where applicable, to ensure effective coordination which can jointly target services to increase their effectiveness. Such consultation may include involving these offices in planning grant applications.

OCS views this program as a capacity-building program, rather than a food delivery program. Applications proposing to use OCS funds solely to purchase food for low-income individuals may be considered non-responsive and be returned to the applicant without further review.

Mobilization of Resources

There is no match requirement for the Community Food and Nutrition Program. However, OCS would like to mobilize as many resources as possible to enhance projects funded under the CFNP. OCS supports and encourages applications submitted by applicants whose programs will leverage other resources, either cash or third party in-kind.

Administrative Costs/Indirect Costs

There is no predetermined administrative cost ceiling for projects funded under this program. Indirect costs consistent with approved indirect cost rate agreements are allowable. Applicants should enclose a copy of the current approved rate agreement. However, it should be understood that indirect costs are part of, and not in addition to, the amount of funds awarded in the subject grant.

Multiple Submittals

There is no limit to the number of applications that can be submitted by an eligible applicant as long as each application is for a different project. However, no applicant will receive more than one grant.

Repeat Grantee

Applicants receiving OCS funds for CFNP projects completed within the last five (5) years must submit with the application an abstract for each such project. The abstract should include the applicant's name, address, CFNP grant number and amount, the title of the project, and a summary of accomplishments. An application that does not include an abstract for each project previously funded may be considered non-responsive and be returned to the applicant without further review.

There is one Program Priority Area for Fiscal Year 2005: Priority Area 1.—General Projects, under which OCS will accept applications as described below.

1. Description

Priority Area 1.

The application should describe the target area and population to be served and discuss the nature and extent of the problem to be solved. The application must contain a detailed and specific work program that is sound and feasible. Projects funded under this announcement must produce lasting and measurable results. The OCS grant funds, in combination with private and/or other public resources, must be targeted to low-income individuals and communities.

Applicants will certify in their submission that projects will only serve the low-income population as stipulated in the HHS Poverty Income Guidelines. The guideline information is posted on the Internet at the following address: *http://www.aspe.hhs.gov/poverty*. Failure to comply with the HHS Poverty Income Guidelines may result in the application not being considered for funding.

If an applicant proposes a project that will affect a property listed in, or eligible for, inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of Section 106 of the National Historic Preservation Act of

1966, as amended. If there is any question as to whether the property is listed in, or is eligible for inclusion in, the National Register of Historic Places, applicant should consult with the State Historic Preservation Officer. The applicant should contact OCS early in the development of its application for instructions regarding compliance with the Act and data required to be submitted to HHS.

When projects propose to mobilize or improve the coordination of existing public and private food assistance resources, the guidelines governing those resources apply. However, when projects propose to provide direct assistance to beneficiaries through grants funded under this program, those beneficiaries must fall within the official HHS Poverty Income Guidelines.

Applications proposing the use of grant funds to develop printed or visual materials must contain convincing evidence that these materials are not available from other sources. OCS will not provide funding for such items if justification is not sufficient. Approval of any films or visual presentations proposed by applicants approved for funding will be made part of the grant award. When material outlays for equipment (audio and visual) are requested, specific evidence must be presented that there is a definite programmatic connection between the equipment (audio and visual) usage and the outreach requirements described in the Program Purpose, Scope and Focus section of this announcement.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Priority Area Funding: $2,300,000.

Anticipated Number of Awards: 46–50.

Ceiling on Amount of Individual Awards Per Budget Period: $50,000.

Floor on Amount of Individual Awards Per Project Period: None.

Average Projected Award Amount Per Budget Period: $50,000.

Length of Project Periods: 12 month project and budget period.

III. Eligibility Information

1. Eligible Applicants

Public and non-profit agencies having a 501(c)(3) status with the IRS, other than institutions of higher education.

Public and non-profit agencies that do not have a 501(c)(3) status with the IRS, other than institutions of higher education.

State, county and local governmental agencies.

Additional Information on Eligibility

Please see Section IV for required documentation supporting eligibility or funding restrictions if any are applicable.

2. Cost Sharing/Matching

None.

3. Other Eligibility Information

Eligible applicants are public and private non-profit agencies including organizations benefiting Indians and migrant and seasonal farm workers with a demonstrated ability to successfully develop and implement programs and activities similar to those enumerated in the announcement. Faith-based organizations and community-based organizations are eligible to apply for these Community Food and Nutrition Program grants.

All applicants must have a Dun & Bradstreet number. On June 27, 2003 the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a Dun & Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003. Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number online at *http://www.dnb.com.*

Non-profit organizations applying for funding are required to submit proof of their non-profit status.

Proof of non-profit status is any one of the following:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code.
- A copy of a currently valid IRS tax exemption certificate.
- A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earning accrue to any private shareholders or individuals.
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.
- Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Disqualification Factors

Applications that exceed the ceiling amount will be considered non-responsive and will not be considered for funding under this announcement.

Any application that fails to satisfy the deadline requirements referenced in Section IV.3 will be considered non-responsive and will not be considered for funding under this announcement. An application that does not include an abstract for each project previously funded may be considered non-responsive and be returned to the applicant without further review. OCS views this program as a capacity-building program, rather than a food delivery program. Applications proposing to use OCS funds solely to purchase food for low-income individuals may be considered non-responsive and be returned to the applicant without further review.

IV. Application and Submission Information

1. Address to request application package: Catherine Beck, Administration for Children and Families, Office of Community Services' Operations Center, 1515 Wilson Boulevard, Suite 100, Arlington, VA 22209, Phone: 1–800–281–9519, fax: 703–528–0716, e-mail: *ocs@lcgnet.com.*

2. Content and Form of Application Submission: *Application Content.* An original and two copies of each application are required. Each application must include the following components:

- *Table of Contents.* The Table of Contents must include page numbers.
- *Abstract of the Proposed Project.* Very brief, not to exceed 250 words. The abstract should be suitable for use in an announcement that the application has

been selected for a grant award and which identifies the type of project, the target population and the major elements of the work plan.

- *Completed Standard Form 424.* Must be signed by an Official of the organization applying for the grant who has authority to obligate the organization legally.
- *Standard Form 424A.* Budget Information-Non-Construction Programs.
- *Narrative Budget Justification.* Justify each object class category required under Section B, Standard Form 424A. Applicants have the option of omitting from the application copies (not the original) of specific salary rates or amounts for individuals specified in the application budget.
- *Project Narrative.* A narrative that addresses issues described in the "Application Review Information" section of this announcement.

Application Format

Submit application materials on white 8½ x 11 inch paper only. Do not use colored, oversized or folded materials. Please do not include organizational brochures or other promotional materials, slides, films, clips, etc. The font size may be no smaller than 12 pitch and the margins must be at least one inch on all sides. Number all application pages sequentially throughout the package, beginning with the abstract of the proposed project as page number one. Please present application materials either in loose-leaf notebooks or in folders with pages two-hole punched at the top center and fastened separately with a slide paper fastener.

Page Limitation

The application package including sections for the Table of Contents, Project Abstract, Project and Budget Narratives must not exceed 30 pages. The page limitation does not include the following attachments and appendices: Standard Forms for Assurances, Certifications, Disclosures and appendices. The page limitation also does not apply to any supplemental documents as required in this announcement.

You may submit your application to us in either electronic or paper format.

To submit an application electronically, please use the *www.Grants.gov/Apply* site. If you use Grants.Gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.Gov site. ACF will not accept grant applications via email or facsimile transmission.

Please note the following if you plan to submit your application electronically via Grants.gov:

- Electronic submission is voluntary, but strongly encouraged.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.Gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.Gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov.*
- You must search for the downloadable application package by the CFDA number.

Applicants that are submitting their application in paper format should submit an original and two copies of the complete application. The original and each of the two copies must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," titled "Survey for Private, Non-Profit Grant Applicants," at: *www.acf.hhs.gov/programs/ofs/forms.htm.*

Standard Forms and Certifications

The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Section V Application Review Information. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement.

Applicants seeking financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF–424A, Budget Information—Non-Construction Programs; SF–424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Applicants must sign and return the standard forms with their application.

Applicants must furnish prior to award an executed copy of the Standard Form LLL, Certification Regarding Lobbying, when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must also understand they will be held accountable for the smoking prohibition included within Pub. L. 103–227, Title XII Environmental Tobacco Smoke (also known as the PRO–KIDS Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification form. Complete the standard forms and the associated certifications and assurances based on the instructions on the forms. The forms and certifications may be found at: *www.acf.hhs.gov/programs/ofs/forms.htm.*

Applicants have the option of omitting from the application copies (not the original) specific salary rates or

amounts for individuals specified in the application budget.

Please see Section V.1 for instructions on preparing the full project description..

3. Submission Dates and Times

Due Date for Applications: June 17, 2005.

Explanation of Due Dates: The closing time and date for receipt of applications is referenced above. Mailed or hand carried applications received after 4:30 p.m. eastern time on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date referenced in Section IV.6. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., eastern time, at the address referenced in Section IV.6., between Monday and Friday (excluding Federal holidays). Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

ACF cannot accommodate transmission of applications by fax. Therefore, applications transmitted to ACF by fax will not be accepted regardless of date or time of submission and time of receipt.

Receipt acknowledgement for application packages will not be provided to applicants who submit their package via mail, courier services, or by hand delivery. Applicants will receive an electronic acknowledgement for applications that are submitted via Grants.gov.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Any application received after 4:30 p.m. eastern time on the deadline date will not be considered for competition. Applicants using express/overnight mail services should allow two working days prior to the deadline date for receipt of applications. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed).

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

Checklist: You may use the checklist below as a guide when preparing your application package.

What to submit	Required content	Required form or format	When to submit
Table of Contents	See Section IV	the "Application Format" section of this announcement	By application due date.
Project Abstract	See Section IV	the "Application Format" section of this announcement	By application due date.
Project Narrative	See Section IV	the "Application Format" section of this announcement	By application due date.
SF424	See Section IV	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.
SF424A	See Section IV	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.
Assurances and Certifications.	See Section IV	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.
Certification Regarding Lobbying.	See Section IV	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.
Certification Regarding Environmental Tobacco Smoke.	See Section IV	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.

Additional Forms: Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *www.acf.hhs.gov/programs/ofs/forms.htm.*

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	See form	May be found on *www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 1, 2004, the following jurisdictions have elected to participate in the Executive Order process: Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Illinois, Iowa, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, New York, North Dakota, Rhode Island, South Carolina, Texas, Utah, West Virginia, Wisconsin, American Samoa, Guam, North Mariana Islands, Puerto Rico, and Virgin Islands. As these jurisdictions have elected to participate in the Executive Order process, they have established SPOCs. Applicants from participating jurisdictions should contact their SPOC, as soon as possible, to alert them of prospective applications and receive instructions. Applicants must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2).

A SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 4th floor, Washington, DC 20447.

Although the remaining jurisdictions have chosen not to participate in the process, entities that meet the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. Therefore, applicants from these jurisdictions, or for projects administered by federally-recognized Indian Tribes, need take no action in regard to E.O. 12372.

The official list, including addresses, of the jurisdictions that have elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. Funding Restrictions

Capacity-Building Program

OCS views this program as a capacity-building program, rather than a food delivery program.

Program Beneficiaries

Projects proposed for funding under this announcement must result in direct benefits targeted toward low-income people as defined in the most recent annual update of the Poverty Income Guidelines published by HHS. The guideline information is posted on the Internet at the following address: *http://www.aspe.hhs.gov/poverty.* Annual revisions of these guidelines are normally published in the **Federal Register** in February or early March of each year and are applicable to projects being implemented at the time of publication. Grantees will be required to apply the most recent guidelines throughout the project period. The **Federal Register** may be obtained from public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The **Federal Register** is also available on the Internet through GPO Access at the following web address: *http://www.access.gpo.gov/su_docs/aces/aces140.html.* No other government agency or privately defined poverty guidelines are applicable to determining low-income eligibility for this OCS program.

Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. The applicant must have a substantive role in the implementation of the project for which funding is requested. This prohibition does not bar the making of sub-grants or sub-contracting for specific services or activities to conduct the project.

Number of Projects in Application

Each application may include only one proposed project.

Repeat Grantee

Applicants receiving OCS funds for CFNP projects completed within the last five (5) years must submit with the application an abstract for each such project. The abstract should include the applicant's name, address, CFNP grant number and amount, the title of the project, and a summary of accomplishments.

6. Other Submission Requirements

Submission by Mail: An application must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date. Applications should be mailed to: Administration for Children and Families, Office of Community Services' Operations Center, 1515 Wilson Boulevard, Suite 100, Arlington, VA 22209, Attention: Catherine Beck.

Hand Delivery: An applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date.

Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications may be delivered to: Administration for Children and Families, Office of Community Services' Operations Center, 1515 Wilson Boulevard, Suite 100, Arlington, VA 22209, Attention: Catherine Beck.

Electronic Submission: www.Grants.gov. Please see Section IV. 2 for guidelines and requirements when submitting applications electronically.

V. Application Review Information

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 25 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0139 which expires 4/30/2007.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Criteria

The following are instructions and guidelines on how to prepare the "project summary/abstract" and "full project description" sections of the application. Under the evaluation criteria section, note that each criterion is preceded by the generic evaluation requirement under the ACF Uniform Project Description (UPD).

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, information responsive to each of the requested evaluation criteria must be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application in a manner that is clear and complete.

General Instructions

ACF is particularly interested in specific project descriptions that focus on outcomes and convey strategies for achieving intended performance. Project descriptions are evaluated on the basis of substance and measurable outcomes, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that

will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix. Pages should be numbered and a table of contents should be included for easy reference.

Introduction

Applicants are required to submit a full project description shall prepare the project description statement in accordance with the following instructions while being aware of the specified evaluation criteria. The text options give a broad overview of what your project description should include while the evaluation criteria identifies the measures that will be used to evaluate applications.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived.

For example, describe the population to be served by the project and how the project will reach that population. Explain how the project will benefit low-income individuals and families including how it will support them to become more self-sufficient.

Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished.

When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates. If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF." List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Geographic Location

Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

Additional Information

Following are requests for additional information that need to be included in the application:

Staff and Position Data

Provide a biographical sketch and job description for each key person appointed. Job descriptions for each vacant key position should be included as well. As new key staff is appointed, biographical sketches will also be required.

Plan for Project Continuance Beyond Grant Support

Provide a plan for securing resources and continuing project activities after Federal assistance has ended.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners, such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. If the applicant is a non-profit organization, submit proof of non-profit status in its application. The non-profit agency can accomplish this by providing: a) a reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; b) a copy of a currently valid IRS tax exemption certificate; c) a statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals; d) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; e) any of the items immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Budget and Budget Justification

Provide a budget with line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. Also include a breakout by the funding sources identified in Block 15 of the SF–424. Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

Use the following guidelines for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. "Federal resources" refers only to the ACF grant for which you are applying. "Non-Federal resources" are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages. Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate. Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel). Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (**Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.) Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category. Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Include third party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant. Justification: Demonstrate that all procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000).

Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc. Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs. Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency. Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, upon notification that an award will be made, it should immediately develop a tentative indirect cost rate proposal based on its most recently completed fiscal year, in accordance with the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. When an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project. Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

Nonfederal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424. Justification: The firm commitment of these resources must be documented and submitted with the application so the applicant is given credit in the review process. A detailed budget must be prepared for each funding source.

Evaluation Criteria: In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

Approach (35 Points)

I(a) Realistic Quarterly Time Lines (0–10 Points). The application will be evaluated on the extent to which it provides realistic quarterly projections of the activities to be carried out

including the projected number of beneficiaries to be served each quarter.

I(b) Detailed Work Plan (0–15 Points). The application will be evaluated on the extent to which it ensures that activities are adequately described and appear reasonably likely to achieve results which will have a desired impact on the identified problems and/or needs. In addressing this criterion, the application should address the basic criteria and other mandated activities found in Part I and should include:

(1) Project priorities, and rationale for selecting them, which relate to the specific nutritional problem(s) and/or need(s) of the target population identified under Criterion V;

(2) Goals and objectives that speak to the problem(s) and/or need(s); and

(3) Project activities that, if successfully carried out, can reasonably be expected to result in achieving these goals and objectives.

I(c) Coordinated Community-Based Planning (0–5 Points). The application will be evaluated on the extent to which it demonstrates evidence of coordinated community-based planning in its development, including strategies in the work program to collaborate with other locally-funded Federal programs (such as DHHS health and social services and USDA Food and Consumer Service programs) in ways that will eliminate duplication and will, for example: (a) Unite funding streams at the local level to increase program outreach and effectiveness; (b) facilitate access to other needed social services by coordinating and simplifying intake and eligibility certification processes for clients; or (c) bring project participants into direct interaction with holistic family development resources in the community where needed.

I(d) Community Empowerment Consideration (0–5 Points). Special consideration will be given to applications located in areas characterized by poverty and other indicators of socio-economic distress such as a poverty rate of at least 20 percent, designation as an Enterprise Zone or Enterprise Community, high levels of unemployment, and high levels of incidences of violence, gang activity, crime, or drug use. The application will be evaluated to the extent to which it documents involvement in the preparation and planned implementation of a comprehensive community-based strategic plan to achieve both economic and human development in an integrated manner. If the applicant is receiving funds from the State for community food and nutrition activities, the application should address how the funds are being utilized, and how they will be coordinated with the proposed project to maximize the effectiveness of both. If State funds are being used in the project for which OCS funds are being requested, the application should specifically describe their usage.

Results or Benefits Expected (30 Points)

II(a) Improvement in Nutrition Services to Low-Income People (0–15 Points). The application will be evaluated on the extent to which it proposes to significantly improve or increase nutrition services to low-income people and indicate how such improvements or increases are quantified.

II(b) Promotional Health and Social Service Activities Included in Nutrition Services (0–5 Points). The application will be evaluated on the extent to which it incorporates into the project awareness of health and social services activities for low-income people along with nutritional services. The applicant specifies how this will be measured and accrued benefits reported.

II(c) Commitment of Resources (0–5 Points). The application will be evaluated on the extent to which it indicates that the project will significantly leverage or mobilize other community resources. These resources are detailed and quantified.

II(d) One Time Funding (0–5 Points). The application will be evaluated on the extent to which it demonstrates either that the project addresses problem(s) that can be resolved by one-time OCS funding, or demonstrates that non-Federal funding is available to continue the project without Federal support.

In addressing the above criterion, the application must include quantitative data for items (a), (b), and (c), and discuss how the beneficial impact relates to the relevant legislatively-mandated program activities identified in the Program Purpose, Scope and Focus section of this announcement, and the problems and/or needs described under Criterion V.

Organizational Profiles

III(a) Organizational Experience in Program Area (0–5 Points). The application will be evaluated on the extent to which it documents the organization's capability and relevant experience in developing and operating programs that deal with poverty problems similar to those to be addressed by the proposed project. Documentation provided should indicate that projects previously undertaken have been relevant and effective and have provided permanent benefits to the low-income population. Organizations proposing training and technical assistance should have detailed competence in the program area and expertise in training and technical assistance. If applicable, information provided in these applications should also address related achievements and competence of each cooperating or sponsoring organization.

III(b) Management History (0–5 Points). The application will be evaluated on the extent to which it demonstrates the applicant's ability to implement sound and effective management practices. If the applicant has been a recipient of other Federal or other governmental grants, it must also document their compliance with financial and program progress reporting and audit requirements. Such documentation may be in the form of references to any available audit or progress reports and should be accompanied by a statement from a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

III(c) Staff Skills, Resources and Responsibilities (0–5 Points). The application will be evaluated on the extent to which it adequately describes the experience and skills of the proposed Project Director, showing that the individual is not only well qualified, but that his/her professional capabilities are relevant to successfully implement the project. If the key staff person has not yet been identified, the application should contain a comprehensive position description indicating that the responsibilities to be assigned to the Project Director are relevant to successfully implement the project. The application must indicate that it has adequate facilities and resources (*i.e.* space and equipment) to carry out the work plan successfully.

In addressing the above criterion, the application must clearly show that sufficient time of the Project Director and other senior staff will be budgeted to assure timely project implementation and oversight and that the assigned responsibilities of the staff are appropriate to the tasks identified.

Budget and Budget Justification (10 points)

Every application must include a Budget Justification, placed after the budget forms SF–424 and 424A, explaining the sources and uses of project funds. The budget is adequate and administrative costs are appropriate to the services proposed.

Objectives and Need for Assistance (10 points)

V(a) Description of Target Population (0–4 Points). The application will be evaluated on the extent to which it describes the target area and population to be served, including specific details on any minority population(s) to be served.

V(b) Analysis of Needs/Priorities (0–6 Points). The application will be evaluated on the extent to which it discusses the nature and extent of the problem(s) and/or need(s), including specific information on minority population(s).

2. Review and Selection Process

No grant award will be made under this announcement on the basis of an incomplete application.

Initial OCS Screening

Each application submitted to OCS will be screened to determine whether it was received by the closing date and time.

Since ACF will be using non-Federal reviewers in the process, applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget and Social Security Numbers, if otherwise required for individuals. The copies may include summary salary information.

Applications received by the closing date and time will be screened for completeness and conformity with this program announcement.

All applications must comply with the following requirements except as noted:

- The application must contain a signed Standard Form 424 Application for Federal Assistance "SF–424", a Standard Form 424–A Budget Information "SF–424A" and signed Standard Form 424B Assurance—Non-Construction Programs "SF–424B" completed according to instructions provided in this Program Announcement. The forms SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant's legal name as required on the SF–424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6).
- The application must include a project narrative that meets requirements set forth in this announcement.
- The application must contain documentation of the applicant's tax-exempt status as indicated in the "Additional Information on Eligibility" section of this announcement.
- The application package including sections for the Table of Contents, Project Abstract, Project and Budget Narratives must not exceed 30 pages. The page limitation does not include the following attachments and appendices: Standard Forms for Assurances, Certifications, Disclosures and appendices. The page limitation also does not apply to any supplemental documents as required in this announcement.
- An application that exceeds the ceiling on the amount of an individual award, will be considered "non-responsive" and be returned to the applicant without further review.
- Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *www.acf.hhs.gov/programs/ofs/forms.htm.*

OCS Evaluation of Applications

Applications that pass the initial OCS screening will be reviewed and rated by a panel based on the program elements and review criteria presented in relevant sections of this program announcement.

The review criteria are designed to enable the review panel to assess the quality of a proposed project and determine the likelihood of its success. The criteria are closely related to each other and are considered as a whole in judging the overall quality of an application.

The review panel awards points only to applications that are responsive to the program elements and relevant review criteria within the context of this program announcement.

The OCS Director and program staff will use the reviewer scores when considering competing applications. Reviewer scores will weigh heavily in funding decisions, but will not be the only factors considered.

Applications generally will be considered in order of the average scores assigned by the review panel. Because other important factors are taken into consideration, highly ranked applications are not guaranteed funding. These other considerations include, for example: the timely and proper completion by the applicant of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; amount and duration of the grant requested and the proposed project's consistency and harmony with OCS goals and policy; geographic distribution of applications; previous program performance of applicants; compliance with grant terms under previous HHS grants, including the actual dedication to program of mobilized resources as set forth in project applications; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowance on previous OCS or other Federal agency grants.

Anticipated Announcement and Award Dates

Award and announcements will be issued no later than September 30, 2005.

VI. Award Administration Information

1. Award Notices

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided (if applicable), and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing.

2. Administrative and National Policy Requirements

Grantees are subject to the requirements in 45 CFR Part 74 (non-governmental) or 45 CFR Part 92 (governmental).

Direct Federal grants, subaward funds, or contracts under this Program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this Program. Regulations pertaining to the prohibition of Federal funds for inherently religious activities can be found on the HHS Web site at *http://www.os.dhhs.gov/fbci/waisgate21.pdf.*

3. Reporting Requirements

Program Progress Reports: semi-annual.

Financial Reports: semi-annual.

Grantees will be required to submit program progress and financial reports (SF 269) throughout the project period. Program progress and financial reports are due 30 days after the reporting period. In addition, final programmatic

and financial reports are due 90 days after the close of the project period.

VII. Agency Contacts

Program Office Contact: Catherine Beck, Administration for Children and Families, Office of Community Services' Operations Center, 1515 Wilson Boulevard, Suite 100, Arlington, VA 22209, Phone: 1–800–281–9519, Fax: 703–528–0716, E-mail: *OCS@lcgnet.com.*

Grants Management Office Contact: Barbara Ziegler-Johnson, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Aerospace Building, Washington, DC 20447–0002, Phone: 1–800–281–9519, Fax: 703–528–0716, E-mail: *OCS@lcgnet.com.*

VIII. Other Information

Notice: Beginning with FY 2006, the Administration for Children and Families (ACF) will no longer publish grant announcements in the **Federal Register**. Beginning October 1, 2005 applicants will be able to find a synopsis of all ACF grant opportunities and apply electronically for opportunities via: *www.Grants.gov.* Applicants will also be able to find the complete text of all ACF grant announcements on the ACF Web site located at: *http://www.acf.hhs.gov/grants/index.html.*

The FY 2006 President's budget does not include or propose funding for the Community Food and Nutrition Program. Future funding is based on the availability of Federal funds.

Direct federal grants, subaward funds, or contracts under this community Food and Nutrition Program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this Program. Regulations pertaining to the prohibition of Federal funds for inherently religious activities can be found on the HHS Web site at *http://www.os.HHS.gov/fbci/waisgate21.pdf.*

Additional Information about this program and its purpose can be located on the following Web site: *http://www.acf.hhs.gov/programs/ocs.*

Please reference Section IV.3 for details about acknowledgement of received applications.

Dated: April 7, 2005.

Josephine B. Robinson,

Director, Office of Community Services.

[FR Doc. 05–7461 Filed 4–15–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005F–0138]

Kareem I. Batarseh; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Kareem I. Batarseh has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a mixture of hydrogen peroxide, silver nitrate, phosphoric acid, tartaric acid, glutamic acid, and sodium tripolyphosphate as an antimicrobial agent in bottled drinking water.

FOR FURTHER INFORMATION CONTACT: Mical E. Honigfort, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1278.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5A4759) has been filed by Kareem I. Batarseh, P.O. Box 8, College Park, MD 20741–0008. The petition proposes to amend the food additive regulations in part 172 *Food Additives Permitted For Direct Addition To Food For Human Consumption* (21 CFR part 172) to provide for the safe use of a mixture of hydrogen peroxide, silver nitrate, phosphoric acid, tartaric acid, glutamic acid, and sodium tripolyphosphate as an antimicrobial agent in bottled drinking water.

The agency has determined under 21 CFR 25.32(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: April 1, 2005.

Laura M. Tarantino,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 05–7727 Filed 4–15–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0091]

Draft Guidance for Industry on User Fee Waivers for Fixed Dose Combination Products and Co-Packaged Human Immunodeficiency Virus Drugs for the President's Emergency Plan for Acquired Immunodeficiency Syndrome Relief; 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 "User Fee Waivers for FDC and Co-Packaged HIV Drugs for PEPFAR." This draft guidance describes the circumstances under which certain applications for fixed dose combination (FDC) and copackaged versions of previously approved antiretroviral therapies for the treatment of human immunodeficiency virus (HIV) under the President's Emergency Plan for Acquired Immunodeficiency Syndrome Relief (PEPFAR) will not be assessed user fees. The draft guidance also describes circumstances under which some of the applications that will be assessed fees may be eligible for a public health or a barrier-to-innovation waiver.

DATES: Submit written or electronic comments on the draft guidance by June 17, 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: Michael Jones, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers

Lane, Rockville, MD 20857. 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "User Fee Waivers for FDC and Co-Packaged HIV Drugs for PEPFAR." The draft guidance describes the circumstances under which certain applications for FDC and copackaged versions of previously approved antiretroviral therapies for the treatment of HIV under PEPFAR will not be assessed user fees. The draft guidance also describes circumstances under which some of the applications that will be assessed fees may be eligible for a public health or a barrier-to-innovation waiver.

As part of PEPFAR, FDA issued in May 2004 a draft guidance entitled "Fixed Dose Combination and Co-Packaged Drug Products for the Treatment of HIV" (Fixed Dose Guidance) (69 FR 28931, May 19, 2004). The Fixed Dose Guidance described some scenarios for approval of FDC or copackaged products for the treatment of HIV, provided examples of drug combinations considered acceptable for FDC/copackaging, and examples of those not considered acceptable for FDC/copackaging. The draft guidance also explained that the Federal Food, Drug, and Cosmetic Act provides for certain circumstances in which FDA can grant sponsors a waiver or reduction in fees. The draft guidance also stated that the agency was evaluating the circumstances under which it may grant user fee waivers or reductions for sponsors developing FDC and copackaged versions of previously approved antiretroviral therapies for the treatment of HIV. Since issuance of the Fixed Dose Guidance, several potential applicants have asked that we clarify whether sponsors submitting drug applications under the Fixed Dose Guidance and under the PEPFAR program will be required to pay user fees under the Prescription Drug User Fee Act (PDUFA) and if so, whether they would be eligible for a waiver of those fees. As explained in this draft guidance, in some of the scenarios described in the Fixed Dose Guidance, a sponsor could qualify for fee exemptions or would only be assessed a half-fee either because the sponsor is using an active ingredient that has already been approved or the application does not require clinical data for approval. A sponsor of an application that would be assessed either a full- or a half-fee may also qualify for a waiver of the application fee under several provisions of PDUFA.

We expect that most of the applications, products, and establishments for FDC and copackaged HIV therapies proposed for use in the PEPFAR program will either not be assessed fees in the first instance or will qualify for a waiver under the special circumstances part of the barrier-to-innovation user fee waiver.

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 waivers of user fees for FDC and copackaged products for the treatment of HIV under PEPFAR. 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 draft guidance. Two copies of mailed 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 draft 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 document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: April 13, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–7729 Filed 4–15–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Application for Certification and Recertification as a Federally Qualified Health Center (FQHC) Look-Alike (OMB No. 0915–0142): Revision

The Health Resources and Services Administration (HRSA) proposes to revise the application guide used by organizations applying for certification or recertificaion as a Federally Qualified Health Center (FQHC) Look-Alike for purposes of cost-based reimbursement under the Medicaid and Medicare programs. The guide will be revised to reflect legislative, policy, and technical changes since August 2003, the issuance date of the last guidance. The estimated burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Application	40	1	100	4,000

Form	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Recertification	100	1	15	1,500
Total	140			5,500

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 12, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–7725 Filed 4–15–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part A (Office of the Secretary) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (HHS) to reflect a realignment of functions and responsibilities within the Office of Inspector General (OIG). The statement of organization, functions, and delegations of authority conforms to and carries out the statutory requirements for operating OIG. Chapter AF was last published in its entirety on July 2, 2004.

The realignment of functions and responsibilities within OIG has been done to allow greater staff flexibility and to better reflect the current work environment and priorities within the organization. In addition, this notice sets forth a number of technical changes in Chapter AF that serve to update references to office titles and statutory authorities.

As amended, Chapter AF now reads as follows:

Section AF.00, Office of Inspector General—Mission

The Office of Inspector General (OIG) was established by law as an independent and objective oversight unit of the Department to carry out the mission of promoting economy, efficiency and effectiveness through the elimination of waste, abuse and fraud. In furtherance of this mission, the organization:

A. Conducts and supervises audits, investigations, inspections and evaluations relating to HHS programs and operations.

B. Identifies systemic weaknesses giving rise to opportunities for fraud and abuse in HHS programs and operations and makes recommendations to prevent their recurrence.

C. Leads and coordinates activities to prevent and detect fraud and abuse in HHS programs and operations.

D. Detects wrongdoers and abusers of HHS programs and beneficiaries so appropriate remedies may be brought to bear.

E. Keeps the Secretary and the Congress fully and currently informed about problems and deficiencies in the administration of HHS programs and operations and about the need for and progress of corrective action, including imposing sanctions against providers of health care under Medicare and Medicaid who commit certain prohibited acts.

In support of its mission, OIG carries out and maintains an internal quality assurance system and a peer review system with other Offices of Inspectors General, including periodic quality assessment studies and quality control reviews, to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards, and other requirements are followed, are effective, and are functioning as intended in OIG operations.

Section AF.10, Office of Inspector General—Organization

There is at the head of OIG a statutory Inspector General, appointed by the President and confirmed by the Senate. This office consists of six organizational units:

A. Immediate Office of the Inspector General (AFA)

B. Office of Management and Policy (AFC)

C. Office of Evaluation and Inspections (AFE)

D. Office of Counsel to the Inspector General (AFG)

E. Office of Audit Services (AFH)

F. Office of Investigations (AFJ)

Section AF.20, Office of Inspector General—Functions

The component sections that follow describe the specific functions of the organization.

Section AFA.00, Immediate Office of the Inspector General—Mission

The Immediate Office of the Inspector General (IOIG) is directly responsible for meeting the statutory mission of OIG as a whole and for promoting effective OIG internal quality assurance systems, including quality assessment studies and quality control reviews of OIG processes and products. The office also plans, conducts and participates in a variety of interagency cooperative projects and undertakings relating to fraud and abuse with the Department of Justice (DOJ), the Centers for Medicare & Medicaid Services (CMS) and other governmental agencies, and is responsible for the reporting and legislative and regulatory review functions required by the Inspector General Act.

Section AFA.10, Immediate Office of the Inspector General—Organization

IOIG is comprised of the Inspector General, the Principal Deputy Inspector General and an immediate office staff, including the Office of External Affairs.

Section AFA.20, Immediate Office of the Inspector General—Functions

As the senior official of the organization, the Inspector General supervises the Chief Counsel to the Inspector General and the Deputy Inspectors General, who head the major OIG components. The Inspector General is appointed by the President, with the advice and consent of the Senate, and reports to and is under the general supervision of the Secretary or, to the extent such authority is delegated, the Deputy Secretary, but does not report to and is not subject to supervision by any other officer in the Department. In keeping with the independence conferred by the Inspector General Act, the Inspector General assumes and exercises, through line management, all functional authorities related to the administration and management of OIG and all mission-related authorities stated or implied in the law or delegated directly from the Secretary.

The Inspector General provides executive leadership to the organization and exercises general supervision over the personnel and functions of its major components. The Inspector General determines the budget needs of OIG, sets OIG policies and priorities, oversees OIG operations and provides reports to the Secretary and the Congress. By statute, the Inspector General exercises general personnel authority, e.g., selection, promotion, and assignment of employees, including members of the senior executive service. The Inspector General delegates related authorities as appropriate.

The Principal Deputy Inspector General assists the Inspector General in the management of OIG, and during the absence of the Inspector General, acts as the Inspector General.

The Office of External Affairs is comprised of three components—Public Affairs, Legislative and Regulatory Affairs, and the Executive Secretariat. The office conducts and coordinates reviews of existing and proposed legislation and regulations related to HHS programs and operations to identify their impact on economy and efficiency and their potential for fraud and abuse. It serves as the contact for the press and electronic media and serves as OIG congressional liaison. The office prepares or coordinates congressional testimony and confers with officials in the Office of the Secretary staff divisions on congressional relations, legislation and public affairs. The office coordinates the distribution of all legislatively-mandated reports to the Congress. It develops and publishes OIG newsletters and other issuances to announce and promote OIG activities and accomplishments. The office has primary responsibility for developing and promulgating all OIG regulations for codification into the Code of Federal Regulations, and for preparing all OIG related notices and other documents for **Federal Register** publication. The office also serves as OIG liaison to the Office of the Secretary for Freedom of Information and Privacy Act requests.

Section AFC.00, Office of Management and Policy—Mission

The Office of Management and Policy (OMP) provides mission support services to the Inspector General and other components. The office formulates and executes the budget, develops functional policies for the general management of OIG, and manages information technology resources.

In support of its mission, the office carries out and maintains an internal quality assurance system. The system includes quality control reviews of OMP processes and products to ensure that policies and procedures are followed effectively and function as intended.

Section AFC.10, Office of Management and Policy—Organization

The office is directed by the Deputy Inspector General for Management and Policy and the Assistant Inspector General for Information Technology. The office is comprised of the following components:

A. Budget Operations
B. Information Technology
C. Policy, Planning and Performance

Section AFC.20, Office of Management and Policy—Functions

A. Budget Operations

The office formulates and oversees the execution of the budget and confers with the Office of the Secretary, the Office of Management and Budget, and the Congress on budget issues. It issues quarterly grants to States for Medicaid Fraud Control Units.

B. Information Technology

The office is responsible for information resources management (IRM), as defined by the Paperwork Reduction Act, OMB Circular A–130, the Federal Information Resources Management regulations, the Computer Security Act of 1987, the Clinger-Cohen Act, the Federal Information Security Management Act of 2002, HHS IRM Circulars, and by related guidance. The office also provides nationwide information technology support to OIG through management of its local area networks, provision of computer end-user and direct mission information technology (IT) support, maintenance of OIG information systems, and safeguarding sensitive information and IT resources. The Assistant Inspector General for Information Technology, who reports to the Inspector General through the Deputy Inspector General for Management and Policy, serves as Chief Information Officer.

C. Policy, Planning and Performance

This office coordinates the development of the work planning process, including strategic long-range planning, tactical planning and the annual work plan coordination and production. It compiles the Office of Inspector General Semiannual Report to the Congress. It is responsible for overseeing emergency operations and national security classification policy, and for coordinating updates of the Red Book, which addresses unimplemented OIG recommendations to reduce fraud, waste and abuse. The office also conducts management studies and analyzes and establishes and coordinates general management policies for OIG and publishes those policies in the OIG Administrative Manual. It serves as OIG liaison to the Office of the Secretary for personnel issues and other administrative policies and practices, and on equal employment opportunity and other civil rights matters. It coordinates internal control reviews for OIG.

Section AFE.00, Office of Evaluation and Inspections—Mission

The Office of Evaluation and Inspections (OEI) is responsible for conducting a comprehensive set of in-depth evaluations of HHS programs, operations and processes to identify vulnerabilities, to prevent and detect fraud, waste and abuse, and to promote efficiency and effectiveness in HHS programs and operations.

Section AFE.10, Office of Evaluation and Inspections—Organization

This office is comprised of the following components:

A. Immediate Office
B. Policy and Oversight Division
C. Program Evaluations Division
D. Regional Operations
E. Technical Support Staff

Section AFE.20, Office of Evaluation and Inspections—Functions

A. Immediate Office of the Deputy Inspector General for OEI

This office is directed by the Deputy Inspector General for OEI who, with the assistance of an Assistant Inspector General, is responsible for carrying out OIG's evaluations mission and supervises the Directors for Policy and Oversight, Program Evaluations, Regional Operations, and Technical Support. This office is also responsible for the oversight of the State Medicaid Fraud Control Units and for certifying and recertifying these units and for auditing their Federal funding.

B. Policy and Oversight

This office develops OEI's evaluation and inspection policies, procedures and standards. It manages OEI's human and financial resources; develops and monitors OEI's management information systems; and conducts management reviews within the HHS/OIG and for other OIGs upon request. The office carries out and maintains an internal quality assurance system. The system includes quality assessment studies and quality control reviews of OEI processes and products to ensure that policies and

procedures are effective, followed, and functioning as intended.

C. Program Evaluations

This office manages OEI's work planning process, and develops and reviews legislative, regulatory and program proposals to reduce vulnerabilities to fraud, waste and mismanagement. It develops evaluation techniques and coordinates projects with other OIG and Departmental components. It provides programmatic expertise and information on new programs, procedures, regulations and statutes to OEI regional offices. It maintains liaison with other components in the Department, follows up on implementation of corrective action recommendations, evaluates the actions taken to resolve problems and vulnerabilities identified, and provides additional data or corrective action options, where appropriate.

D. Regional Operations

This office is responsible for OEI's mission in the field. The regional offices conduct extensive evaluations of HHS programs and produce the results in inspection reports. They conduct data and trend analyses of major HHS initiatives to determine the effects of current policies and practices on program efficiency and effectiveness. They recommend changes in program policies, regulations and laws to improve efficiency and effectiveness, and to prevent fraud, abuse, waste and mismanagement. They analyze existing policies to evaluate options for future policy, regulatory and legislative improvement.

E. Technical Support

This office provides statistical and database advice and services for inspections conducted by the regional offices. It carries out analyses of large databases to identify potential areas of fraud and abuse and provides technical assistance to the regional offices for these purposes.

Section AFG.00, Office of Counsel to the Inspector General—Mission

The Office of Counsel to the Inspector General (OCIG) is responsible for providing all legal services and advice to the Inspector General, Principal Deputy Inspector General and all the subordinate components of the Office of Inspector General, in connection with OIG operations and administration, OIG fraud and abuse enforcement and compliance activities, and OIG activities designed to promote efficiency and economy in the Department's programs and operations. OCIG is also responsible for proposing and litigating civil money penalty (CMP) and program exclusion cases within the jurisdiction of OIG, for coordinating False Claims Act and criminal, civil and administrative fraud and abuse law enforcement matters, and for resolving voluntary disclosure cases. OCIG develops guidance to assist providers in establishing compliance programs; monitors ongoing compliance of providers subject to integrity agreements; and promotes industry awareness through the issuance of advisory opinions, fraud alerts, and special advisory bulletins.

Section AFG.10, Office of Counsel to the Inspector General—Organization

The office is directed by the Chief Counsel to the Inspector General and the Assistant Inspector General for Legal Affairs. The office is comprised of the following components:

A. Advice
B. Administrative and Civil Remedies
C. Industry Guidance

Section AFG.20, Office of Counsel to the Inspector General—Functions

A. Advice

This office provides legal advice to the various components of OIG on issues that arise in the exercise of OIG's responsibilities under the Inspector General Act of 1978. Such issues include the scope and exercise of the Inspector General's authorities and responsibilities; investigative techniques and procedures (including criminal procedure); the sufficiency and impact of legislative proposals affecting OIG; and the conduct and resolution of investigations, audits and inspections. The office evaluates the legal sufficiency of OIG recommendations and develops formal legal opinions to support these recommendations. When appropriate, the office coordinates formal legal opinions with the HHS Office of the General Counsel. The office provides legal advice on OIG internal administration and operations, including appropriations, delegations of authority, OIG regulations, personnel matters, the disclosure of information under the Freedom of Information Act, and the safeguarding of information under the Privacy Act. The office provides advice and guidance on Government ethics and assists the Chief Counsel in his/her role as OIG's Deputy Ethics Officer. The office is responsible for conducting and coordinating litigation activities on personnel and Equal Employment Opportunity matters and Federal tort actions involving OIG employees. The office is responsible for the clearance and enforcement of subpoenas issued by OIG, and defends OIG in litigation matters as necessary.

B. Administrative and Civil Remedies

1. This office is responsible for determining whether to propose or implement administrative sanctions, including CMPs within the jurisdiction of OIG, assessments, and program exclusions. The office, in conjunction with the Office of Investigations (OI), effectuates all mandatory and permissive exclusions from participation in Federal health care programs under the Social Security Act; decides on all requests for reinstatement from, or waiver of, exclusions; and participates in developing standards governing the imposition of these exclusion authorities. The office litigates appeals of program exclusions before the Departmental Appeals Board and assists DOJ in handling any subsequent appeals of such cases to the Federal courts.

2. The office reviews all cases referred by CMS under the patient anti-dumping authority of the Social Security Act and, where appropriate, proposes and litigates CMPs with respect to hospitals, and CMPs and program exclusions with respect to physicians, for violations of the patient anti-dumping statute.

3. The office proposes and litigates CMPs, assessments and program exclusions under the CMP law and other CMP authorities delegated to OIG.

4. In coordination with DOJ, the office handles all False Claims Act cases, including qui tam cases, and is responsible for final sign-off on False Claims Act settlements for the Department, including the resolution of the CMP and program exclusion authorities that have been delegated to OIG. It participates in settlement negotiations and provides litigation support. The office, in conjunction with OI, coordinates resolution of all voluntary disclosure cases, both under the OIG Self-Disclosure Protocol and otherwise, through: liaison activities with DOJ and U.S. Attorneys offices; the disclosure verification efforts of the Office of Audit Services (OAS) and OI; and final disposition and sign-off of the matter. The office is responsible for developing and maintaining a comprehensive and coordinated database on all settled and pending False Claims Act, CMP, and exclusion cases under its authority.

5. The office also develops and monitors corporate and provider integrity programs adopted as part of settlement agreements, conducts on-site reviews, and develops audit and investigative review standards for monitoring such plans in cooperation

with other OIG components. The office resolves breaches of integrity agreements through the development of corrective action plans and through the imposition of sanctions.

C. Industry Guidance

This office is responsible for drafting and issuing advisory opinions to the health care industry and members of the public on whether an activity (or proposed activity) would constitute grounds for the imposition of a sanction under the anti-kickback statute, the CMP law or the program exclusion authorities, and on other issues pertaining to the anti-kickback statute. The office develops and updates procedures for the submission of requests for advisory opinions and for determining the fees that will be imposed. The office solicits and responds to proposals for new regulatory safe harbors to the anti-kickback statute, modifications to existing safe harbors, and new fraud alerts. The office consults with DOJ on all proposed advisory opinions and safe harbors before issuance or publication. The office provides legal advice to the various components of OIG, other offices of the Department, and DOJ concerning matters involving the interpretation of the anti-kickback statute and other legal authorities, and assists those components or offices in analyzing the applicability of the anti-kickback statute to various practices or activities under review.

Section AFH.00, Office of Audit Services—Mission

The Office of Audit Services (OAS) provides policy direction for and conducts and oversees comprehensive audits of HHS programs, operations, grantees and contractors, following generally accepted government auditing standards (GAGAS), the Single Audit Act of 1984, applicable Office of Management and Budget (OMB) circulars and other legal, regulatory and administrative requirements. This includes investigative audit work performed in conjunction with other OIG components. The office maintains an internal quality assurance system, including periodic quality assessment studies and quality control reviews, to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed in all audit activities performed for, or on behalf of, the Department. In furtherance of this mission, the organization engages in a number of activities:

A. The office coordinates and confers with officials of the central Federal management agencies (OMB, the Government Accountability Office (GAO), the Office of Personnel Management (OPM) and the Department of the Treasury) on audit matters involving HHS programs and operations. It provides technical assistance to Federal, State and local investigative offices on matters involving HHS programs and operations. It participates in interagency efforts implementing OMB Circular 133, which calls for use of the single audit concept for most external audits, as well as reviews the quality of those audits as they pertain to HHS oversight responsibilities. It performs audits of activities administered by other Federal departments, following the system of audit cognizance administered by OMB. It participates in the President's Council on Integrity and Efficiency (PCIE) initiatives and other governmentwide projects; works with other OIG components on special assignments and projects; and responds to congressional oversight interests related to audit matters in the Department.

B. The office provides comprehensive audit services to HHS operating divisions (OPDIVs) and the Office of the Secretary staff divisions (STAFFDIVs) in their development of program policies and management of grants and procurement and in their establishment of indirect cost rates. The office also performs pre-award audits of grant or contract proposals to determine the financial capability of the grantees or contractors and conducts post-award audits.

C. The office reviews legislative, regulatory and policy proposals for audit implications. It recommends improvements in the accountability and integrity features of legislation, regulations and policy. It prepares reports of audits and special studies for the Secretary, heads of HHS OPDIVs, regional directors and others. It gathers data on unresolved audit findings for the statutorily required semiannual reports to the Congress and reconciles resolution data with the Department OPDIVs as required by the Inspector General Act of 1978, as amended by Inspector General Act Amendments of 1988 (Public Law 100–504). It conducts follow-up examinations and special analyses of actions taken on previously reported audit findings and recommendations to ensure completeness and propriety. The office provides input to the Office of Inspector General Semiannual Report to the Congress and produces summaries for both (1) the Orange Book—a summary of unimplemented program and management improvements recommended—and (2) the Red Book—a summary of significant monetary recommendations not yet implemented.

D. The office serves as the focal point for all financial management audit activity within the Department and acts as the primary liaison between the OIG and Departmental management. It also provides overall leadership and direction in carrying out the responsibilities mandated under the Chief Financial Officers Act relating to financial statement audits.

Section AFH.10, Office of Audit Services—Organization

The office is comprised of the following components:

A. Immediate Office
B. Financial Management and Regional Operations
C. Centers for Medicare and Medicaid Services Audits
D. Grants and Internal Activities Audits
E. Audit Management, Policy, and Information Technology Audits

Section AFH.20, Office of Audit Services—Functions

A. Immediate Office of the Deputy Inspector General for Audit Services

This office is directed by the Deputy Inspector General for Audit Services who carries out the functions designated in the law (section 3(d)(1) of the Inspector General Act) for the position, Assistant Inspector General for Auditing. The Deputy Inspector General for Audit Services is responsible to the Inspector General for carrying out OIG's audit mission and supervises the Assistant Inspectors General heading OAS offices described below.

B. Financial Management and Regional Operations

This office is directed by the Assistant Inspector General for Financial Management and Regional Operations. In addition to directing this office, the Assistant Inspector General supervises the eight Regional Inspectors General for Audit Services. The office's principal functions include the direct-line responsibility for audits of financial statements and financial statement-related audits, including internal audits of functional areas within the Department, and directing field audit operations.

1. The office serves as the focal point for all financial statement and financial statement-related audit activity within the Department and serves as the primary liaison between OIG and departmental management with respect to those audits.

2. The office provides oversight for audits of governments, universities and

nonprofit organizations conducted by nonfederal auditors (external audit resources) and those under contract with OIG.

3. The office maintains an internal quality assurance system that provides reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed in all financial management audit activities performed by the office, or on behalf of the Department.

C. Centers for Medicare and Medicaid Services Audits

This office is directed by the Assistant Inspector General for Centers for Medicare and Medicaid Services Audits. The office conducts audits of CMS program operations and oversees nationwide the audits of the Medicare and Medicaid programs, their contractors, and providers of services and products. It maintains an internal quality assurance system to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed in all CMS audit activities performed by, or on behalf of, the Department.

D. Grants and Internal Activities Audits

This office is directed by the Assistant Inspector General for Grants and Internal Activities Audits. The office conducts and oversees audits of the operations and programs of the Administration for Children and Families, the Administration on Aging, and the Public Health programs, as well as Statewide cost allocation plans. It maintains an internal quality assurance system, including periodic quality control reviews, to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed in its audit activities.

E. Audit Management, Policy, and Information Technology Audits

This office is directed by the Assistant Inspector General for Audit Management and Policy. The office manages the human and financial resources of OAS, including developing staffing allocation plans and issuing policy for, coordinating and monitoring all budget, staffing, recruiting, and training activities of the office. It maintains a professional development program for office staff, which meets the requirements of Government auditing standards. The office evaluates audit work, including performing quality control reviews of audit reports, and coordinates the development of and monitors audit work plans. It operates and maintains an OAS-wide quality assurance program that includes the conduct of periodic quality control reviews. It develops audit policy, procedures, standards, criteria and instructions to be followed by OAS staff in conducting audits of departmental programs, grants, contracts or operations. Such policy is developed in accordance with GAGAS and other legal, regulatory and administrative requirements. The office tracks, monitors and reports on audit resolution and follow-up in accordance with OMB Circular A–50, "Audit Follow-up," and the 1988 Inspector General Act Amendments. The office coordinates with other OIG divisions in developing input to the Office of Inspector General Annual Work Plan, to the Office of Inspector General's Orange and Red Books, and to the Office of Inspector General Semiannual Report to the Congress. The office reviews the design, development and maintenance of Department computer-based systems through the conduct of comprehensive audits of general and application controls in accordance with GAO's Federal Information System Controls Audit Manual and develops and applies advanced computer-based audit techniques for use in detecting fraud, waste and abuse in HHS programs.

Section AFJ.00, Office of Investigations—Mission

The Office of Investigations (OI) is responsible for conducting and coordinating investigative activities related to fraud, waste, abuse and mismanagement in HHS programs and operations, including wrongdoing by applicants, grantees, and contractors, or by HHS employees in the performance of their official duties. It serves as OIG liaison to DOJ on all matters relating to investigations of HHS programs and personnel, and reports to the Attorney General when OIG has reasonable grounds to believe Federal criminal law has been violated. The office serves as a liaison to CMS, State licensing boards, and other outside organizations and entities with regard to exclusion, compliance and enforcement activities. It works with other investigative agencies and organizations on special projects and assignments. In support of its mission, the office carries out and maintains an internal quality assurance system. The system includes quality assessment studies and quality control reviews of OI processes and products to ensure that policies and procedures are followed effectively, and are functioning as intended.

Section AFJ.10, Office of Investigations—Organization

This office is comprised of the following components:

A. Immediate Office
B. Investigative Operations
C. Investigative Oversight and Support

Section AFJ.20, Office of Investigations—Functions

A. Immediate Office of the Deputy Inspector General for Investigations

This office is directed by the Deputy Inspector General for Investigations (DIGI), who is responsible for the functions designated in the law for the position Assistant Inspector General for Investigations. The DIGI supervises the Assistant Inspector General for Investigative Operations and the Assistant Inspector General for Investigative Oversight and Support, who head the offices described below.

The DIGI is responsible to the Inspector General for carrying out the investigative mission of OIG and for leading and providing general supervision to the OIG investigative component. The Immediate Office provides broad guidance and instruction to staff and serves as the focal point for interaction within OIG. The Immediate Office handles all investigative and management advisory services for the DIGI, ensuring that the DIGI is briefed on all complex, sensitive and precedent-setting program and administrative issues that may significantly impact on OI management and the investigative program nationwide. The Immediate Office coordinates special investigations, studies and analyses with respect to OIG responsibilities and serves as liaison with other Federal, State and local agencies.

B. Investigative Operations

The Assistant Inspector General for Investigative Operations, who supervises a headquarters staff and the Special Agents in Charge, directs this office.

1. The headquarters staff assists the Deputy Inspector General for Investigations in establishing investigative priorities, evaluating the progress of investigations, and reporting to the Inspector General on the effectiveness of investigative efforts. It develops and implements investigative techniques, programs, guidelines, and policies. It provides programmatic expertise and issues information on new programs, regulations and statutes. It directs and coordinates the investigative regional offices.

2. The headquarters staff identifies systemic and programmatic

vulnerabilities in the Department's operations and makes recommendations for change to the appropriate managers.

3. The office develops all derivative mandatory and permissive program exclusions, and ensures enforcement of exclusions imposed through liaison with CMS, DOJ and other governmental and private sector entities. It is responsible for developing, improving and maintaining a comprehensive and coordinated OIG database on all OIG exclusion actions, and promptly and accurately reports all exclusion actions within its authority to the database. It informs appropriate regulatory agencies, health care providers and the general public of all OIG exclusion actions, and is responsible for improving public access to information on these exclusion actions to ensure that excluded individuals and entities are effectively barred from program participation.

4. The regional offices conduct investigations of allegations of fraud, waste, abuse, mismanagement and violations of standards of conduct within the jurisdiction of OIG in their assigned geographic areas. They coordinate investigations and confer with HHS operating divisions, staff divisions, OIG counterparts and other investigative and law enforcement agencies. They prepare investigative and management improvement reports.

5. The office directs and manages extremely sensitive and complex investigations into alleged misconduct by OIG and Department employees, as well as criminal investigations into electronic and/or computer-related violations.

C. Investigative Oversight and Support

This office is directed by the Assistant Inspector General for Investigative Oversight and Support, who performs the general management functions of the Office of Investigations.

1. This office manages the human and financial resources of OI, including developing staffing allocation plans and issuing policy for coordination and monitoring all budget, staffing and recruiting.

2. This office plans, develops, implements and evaluates all levels of employee training for investigators, managers, support staff and other personnel. It oversees a law enforcement techniques and equipment program.

3. This office coordinates the general management processes, and implements policies and procedures published in the OIG Administrative Manual and elsewhere. It also coordinates a national inspection program to ensure compliance with the Federal Managers Financial Integrity Act, the President's Council on Integrity and Efficiency, and Attorney General guidelines.

4. The office coordinates with the other OIG components in developing the Work Plan and provides input to the Office of Inspector General Semiannual Report to the Congress.

5. The staff provides for the personal protection of the Secretary.

6. The office maintains an automated data and management information system used by all OI managers and investigators. It provides technical expertise on computer applications for investigations and coordinates and approves investigative computer matches with other agencies.

7. The office operates a toll-free hotline for OIG to permit individuals to call in suspected fraud, waste, or abuse; refers the calls for appropriate action by HHS agencies or other OIG components; and analyzes the body of calls to identify trends and patterns of fraud and abuse needing attention.

8. The office promotes and coordinates the adoption of advanced information technology forensics in the prevention and detection of fraud and provides general and specific coordination of programs to retrieve and analyze computer-based forensic evidence.

Dated: March 23, 2005.

Daniel R. Levinson,

Acting Inspector General.

[FR Doc. 05–7612 Filed 4–15–05; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Evaluation of Networking Suicide Prevention Hotlines Follow-Up Assessment—NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services has funded a National Suicide Prevention Lifeline Network, consisting of a single toll-free telephone number that routes calls from anywhere in the United States to a network of local crisis centers. In turn, the local centers link callers to local emergency, mental health, and social service resources.

With input from multiple experts in the field of suicide prevention, the project created a telephone interview survey to collect data on follow-up assessments of consenting individuals calling the Lifeline network. The "Evaluation of Networking Suicide Prevention Hotlines Follow-Up Assessment" will provide an empirical evaluation of crisis hotline services, necessary to optimize public health efforts to prevent suicidal behavior.

Three hundred and sixty callers will be recruited from seven of the approximately 100 crisis hotline centers that participate in the Lifeline network. Trained crisis workers will conduct the follow-up telephone assessment ("Crisis Hotline Telephone Followup Assessment") within one month of the initial call. Assessments will be conducted only one time for each client. Strict measures to ensure confidentiality will be followed.

The resulting data will measure (1) suicide risk status at the time of and since the call, (2) depressive symptoms at follow-up, (3) service utilization since the call, (4) barriers to service access, and (5) the client's perception of the efficacy of the hotline intervention. The estimated annual response burden to collect this information is as follows:

Instrument	Number of response	Responses/respondent	Burden/response (hours)	Annual burden (hours)
Crisis Hotline Telephone Followup Assessment	360	1	.58	209

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, 1 Choke Cherry Road, Rockville, MD 20850. Written comments should be received by June 17, 2005.

Dated: April 12, 2005.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 05–7677 Filed 4–17–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: 2006 National Survey on Drug Use and Health—(OMB No. 0930–0110)—Revision

The National Survey on Drug Use and Health (NSDUH), formerly the National Household Survey on Drug Abuse (NHSDA), is a survey of the civilian, noninstitutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

For the 2006 NSDUH, additional questions are being planned regarding self-help drug treatment, use of additional hallucinogens, prescription drugs and over the counter medications, respondent's place of residence, and alcohol consumption practices. To maintain the respondent burden at 60 minutes per interview, a few questions will be deleted. The remaining modular components of the questionnaire will remain essentially unchanged except for minor modifications to wording.

As with all NSDUH/NHSDA surveys conducted since 1999, the sample size of the survey for 2006 will be sufficient to permit prevalence estimates for each of the fifty states and the District of Columbia.

The total annual burden estimate is shown below:

Activity	Number of respondents	Number of responses per respondent	Average burden hours per respondent	Total burden hours
Household Screening	182,250	1	.083	15,127
Interview	67,500	1	1.0	67,500
Re-interview	3,100	1	1.0	3,100
Screening Verification	5,559	1	.067	372
Interview Verification	10,125	1	.067	678
Re-Interview Verification	1,550	1	.067	104
Total	182,250			86,881

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 71–1044, One Choke Cherry Road, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 12, 2005.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 05–7678 Filed 4–17–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2005–0032]

Office of Research and Development; Proposed Federally Funded Research and Development Center

AGENCY: Office of National Laboratories, Directorate of Science and Technology, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS) expects to sponsor a Federally Funded Research and Development Center (FFRDC) to address the need for scientific research to better anticipate, prevent, and mitigate the consequences of biological attacks. The proposed FFRDC will be the National Biodefense Analysis and Countermeasures Center (NBACC) which is a critical component in the overarching Homeland Security national biodefense complex. The NBACC will both coordinate biodefense research activities among various federal agencies and to execute its own research plan. Also required will be technical and program management capabilities to

facilitate operation of the NBACC facility.

ADDRESSES: If you desire to submit comments, they must be submitted within 30 days after publishing of this Notice. Comments must be identified by DHS–2005–0032 and may be submitted by *one* of the following methods:

- EPA Federal Partner EDOCKET Web site: *http://www.epa.gov/feddocket*. Follow instructions for submitting comments on the Web site.
- E-mail: *James.Johnson2@dhs.gov* Include docket number in the subject line of the message.
- Fax: 202–254–6163.
- Mail: James V. Johnson, Science and Technology Directorate, Department of Homeland Security, Washington DC 20528.

Docket: For access to the docket to read the background documents or comments received, go to *http://www.epa.gov/feddocket*.

FOR FURTHER INFORMATION CONTACT: Mr. James V. Johnson via e-mail at *James.Johnson2@dhs.gov*, or by telephone at (202) 254–6098.

SUPPLMENTARY INFORMATION: The FFRDC would be established under the authority of Section 305 of the Homeland Security Act of 2002, P.L. 107–296. Pursuant to this section, the Secretary of Homeland Security, "acting through the Under Secretary for Science and Technology, shall have the authority to establish * * * 1 or more federally funded research and development centers to provide independent analysis of homeland security issues, or to carry out other responsibilities under this Act* * *."

This notice is provided pursuant to 5.205b of the Federal Acquisition Regulations (FAR) to enable interested members of the public to provide comments to DHS on this proposed action. The potential FFRDC procurement will involve a Request for Proposals within approximately 90 days of the date of this notice. Upon request, a copy of the Request for Proposals, including the scope of work for the proposed FFRDC, will be provided to any interested party or parties. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section, above.

This also constitutes preliminary notice pursuant to section 308(c)(2)–(4) of the Homeland Security Act of 2002 that DHS may establish a headquarters laboratory to perform the functions envisioned by the NBACC. As required under section 308(c)(3)(A) and (B) of the Homeland Security Act, should the Secretary choose to establish a headquarters laboratory, he will establish criteria for the selection of that laboratory in consultation with the National Academy of Sciences and other agencies and experts. The criteria so established will be published in the **Federal Register**.

Further background of this potential establishment of the proposed FFRDC can be found out at the USAMRAA Web site, *http://www.usamraa.army.mil*.

Dated: April 12, 2005.

Dr. Maureen McCarthy,

Director, Office of Research and Development, Department of Homeland Security.

[FR Doc. 05–7702 Filed 4–15–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

[DHS2005–0024]

Office of Inspector General; Privacy Act of 1974; Systems of Records

AGENCY: Office of Information Technology and Office of Audits, Office of Inspector General, Department of Homeland Security.

ACTION: Notice of Privacy Act systems of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security Office of Inspector General is giving notice that it proposes to establish a new system of records titled, "Audit Training Tracking System."

DATES: Comments must be received on or before May 18, 2005.

ADDRESSES: You may submit comments, identified by Docket Number DHS–OIG–2005–0024, by *one* of the following methods:

- EPA Federal Partner EDOCKET Web site: *http://www.epa.gov/feddocket*. Follow instructions for submitting comments on the Web site. DHS has joined the Environmental Protection Agency (EPA) online public docket and comment system on its Partner Electronic Docket System (Partner EDOCKET).
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: (202) 254–4285 (This is not a toll-free number).
- Mail: Richard N. Reback, DHS, Office of Inspector General/STOP 2600, 245 Murray Drive, SW., Building 410, Washington, DC 20528.
- Hand Delivery / Courier: Richard N. Reback, DHS, Office of Inspector General/STOP 2600, 245 Murray Drive, S.W., Building 410, Washington, D.C. 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.epa.gov/feddocket*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.epa.gov/feddocket*. You may also access the Federal eRulemaking Portal at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Richard N. Reback, Department of Homeland Security, Office of Inspector General/STOP 2600, 245 Murray Drive, SW., Building 410, Washington, DC 20528 by telephone (202) 254–4100 or facsimile (202) 254–4285; Nuala O'Connor Kelly, Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, Washington, DC 20528 by telephone (202) 772–9848 or facsimile (202) 772–5036.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS), Office of Inspector General (OIG) is establishing a new system of records within OIG Headquarters under the Privacy Act of 1974 (5 U.S.C. 552a).

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS–OIG by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist the individual to more easily find such files within the Agency.

OIG is therefore publishing this system of records to cover training records relating to OIG auditors'

continuing professional education. The system is maintained for the purpose of tracking training completed by OIG auditors to ensure that OIG has met the requirements for continuing professional education under the Government Accountability Office, Government Auditing Standards, section 3.45, at 55 (2003)(GAO–03–673G; the "Yellow Book"). The Yellow Book standards require auditors performing work under generally accepted government auditing standards (GAGAS) to maintain their professional competence through continuing professional education (CPE). The system of records being published today will allow OIG to track training information and ensure these standards are met.

In accordance with 5 U.S.C. 552a(r), OIG has provided a report of this new system of records to the Office of Management and Budget (OMB) and to the Congress.

DHS–OIG–001

SYSTEM NAME:

Department of Homeland Security (DHS) Office of Inspector General (OIG) Audit Training Tracking System

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

This system of records is located in the OIG Office of Audits and Office of Information Technology, 1120 Vermont Avenue, NW., Washington, DC 20528.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

OIG auditors who are required to complete and track continuing education courses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records received, created, and compiled that document training requested and received by OIG auditors for purposes of continuing professional education. Types of information in the records include training registration and verification forms; course syllabi and materials; Standard Forms 182 (Request, Authorization, and Certification of Training); auditors' names and Social Security Numbers; auditors' office addresses and telephone numbers; hours of training completed; and names of training courses completed along with dates, cost (including travel costs), hours, and location of training.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 5 U.S.C. App. 3, section 4(b); Government Auditing Standards at section 3.45 (2003 Revision), GAO–03–673G, June 2003.

PURPOSE(S):

The system is maintained for the purpose of tracking training completed by OIG auditors to ensure that OIG has met the requirements for continuing professional education under the Government Accountability Office, Government Auditing Standards, section 3.45, at 55 (2003)(GAO–03–673G; the "Yellow Book"). OIG will use this system of records to track training and ensure that the Yellow Book standards are met.

ROUTINE USES OF THESE RECORDS:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(2) To a Federal, State, territorial, tribal, local, international, or foreign agency or entity for the purpose of consulting with that agency or entity (a) to assist in making a determination regarding access to or amendment of information, or (b) for the purpose of verifying the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment of information.

(3) To the Department of Justice (DOJ) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (a) DHS, or (b) any employee of DHS in his/her official capacity, or (c) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation.

(4) To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

(5) To the National Archives and Records Administration or other Federal Government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

(6) To a Federal, State, or local government entity or professional licensing.authority for purposes of responding to an official inquiry relating to professional licensing or certification requirements. Referral of information to State boards of accountancy will be made only after the auditor has been notified that the OIG is contemplating disclosing the information to an appropriate State board of accountancy, and the auditor has been provided with an opportunity to respond in writing to the OIG's findings.

(7) To appropriate persons engaged in conducting and reviewing internal and external peer reviews of the OIG to ensure adequate internal safeguards and management procedures exist or to ensure auditing standards applicable to Government audits are applied and followed.

(8) To the President's Council on Integrity and Efficiency (PCIE) and other Federal agencies, as necessary, if the records respond to an audit, investigation or review which is conducted pursuant to an authorizing law, rule or regulation, and in particular those conducted at the request of the PCIE pursuant to Executive Order No. 12993.

(9) To educational institutions for purposes of enrollment and verification of employee attendance and performance.

(10) To an appropriate Federal, State, territorial, tribal, local, international, or foreign agency law enforcement agency or other appropriate authority charged with investigating or prosecuting such a violation or enforcing or implementing such law, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law (i.e. criminal, civil, administrative, or regulatory).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored on paper media and in digital or other electronic form in a secure Local Area Network (LAN)-server and/or Wide Area Network (WAN) environment.

RETRIEVABILITY:

Records are retrieved by an identification number assigned by computer, by the name of the OIG auditor, by course, and by audit division.

SAFEGUARDS:

Information in this system is safeguarded in accordance with

applicable laws, rules and policies, including the DHS Information Technology Security Program Handbook. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know, and using locks and password protection identification features. OIG file areas are locked after normal duty hours and facilities are protected from the outside by security personnel.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration General Records Schedule 1, Item 29, Transmittal No. 12 (July 2004). Files may be retained for up to five years. For requests that result in litigation, the files related to that litigation will be retained for three years after final court adjudication.

SYSTEM MANAGER(S) AND ADDRESSES:

The System Managers are System Manager/OIG Office of Technology and System Manager/OIG Office of Audits, 1120 Vermont Avenue, NW., Washington, DC 20528.

NOTIFICATION PROCEDURES:

To determine whether this system contains records relating to you, write to the System Manager identified above.

RECORD ACCESS PROCEDURES:

A request for access to records in this system may be made by writing to the System Manager identified above, in conformance with 6 CFR part 5, subpart B, which provides the rules for requesting access to Privacy Act records maintained by DHS agencies.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures," above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from OIG auditors and government and non-government entities conducting continuing professional education courses and conferences.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: April 7, 2005.

Nuala O'Connor Kelly,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 05–7703 Filed 4–15–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[DHS2005–0028]

Privacy Act of 1974; Systems of Records: Homeland Security Operations Center Database

AGENCY: Privacy Office, Department of Homeland Security.

ACTION: Notice of Privacy Act systems of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to add a new system of records to its inventory of record systems, the Homeland Security Operations Center Database.

DATES: Comments must be received on or before May 18, 2005.

ADDRESSES: You may submit comments, identified by Docket Number DHS–2004-xxxx, by *one* of the following methods:

- EPA Federal Partner EDOCKET Web site: *http://www.epa.gov/feddocket.* Follow instructions for submitting comments on the Web site.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: (202) 772–5036 (This is not a toll-free number).
- Mail: Sandy Ford Page, Director, Disclosure Officer, Office of the Chief Of Staff, Office of the Under Secretary for Information Analysis and Infrastructure Protection, Department of Homeland Security, Washington, DC 20528; Nuala O'Connor Kelly, Chief Privacy Officer, Department of Homeland Security, 245 Murray Lane, Building 410, Washington, DC 20528.
- Hand Delivery / Courier: Nuala O'Connor Kelly, DHS Chief Privacy Officer, 245 Murray Lane, Building 410, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.epa.gov/feddocket,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.epa.gov/feddocket.* You may also access the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Sandy Ford Page, Director, Disclosure Office, Office of the Chief of Staff, Office of the Under Secretary for Information Analysis and Infrastructure Protection, Department of Homeland Security, Washington, DC by telephone (202) 282–8522 or facsimile (202) 282–9069; Nuala O'Connor Kelly, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528 by telephone (202) 772–9848 or facsimile (202) 772–5036.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS) is composed of five directorates. The mission of the Directorate for Information Analysis and Infrastructure Protection (IAIP) is to help deter, prevent, and mitigate acts of terrorism by assessing vulnerabilities in the context of changing threats. Within IAIP, the Homeland Security Operations Center (HSOC) serves as the technological platform to receive threat information, integrate it and disseminate it in order to support the following activities of IAIP:

a. Maintaining domestic situational awareness;

b. Facilitating homeland security information sharing and operational coordination with other operations centers to include incident management;

c. Monitoring threats and assisting in dissemination of homeland security threat warnings, advisory bulletins, and other information pertinent to national incident management;

d. Providing general situational awareness and support to, and acting upon, requests for information generated by the Interagency Incident Management Group; and

e. Facilitating domestic incident awareness, prevention, deterrence, and response and recovery activities, as well as direction to DHS components.

DHS is establishing a new system of records under the Privacy Act (5 U.S.C. 552a), which will be maintained in the IAIP Directorate, the Homeland Security Operations Center Database. The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some

identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires that each agency publish in the **Federal Register** a description denoting the type and character of each system of records in order to make agency recordkeeping practices transparent, to notify individuals about the use to which personally identifiable information is put, and to assist the individual to more easily find files within the agency.

This system of records notice describes the HSOC database within IAIP. The information in the HSOC database includes intelligence information and other information received from agencies and components of the Federal Government, foreign governments, organizations or entities, international organizations, state and local government agencies (including law enforcement agencies), and private sector entities, as well as information provided by individuals, regardless of the medium used to submit the information or the agency to which it was submitted. This system also contains: information regarding persons on watch lists with possible links to terrorism; the results of intelligence analysis and reporting; ongoing law enforcement investigative information, information systems security analysis and reporting; historical law enforcement information, operational and administrative records; financial information; and public-source data such as that contained in media reports and commercial databases as appropriate to identify and assess the nature and scope of terrorist threats to the homeland, detect and identify threats of terrorism against the United States, and understand such threats in light of actual and potential vulnerabilities of the homeland. Data about the providers of information, including the means of transmission of the data is also retained.

IAIP will use the information in the HSOC database to access, receive, and analyze law enforcement information, intelligence information, and other information and to integrate such information in order to identify and assess the nature and scope of terrorist or other threats to the homeland.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget (OMB) and to the Congress.

DHS/IAIP–001

SYSTEM NAME:

Homeland Security Operations Center Database

SECURITY CLASSIFICATION:

Classified; sensitive

SYSTEM LOCATION:

Records are maintained at the Homeland Security Operations Center, Office of the Undersecretary for Information Analysis and Infrastructure Protection, Department of Homeland Security, Washington, DC 20528.

CATEGORY OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been linked in any manner to potential terrorism, to other domestic incidents with homeland security implications, or whose behavior arouses reasonable suspicion of possible terrorist activity; individuals who are the subject of information pertaining to terrorism and/or homeland security; individuals who offer information pertaining to terrorism and/or homeland security; individuals who request assistance or information; or individuals who make inquiries concerning possible terrorist activity. The system will also contain information about individuals who are or have been associated with DHS homeland security operations or with DHS administrative operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Intelligence information obtained from agencies and components of the Federal Government, foreign governments, organizations or entities, international organizations, state and local government agencies (including law enforcement agencies), and private sector entities; information provided by individuals, regardless of the medium used to submit the information; information obtained from the Terrorist Screening Center or on terrorist watch lists about individuals known or reasonably suspected to be engaged in conduct constituting, preparing for, aiding, or relating to terrorism; results of intelligence analysis and reporting; ongoing law enforcement investigative information; information systems security analysis and reporting; historical law enforcement information; operational and administrative records; financial information; and public source data such as that contained in media reports and commercial databases. Data about the providers of information, including the means of transmission of the data, will also be retained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 552, 552a; Section 201 of the Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2145 (Nov. 25, 2002), as amended (6 U.S.C. 121); 44 U.S.C. 3101; E.O. 12958; E.O. 9397.

PURPOSE(S):

This record system is maintained to collect, access, and analyze law enforcement information, intelligence information, and other information from agencies of the Federal Government, foreign governments, international organizations, state and local government agencies (including law enforcement agencies), and private sector entities or individuals; and to integrate such information in order to: detect, identify and assess the nature and scope of terrorist or other threats to the United States; and understand such threats in light of actual and potential vulnerabilities of the homeland.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. If the record, on its face or in conjunction with other information, indicates a violation or potential violation of any law, regulation, rule, order, or contract, the record may be disclosed to the appropriate entity, whether federal, state, local, joint, tribal, foreign, or international, that is charged with the responsibility of investigating, prosecuting and/or enforcing such law, regulations, rule, order or contract.

B. To a Federal, state, local, joint, tribal, foreign, international or other public agency or organization, or to any person or entity in either the public or private sector, domestic or foreign, where such disclosure may promote assist or otherwise serve homeland or national security interests.

C. To an organization or individual in either the public or private sector, where there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life or property.

D. To recipients under circumstances and procedures as are mandated by Federal statute, treaty, or international agreement.

E. To the news media or members of the general public in furtherance of a function related to homeland security as

determined by the system manager where disclosure could not reasonably be expected to constitute an unwarranted invasion of privacy.

F. To the Department of Justice or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (a) DHS, or (b) any employee of DHS in his/her official capacity, or (c) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation.

G. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

H. To the National Archives and Records Administration or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. Sections 2904 and 2906.

I. To contractors, grantees, experts, consultants, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government, when necessary to accomplish an agency function related to this system of records.

J. To an agency, organization, or individual for the purposes of performing authorized audit or oversight operations.

K. To a Federal, state, local, tribal, territorial, foreign, or international agency, if necessary to obtain information relevant to a Department of Homeland Security decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of any employee, the letting of a contract, or the issuance of a license, grant, or other benefit.

L. To a Federal, state, local, tribal, territorial, foreign, or international agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically at the HSOC in a secure facility. The records are stored on magnetic disc, tape, digital media, and CD-ROM, and may also be retained in hard copy format in secure folders.

RETRIEVABILITY:

Data may be retrieved by the individual's name or other identifier.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable rules and policies, including any applicable IAIP and DHS automated systems security and access policies. Strict controls have been imposed to minimize the risks of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals specifically authorized and granted access by DHS regulations, who hold appropriate security clearances, and who have a need to know the information in the performance of their official duties. The system also maintains a real-time auditing function of individuals who access the system. Classified information is appropriately stored in a secured facility, in secured databases and containers, and in accordance with other applicable requirements, including those pertaining to classified information. Access is limited to authorized personnel only.

RETENTION AND DISPOSAL:

IAIP is working with the National Archives and Records Administration to obtain approval of a records retention and disposal schedule to cover records in the HSOC database. IAIP has proposed a short retention schedule for these records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Disclosure Office, Office of the Chief of Staff, Office of the Undersecretary for Information Analysis and Infrastructure Protection, Department of Homeland Security, Washington, D.C. 20528.

NOTIFICATION PROCEDURES:

To determine whether this system contains records relating to you, write to the System Manager identified above.

RECORDS ACCESS PROCEDURES:

A request for access to records in this system may be made by writing to the System Manager, identified above, in conformance with 6 CFR Part 5, Subpart B, which provides the rules for requesting access to Privacy Act records maintained by DHS.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures," above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from subject individuals, other agencies and organizations, both domestic and foreign, media, including periodicals, newspapers, and broadcast transcripts and public and classified reporting, privacy organizations and individuals, intelligence source documents, investigative reports, and correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system are exempt under 5 U.S.C. 552a((j)(2), (k)(1), and (k)(2).

Dated: April 7, 2005.

Nuala O'Connor Kelly,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 05–7704 Filed 4–15–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD08–05–020]

Houston/Galveston Navigation Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) and its working groups will meet to discuss waterway improvements, aids to navigation, area projects impacting safety on the Houston Ship Channel, and various other navigation safety matters in the Galveston Bay area. All meetings will be open to the public.

DATES: The next meeting of HOGANSAC will be held on Tuesday, May 24, 2005 at 9 a.m. The meeting of the Committee's working groups will be held on Tuesday, May 10, 2005 at 9 a.m. The meetings may adjourn early if all business is finished. Members of the public may present written or oral statements at either meeting. Requests to make oral presentations or distribute written materials should reach the Coast Guard five (5) working days before the meeting at which the presentation will be made. Requests to have written materials distributed to each member of

the committee in advance of the meeting should reach the Coast Guard at least ten (10) working days before the meeting at which the presentation will be made.

ADDRESSES: The full Committee meeting will be held at the Galveston Cruise Ship Terminal, 2502 Harborside Drive, Galveston, TX 77553, (409–765–9321). The working group meetings will be held at the Houston Pilots Office, 8150 South Loop East, Houston, TX 77017 (713–645–9620). This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Captain Richard Kaser, Executive Director of HOGANSAC, telephone (713) 671–5199, Commander Tom Marian, Executive Secretary of HOGANSAC, telephone (713) 671–5164, or Lieutenant Junior Grade Brandon Finley, Assistant to the Executive Secretary of HOGANSAC, telephone (713) 671–5103, e-mail *mailto:rfinley@vtshouston.uscg.mil.* Written materials and requests to make presentations should be sent to Commanding Officer, VTS Houston/Galveston, Attn: LTJG Finley, 9640 Clinton Drive, Floor 2, Houston, TX 77029.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of the Meetings

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The tentative agenda includes the following:

(1) Opening remarks by the Committee Sponsor (RADM Duncan) or the Committee Sponsor's representative, Executive Director (CAPT Kaser) and Chairperson.

(2) Approval of the February 10, 2005 minutes.

(3) Old Business:

(a) Dredging projects.

(b) AtoN Knockdown Working Group.

(c) Navigation Operations subcommittee report.

(d) Area Maritime Security Committee Liaison's report.

(e) Technology subcommittee report.

(f) Deepdraft Entry Facilitation Working Group.

(4) New Business.

(a) Adoption of 2005–07 Charter.

(b) Hurricane Brief.

(c) Bayport Container Port Update.

(d) LNG Advisory Subcommittee Formation.

(e) Limited Visibility Subcommittee Formation.

Working Group Meetings. The tentative agenda for the working groups meeting includes the following:

(1) Presentation by each working group of its accomplishments and plans for the future.

(2) Review and discuss the work completed by each working group.

Procedural

Working groups have been formed to examine the following issues: Dredging and related issues, electronic navigation systems, AtoN knockdowns, impact of passing vessels on moored ships, boater education issues, facilitating deep draft movements and mooring infrastructure. Not all working groups will provide a report at this session. Further, working group reports may not necessarily include discussions on all issues within the particular working group's area of responsibility. All meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. Members of the public may make presentations, oral or written, at either meeting. Requests to make oral or written presentations should reach the Coast Guard five (5) working days before the meeting at which the presentation will be made. If you would like to have written materials distributed to each member of the committee in advance of the meeting, you should send your request along with fifteen (15) copies of the materials to the Coast Guard at least ten (10) working days before the meeting at which the presentation will be made.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Director, Executive Secretary, or Assistant to the Executive Secretary as soon as possible.

Dated: April 7, 2005.

R.F. Duncan,

Rear Admiral, U.S. Coast Guard, Commanders, Eighth Coast Guard District.

[FR Doc. 05–7701 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD08–05–023]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC) will meet to discuss various issues relating to navigational safety on the Lower Mississippi River and related waterways. The meeting will be open to the public.

DATES: The next meeting of LMRWSAC will be held on Wednesday, May 18, 2005, from 9 a.m. to 12 p.m. This meeting may adjourn early if all business is finished. Requests to make oral presentations or submit written materials for distribution at the meeting should reach the Coast Guard on or before May 2, 2005. Requests to have a copy of your material distributed to each member of the committee in advance of the meeting should reach the Coast Guard on or before May 2, 2005.

ADDRESSES: The meeting will be held in the Crescent City Room Suite 1830 at the World Trade Center Building, 2 Canal Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) Melissa Owens, Assistant Committee Administrator, telephone (504) 589–4222, fax (504) 589–4216. Written materials and requests to make presentations should be mailed to Commanding Officer, Marine Safety Office New Orleans, Attn: LTJG Owens, 1615 Poydras Street, Suite 700, New Orleans, LA 70112.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC). The agenda includes the following:

(1) Introduction of committee members.

(2) Opening Remarks.

(3) Approval of the November 16, 2004 minutes.

(4) Old Business:

(a) Captain of the Port status report.

(b) VTS update report.

(c) Subcommittee / Working Group update reports.

(5) New Business.

(6) Adjournment.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Committee Administrator no later than May 2, 2005. Written material for distribution at the meeting should reach the Coast

Guard no later than May 2, 2005. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to the Committee Administrator no later than May 2, 2005.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the Committee Administrator at the location indicated under Addresses as soon as possible.

Dated: April 7, 2005.

R.F. Duncan,

Rear Admiral, U.S. Coast Guard, Eighth Coast Guard District.

[FR Doc. 05–7700 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–20]

Notice of Proposed Information Collection: Comment Request Subpoenas and Production in Response to Subpoenas or Demands of Courts or Other Authorities

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 17, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wayne Eddins, AYO, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410; fax: (202) 708–3135; e-mail *Wayne_Eddins@HUD.gov*.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 755–2374 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Subpoenas and Production in Response to Subpoenas or Demands of Courts or Other Authorities.

OMB Control Number, if applicable: 2535—not yet approved.

Description of the need for the information and proposed use: Upon request or demand of documents or testimony, the Counsel for the Inspector General will review the demand and determine whether an OIG employee is authorized to release documents or testify. The Counsel will notify the requester of the final determination and the reasons for the grant or denial of the request.

If a party or any person is aggrieved by the Counsel's decision denying a request for documents or testimony, that party or person may seek review of the decision by filing a written Notice of Intention to Petition for Review (Notice). After filing this Notice, the party or person must also file a Petition for Review (Petition) detailing the issues and reasons why a review of the Counsel's decision is appropriate.

Agency form numbers, if applicable: None.

Estimation of the total number of hours needed to prepare the information collection, including number of respondents, and hours of response:

Number of respondents	Number of responses per respondent	Average time per responses (hrs)	Estimated annual burden (hrs)
8	2	5	80

Frequency of Response: On occasion.

Status of the proposed information collection: New collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 12, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E5–1808 Filed 4–15–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4912–N–13]

Notice of Intent To Prepare an Environmental Impact Statement and a Scoping Meeting for the Ashburton Avenue Urban Renewal Plan and Master Plan, Yonkers, Westchester County, NY

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Intent.

SUMMARY: HUD gives notice to the public, agencies, and Indian tribes that the City of Yonkers, NY, intends to prepare an Environmental Impact Statement (EIS) for the preparation of an Urban Renewal Area and Master Plan for approximately 44-acres in downtown Yonkers, Westchester County, NY. The EIS will cover the redevelopment of the Mulford Gardens public housing complex and eight sites on nearby blocks financed, in part, by a HOPE VI grant awarded to the Municipal Housing Authority for the City of Yonkers. The City of Yonkers, NY, acting as the lead agency will prepare the EIS acting under its

authority as the responsible entity for compliance with the National Environmental Policy Act (NEPA) and in accordance with 42 U.S.C. 1437x and HUD regulations at 24 CFR 58.4, and under its authority as lead agency in accordance with the New York State Environmental Quality Review Act (SEQRA).

The EIS will be a joint NEPA and SEQRA document. The EIS will satisfy requirements of SEQRA 6NYCRR part 617, which requires that all State and local government agencies consider the environmental consequences of projects over which they have discretionary authority before acting on those projects. Because Federal HOPE VI funds would be used, the proposed action is also subject to NEPA. The EIS and NEPA process will also be used to address historic preservation and cultural resource issues under section 106 of the National Historic Preservation Act, 16 U.S.C. 470f. This notice is given in accordance with the Council on Environmental Quality regulations at 40 CFR parts 1500–1508. All interested Federal, State, and local agencies, Indian tribes, groups, and the public are invited to comment on the scope of the EIS. Federal agencies with jurisdiction by law, special expertise, or other special interest should report their willingness to participate in the EIS process as a Cooperating Agency.

FOR FURTHER INFORMATION CONTACT: Inquiries concerning the Proposed Action and this notice should be made to the Lead Agency care of Steven Whetstone, Commissioner of Planning and Development, City of Yonkers, 87 Nepperhan Avenue, 3rd Floor, Yonkers NY 10701–3874, (914) 377–6565 (*steve.whetstone@cityofyonkers.com*).

SUPPLEMENTARY INFORMATION: The Proposed Action consists of two parts: (1) An Urban Renewal Plan and Master Plan for the entire Ashburton Avenue Urban Renewal Area (URA) and (2) the redevelopment of Mulford Gardens and related development sites located within the URA, financed, in part, by a HOPE VI grant to the Municipal Housing Authority for the City of Yonkers.

The URA is located on the west side of Yonkers, north of the downtown and west of the Saw Mill River Parkway. The area encompasses approximately 44 acres with approximately 600 parcels along and near Ashburton Avenue, between Warburton Avenue and Yonkers Avenue.

The area was selected by the City as a potential URA to tie into the redevelopment of Mulford Gardens, the City's oldest public housing complex, which is located on 12 acres within the boundaries of the proposed URA. Due to its age and substandard housing condition of its 552 units, Mulford Gardens is slated for demolition. The City's Municipal Housing Authority was awarded a HOPE VI grant to demolish and reconstruct housing on and around the existing Mulford Gardens site. Proposed HOPE VI residential development will occur on the existing 12 acre Mulford Gardens site, with additional residential, community facility and retail development to occur on eight surrounding sites within the Ashburton Avenue URA.

The Urban Renewal Plan will be used as a revitalization strategy to improve the residential character of the area, expand business opportunities and improve the transportation network. The Master Plan for the URA will include: the provision of a range of housing opportunities; mixed use development along Ashburton Avenue; and transportation improvements, including street widenings along Ashburton Avenue, to improve east-west access between the Saw Mill River Parkway and the Downtown Waterfront District, allow on-street parking, reduce traffic congestion and allow for an upgraded sidewalk and streetscape plan.

Alternatives: The alternatives to be considered by the Lead Agency will include a no action alternative and may include: alternatives with selected roadway improvements that would not require widening Ashburton Avenue; an alternative that assumes the Ashburton Avenue parking garage is not demolished; residential development alternatives including different building types and/or densities. Alternatives to be examined in the EIS will be finalized after the scoping meeting.

Need for the EIS: Insofar as the Proposed Action includes a residential component, it is subject to the Yonkers Affordable Housing Ordinance, Article XV of the Code of the City of Yonkers. The Decision of the United States District Court in *D'Agnillo* v. *United States Department of Housing and Urban Development*, 1999 WL 350870 (S.D.N.Y. 1999), requires environmental review under NEPA of all housing projects which are subject to the Affordable Housing Ordinance. The City of Yonkers has determined that the Proposed Action constitutes an action which has the potential to affect the quality of the human environment and therefore requires the preparation of an EIS in accordance with NEPA.

Scoping: A public EIS scoping meeting will be held at 6 p.m. on Thursday, May 12, 2005, at the Riverfront Library, 2nd Floor Community Room, 1 Larkin Center, Yonkers, NY 10701. The public is invited to attend and identify the issues that should be addressed in the EIS. The public will have the opportunity to comment on the scope of the EIS orally and in writing. A written comment period during which additional written comments will be accepted by the Lead Agency will be extended through and including June 13, 2005. A scoping document that explains in greater detail the Proposed Action and alternatives identified at this time will be sent to the known interested parties in advance of the public scoping meeting. For a copy of the draft Scoping Document contact: Steven Whetstone, Commissioner of Planning and Development, City of Yonkers, 87 Nepperhan Avenue, 3rd Floor, Yonkers NY 10701–3874. Telephone: (914) 377–6565. A copy of the draft scoping document can also be viewed at *www.cityofyonkers.com*.

Questions may be directed to the individuals named in this notice under the heading **FOR FURTHER INFORMATION CONTACT.**

Dated: April 7, 2005.

Nelson R. Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. E5–1809 Filed 4–15–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4922–N–07]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Office of the Chief Information Officer, (HUD).

ACTION: Notice of a computer matching program—HUD and the Small Business Administration (SBA).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, ((Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (June 19, 1989 at 54 FR 25818), and OMB Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management (OMB), Congress and the Public," the Department of Housing and Urban Development (HUD) is issuing a public notice of its intent to conduct a recurring computer matching program with the SBA to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System

(CAIVRS), with SBA's debtor files. In addition to HUD's data, the CAIVRS database includes delinquent debt information from the Departments of Education, Veterans Affairs, Justice and the United States Department of Agriculture. This match will allow prescreening of applicants for debts owed or loans guaranteed by the Federal government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal government for HUD or SBA direct or guaranteed loans.

Before rating a loan, the lending agency and/or the authorized lending institution will be able to interrogate the CAIVRS debtor file which contains the Social Security Numbers (SSNs) of HUD's delinquent debtors and defaulters and defaulted debtor records of the SBA and verify that the loan applicant is not in default or delinquent on direct or guaranteed loans of participating Federal programs of either agency. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision of any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

DATES: *Effective Date:* Computer matching is expected to begin on May 18, 2005, unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

Comments Due Date: May 18, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

For Privacy Act Information and for Further Information From Recipient Agency Contact: Jeanette Smith, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room P8001, Washington, DC 20410–3000, telephone number (202) 708–2374 or FAX (202) 708–3135. [These are not toll-free numbers.]

For Further Information From Source Agency Contact: Walter Intlekfer, Deputy Director, Small Business Administration, 409 Third Street, SW., Suite 8300, Washington, DC 20416, telephone number (202) 205-7543. [This is not a toll-free number.]

Reporting of Matching Program: In accordance with Public Law 100-503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public;" copies of this notice and report are being provided to the Committee on Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget.

Authority: The matching program will be conducted pursuant to Public Law 100–503, "The Computer Matching and Privacy Protection Act of 1988," as amended, and Office of Management and Budget (OMB) Circular A–129 (Revised January 1993), Policies for Federal Credit Programs and Non-Tax Receivables. One of the purposes of all Executive departments and agencies—including HUD—is to implement efficient management practices for Federal credit programs. OMB Circular A–129 was issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; and, the Deficit Reduction Act of 1984, as amended.

Objectives to be Met by the Matching Program: The matching program will allow SBA access to a system which permits prescreening of applicants for loans owed or guaranteed by the Federal government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government. In addition, HUD will be provided access to SBA debtor data for prescreening purposes.

Records to be Matched: HUD will utilize its system of records entitled HUD/DEPT–2,

Accounting Records. The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years on Title II insured or guaranteed home mortgage loans; or individuals who have defaulted on Section 312 rehabilitation loans; or individuals who have had a claim paid in the last three years on a Title I loan. For the CAIVRS match, HUD/DEPT–2, System of Records, receives its program inputs from HUD/DEPT–28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD/DEPT–32, Delinquent/Default/Assigned Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans—Delinquent/Default. The SBA will provide HUD with debtor files contained in its system of records entitled, Loan Case File, SBA 075. HUD is maintaining SBA's records only as a ministerial action on behalf of SBA, not as a part of HUD's HUD/DEPT–2 system of records. SBA's data contain information on individuals who have defaulted on their guaranteed loans. The SBA will retain ownership and responsibility for their system of records that they place with HUD. HUD serves only as a record location and routine use recipient for SBA's data.

Notice Procedures: HUD and the SBA will notify individuals at the time of application (ensuring that routine use appears on the application form) for guaranteed or direct loans that their records will be matched to determine whether they are delinquent or in default on a federal debt. HUD and the SBA will also publish notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the federal government.

Categories of Records/Individuals Involved: The debtor records include these data elements: SSN, claim number, program code, and indication of indebtedness. Categories of records include: records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures. Categories of individuals include: former mortgagors and purchasers of HUD-owned properties, manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans, and rehabilitation loan debtors who are delinquent or in default on their loans.

Period of the Match: Matching is expected to begin at least 40 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreement are sent to both Houses of Congress or at least 30 days from the date this notice is published in the **Federal Register**, whichever is later, providing no comments are received which would result in a contrary determination. The matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the

other in writing to terminate or modify the agreement.

Dated: April 8, 2005.

Lisa Schlosser,

Chief Information Officer.

[FR Doc. E5–1800 Filed 4–15–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Safe Harbor Agreement and Receipt of Application for an Enhancement of Survival Permit Associated With the Restoration of Habitat and Reintroduction of Utah Prairie Dogs on a Ranch in Garfield County, UT

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Mr. Allen Henrie (Applicant) has applied to the Fish and Wildlife Service (Service) for an Enhancement of Survival Permit (ESP) for the Utah prairie dog pursuant to section 10(a)1(A) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). This permit application includes a Safe Harbor Agreement (SHA) between the Applicant, the Utah Division of Wildlife Resources (UDWR), and the Service. The proposed SHA and permit would become effective upon signature of the SHA and issuance of the permit and would remain in effect for 40 years. We have made the determination that the proposed activities described in the application and SHA will improve prairie dog habitat and potentially establish a colony of prairie dogs on private land and that, therefore, it is categorically excluded under 516 DM 8.5 C. (1) of the Department of the Interior's Manual. This notice is provided pursuant to the National Environmental Policy Act (NEPA) and section 10 of the Act and the Service's Safe Harbor Policy (64 FR 32717). The Service requests information, views, and opinions from the public via this notice. Further, the Service is soliciting information regarding the adequacy of the SHA as measured against the Service's Safe Harbor Policy and the regulations that implement it.

DATES: Written comments on the permit application must be received on or before July 18, 2005.

ADDRESSES: Persons wishing to review the SHA and the ESP application may obtain a copy by writing the Service's Mountain-Prairie Regional Office, Denver, Colorado. Documents also will be available for public inspection during normal business hours at the Regional Office, 134 Union Boulevard, Denver Colorado 80228–1807, or the Utah Field Office, U.S. Fish and Wildlife Service, 2369 West Orton Circle, West Valley City, Utah 84119. Written data or comments concerning the SHA or ESP application should be submitted to the Regional Office and must be in writing to be processed. Comments must be submitted in writing to be adequately considered in the Service's decision-making process. Please reference permit number TE098809–0 in your comments, or in the request for the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Pat Mehlhop, Regional Safe Harbor Coordinator (see **ADDRESSES**), telephone, 303–236–4215, or Henry Maddux, Utah Field Supervisor (see **ADDRESSES**), telephone 801–975–3330.

SUPPLEMENTARY INFORMATION: The Utah prairie dog (UPD) is the westernmost member of the genus *Cynomys*. The species' range, which is limited to the southwestern quarter of Utah, is the most restricted of all prairie dog species in the United States. Distribution of the UPD has been greatly reduced due to disease (plague), poisoning, drought, and human-related habitat alteration. Protection of this species and enhancement of its habitat on private land will benefit recovery efforts.

The primary objective of this SHA is to encourage voluntary conservation measures and translocation efforts to benefit the species and the landowner. Through this agreement, the landowner will receive relief from any additional section 9 liability under the Act beyond that which exists at the time the agreement is signed ("regulatory baseline"). To benefit the UPD, foraging and visual surveillance habitat will be enhanced by thinning decadent stands of brush and by increasing forage quantity and quality using mechanical and herbicidal treatments and reseeding native grasses and forbs. In cooperation with the UDWR, UPDs will be released on the property after the habitat improvements have been completed. The habitat improvements will be maintained throughout the term of the permit through managed grazing, additional brush treatments if necessary, and to some degree by the UPDs themselves. The Cooperator will receive an ESP that authorizes implementation of the conservation actions and other provisions of this Agreement and authorizes incidental take and limited direct take of the covered species above the Cooperator's baseline responsibilities, as defined in the SHA.

The Service has evaluated the impacts of this action under NEPA and determined that it warrants categorical exclusion as described in 516 DM 8.5 C.(1). The Service will evaluate whether the issuance of the ESP complies with section 7 of the Act by conducting an intra-Service section 7 consultation on the issuance of the permit. The result of the biological opinion, in combination with the above finding and any public comments will be used in the final analysis to determine whether or not to issue the requested ESP, pursuant to the regulations that guide issuance of the type of permit.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: March 25, 2005.

Elliott Sutta,

Acting Regional Director, Denver, Colorado.

[FR Doc. 05–7676 Filed 4–15–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service ("we") solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before May 18, 2005.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the

requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No.: TE–839960

Applicant: John Dicus, Black Canyon City, Arizona.

The permittee requests an amendment to take (harass by survey) the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in conjunction with surveys throughout the range of the species in Arizona for the purpose of enhancing its survival.

Permit No.: TE–049175

Applicant: Melanie Dicus, Black Canyon City, Arizona.

The permittee requests an amendment to take (harass by survey) the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in conjunction with surveys throughout the range of the species in Arizona for the purpose of enhancing its survival.

Permit No.: TE–099477

Applicant: Kimberly Boydstun-Peterson, Rancho Santa Margarita, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No.: TE–099463

Applicant: Mike McEntee, Rancho Santa Margarita, California.

The applicant requests a permit to take (harass by survey and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*), and take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No.: TE–100007

Applicant: Krista R. Garcia, Fresno, California.

The permittee requests an amendment to take (capture and release) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool tadpole shrimp (*Lepidurus packardi*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No.: TE–101154

Applicant: Douglas Rischbieter, Arnold, California.

The applicant requests a permit to take (capture, handle, and release) the tidewater goby (*Eucyclogobius newberryi*), the mountain yellow-legged frog (*Rana muscosa*), the arroyo toad (*Bufo californicus*), and the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) in conjunction with surveys in throughout the range of each species in California for the purpose of enhancing their survival.

Permit No.: TE–101156

Applicant: Thomas Keegan, Roseville, California.

The applicant requests a permit to take (capture, handle, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with surveys in throughout its range in California for the purpose of enhancing its survival.

Permit No.: TE–827500

Applicant: Sean Barry, Dixon, California.

The permittee requests an amendment to take (harass by survey and capture) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) in conjunction with genetic research throughout the range of the species in California for the purpose of enhancing its survival.

Permit No.: TE–049693

Applicant: Jody Gallaway, Chico, California.

The applicant requests a permit to take (capture and collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in northern California for the purpose of enhancing their survival.

Permit No.: TE–101148.

Applicant: David Compton, Santa Barbara, California.

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys in Santa Barbara, Ventura, and Los Angeles Counties, California, for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: March 16, 2005.

Ken McDermond,

Acting Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. 05–7670 Filed 4–15–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Record of Decision for the Final Comprehensive Conservation Plan and Environmental Impact Statement for Rocky Flats National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the Record of Decision (ROD) for the Final Comprehensive Conservation Plan and Environmental Impact Statement (Final CCP/EIS) for the Rocky Flats National Wildlife Refuge (Refuge) is available. This Final CCP/EIS was prepared pursuant to the National Wildlife Refuge System Administration Act, as amended, and the National Environmental Policy Act (NEPA). The Final CCP/EIS describes the Service's proposal for management of the Refuge for 15 years, beginning at Refuge establishment, which is anticipated to occur sometime between 2006 and 2008. Four alternatives for management of the Refuge were considered in the CCP/EIS and are described in the ROD. The Service adopted and plans to implement Alternative B—Wildlife, Habitat, and Public Use.

FOR FURTHER INFORMATION CONTACT: For further information, or to request a copy of the Final CCP or the ROD, contact Laurie Shannon, Planning Team Leader, Rocky Flats National Wildlife Refuge, Rocky Mountain Arsenal—Building 121, Commerce City, Colorado, 80222. Additionally, copies of the Final CCP, ROD, and the Final CCP/EIS may be downloaded from the project Web site: *http://rockyflats.fws.gov*. These materials will be available for reading at the following main branch libraries: Arvada Public Library, Boulder Public Library, Daniels Library, Golden Public Library, Westminster Public Library, Front Range Community College,

Louisville Public Library, Thornton Public Library, and Mamie Dowd Eisenhower Library in Broomfield.

SUPPLEMENTARY INFORMATION: The 6,240-acre Rocky Flats National Wildlife Refuge site is in northern Jefferson County and southern Boulder County, Colorado. The Rocky Flats site was used as a nuclear weapons production facility until 1992, when the mission of Rocky Flats changed to environmental cleanup and closure. The majority of the site has remained undisturbed for over 50 years and provides habitat for many wildlife species, including the federally threatened Preble's meadow jumping mouse, and several rare plant communities. Under the Rocky Flats National Wildlife Refuge Act of 2001, most of the site will become a National Wildlife Refuge once cleanup and closure has been completed. The Refuge will likely be established sometime between 2006 and 2008.

The National Wildlife System Administration Act of 1966, as amended by the National Wildlife Refuge Improvement Act of 1997, requires the Service to develop a CCP for each National Wildlife Refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCP identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. The CCP is intended to be a dynamic document that will be adaptable to changing resource and management conditions.

The ROD provides the basis for the decision by the Service on the proposed management of the future Refuge. The Service adopted and plans to implement Alternative B—Wildlife, Habitat, and Public Use as described in the Final CCP/EIS to provide Refuge management direction for the first 15 years following the establishment of the Refuge. The Service identified Alternative B as the Preferred Alternative in the Final CCP/EIS. The Service believes that Alternative B best satisfies the mission of the Service and the National Wildlife Refuge System, the direction of the Refuge Act, and the long-term needs of the habitats and wildlife at Rocky Flats.

Alternative B, the Service's selected alternative, emphasizes wildlife and habitat conservation with a moderate amount of wildlife-dependent public use. Refuge-wide habitat conservation would include management of native plant communities, weeds, restoration tools, removal and revegetation of unused roads and stream crossings, management of deer and elk populations, prairie dogs, and protection of Preble's meadow jumping mouse habitat. Visitor use facilities would include about 16 miles of trails, a seasonally staffed visitor contact station, trailheads with parking, and developed overlooks. Most of the trails would use existing roads and public access would be by foot, bicycle, horse, or car. A limited public hunting program would be developed.

Public comments were requested, considered, and incorporated throughout the planning process in numerous ways. Public outreach has included public open houses, public hearings, individual outreach activities, planning update mailings, and **Federal Register** notices. Three previous notices were published in the **Federal Register** concerning this CCP/EIS (67 FR 54667, August 23, 2002; 69 FR 7789, February 19, 2004, and 69 FR 75334, December 16, 2004).

Dated: February 11, 2005.

Ralph O. Morgenweck,

Regional Director, Region 6, Denver, CO.

[FR Doc. 05–7669 Filed 4–15–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Peoria Tribe of Indians of Oklahoma—Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Peoria Tribe of Indians of Oklahoma's (Tribe) Liquor Control Ordinance. The Ordinance regulates and controls the possession, sale and consumption of liquor on the Tribe's land. This Ordinance allows for the possession and sale of alcoholic beverages on tribal land and will increase the ability of the tribal government to control liquor distribution and possession. At the same time, the Ordinance will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Act is effective on April 18, 2005.

FOR FURTHER INFORMATION CONTACT: Karen Ketcher, Eastern Oklahoma Regional Office, Deputy Regional Director—Indian Services, P.O. Box 8002, Muskogee, Oklahoma 74402–8002; Telephone (918) 781–4600; or Ralph Gonzales, Office of Tribal Services, 1951 Constitution Avenue, NW., MS–320–SIB, Washington, DC 20240; Telephone (202) 513–7629.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Peoria Business Committee of the Peoria Tribe of Indians of Oklahoma adopted its Ordinance by Resolution No. R–04–06–04–J on April 6, 2004, and amended it by Resolution No. R–11–02–04–B on November 2, 2004. The purpose of this Ordinance is to govern the sale, possession and distribution of alcohol within Tribal land of the Peoria Tribe of Indians of Oklahoma.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs.

I certify that this Liquor Control Ordinance, of the Peoria Tribe of Indians of Oklahoma, was duly adopted by the Peoria Business Committee on April 6, 2004, and amended on November 2, 2004.

Dated: April 8, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

The Peoria Tribe of Indians of Oklahoma Liquor Ordinance reads as follows:

Section 1. Declaration of Public Policy and Purpose

a. The Peoria Business Committee, in accordance with Article VIII, Section 2(j) of the Constitution of the Peoria Tribe of Indians of Oklahoma, is authorized to enact resolutions, ordinances, and act on behalf of the Peoria Tribe.

b. The Peoria Business Committee finds that tribal control and regulation of liquor is necessary to protect the health and welfare of tribal members, to address specific concerns relating to alcohol use on tribal lands, and to achieve maximum economic benefit to the Tribe.

c. The introduction, possession and sale of liquor on tribal lands is a matter of special concern to the Peoria Business Committee.

d. The Peoria Business Committee finds that a complete ban on liquor on tribal lands

is ineffective and unrealistic. However, it recognizes the need for strict regulation and control over liquor transactions on tribal lands because of the many potential problems associated with the unregulated or inadequately regulated sale, possession, distribution and consumption of liquor.

e. Federal law forbids the introduction, possession, and sale of liquor in Indian country except when the same is in conformity both with the laws of the State and the Tribe, 18 U.S.C. 1161. As such, compliance with this ordinance shall be in addition to, and not substitute for, compliance with the laws of the State of Oklahoma.

f. It is in the best interests of the Tribe to enact tribal ordinance governing liquor sales on tribal lands and which provides for exclusive purchase, distribution, and sale of liquor only on tribal lands within the exterior boundaries of tribal lands. Further, the Tribe has determined that said purchase, distribution and sale shall take place on designated land only.

Section 2. Definitions

As used in this ordinance, the following words shall have the following meanings unless the context clearly require otherwise:

a. *Alcohol.* That substance known as ethyl alcohol, hydrated oxide of ethyl, alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, from whatever source or by whatever process produced.

b. *Alcoholic beverage.* This term is synonymous with the term liquor as defined in paragraph (f) of this Section.

c. *Bar.* Any establishment with special space and accommodations for the sale of liquor by the glass and for consumption on the premises as herein defined.

d. *Beer.* Any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water and containing the percent of alcohol by volume subject to regulation as an intoxicating beverage in the state where the beverage is located.

e. *Business Committee.* The governing body of the Peoria Tribe of Indians of Oklahoma, as defined in the Tribal Constitution.

f. *Liquor.* All fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable alcohol, beer, wine, brandy, whiskey, rum, gin, aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contain more than one half of one percent of alcohol.

g. *Liquor Control Board.* The Peoria Liquor Control Board as established by Section 3 of this Ordinance.

h. *Liquor store.* Any store at which liquor is sold and, for the purpose of this Ordinance, includes stores where only a portion of which are devoted to sale of liquor or beer.

i. *Malt liquor.* Beer, strong beer, ale, stout or porter.

j. *Package.* Any container or receptacle used for holding liquor.

k. *Public place.* Federal, state, county, or tribal highways and roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining room of hotels, restaurants, theaters, gaming facilities, entertainment centers, stores, garages, and filling stations which are open to and/or generally used by the public and to which the public is permitted to have generally unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

l. *Sale and sell.* The exchange, barter and traffic, including the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.

m. *Spirits.* Any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.

n. *Tribal Court.* Refers to the Peoria Tribal Court or, in accordance with Article XVI of the Constitution of the Peoria Tribe of Indians of Oklahoma, the Court of Indian Offenses, more specifically designated for purposes of this Ordinance as 25 CFR Court located at the Miami Agency of the Bureau of Indian Affairs in Miami, Oklahoma.

o. *Tribal lands.* Any or all land over which the Tribe exercises governmental power and that is either held in trust by the United States for the benefit of the Tribe or individual members of the Tribe, or held by the Tribe or individual members of the Tribe subject to restrictions by the United States against alienation.

p. *Wine.* Any alcoholic beverage obtained by fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelia, not exceeding seventeen percent of alcohol by weight.

Section 3. Peoria Liquor Control Board

a. There is hereby established a Peoria Liquor Control Board, composed of a Chairperson, Vice-Chairperson, Secretary, Treasurer and three (3) additional members.

b. The Peoria Liquor Control Board shall consist of the officers and members of the Peoria Business Committee.

c. Officers and members of the Peoria Business Committee shall hold the same positions on the Peoria Liquor Control Board as such officers and members hold on the Business Committee. The Chief shall serve as the Liquor Control Board Chairperson; the Vice-Chief shall serve as the Liquor Control Board Vice-Chairperson; the Business Committee Secretary shall serve as Secretary of the Liquor Control Board; and the Business Committee Treasurer shall serve as Treasurer of the Liquor Control Board.

d. The Peoria Liquor Control Board shall meet on call, but not less than once each calendar quarter, provided ten (10) days public notice of its meetings is given. The Chairman of the Peoria Liquor Control Board shall call meetings of the Liquor Control Board.

e. A quorum of the Board shall consist of five (5) members and no fewer members are required to transact business.

Section 4. Powers and Duties of the Peoria Liquor Control Board

a. *Powers and Duties.* In furtherance of this ordinance, the Liquor Control Board shall have the following powers and duties:

(1) Publish and enforce rules and regulations adopted by the Peoria Business Committee governing the sale, manufacture, distribution, and possession of alcoholic beverages on tribal lands.

(2) Employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Liquor Control Board to perform its function.

(3) Issue licenses permitting the sale or manufacture or distribution of liquor on tribal lands.

(4) Hold hearings on violations of this Ordinance or for the issuance of revocation of licenses hereunder.

(5) Bring suit in the Tribal Court or other appropriate court to enforce this Ordinance as necessary.

(6) Determine and seek damages for violation of this Ordinance.

(7) Make such reports as may be required by the Peoria Business Committee.

(8) Collect taxes and fees levied or set by the Peoria Business Committee and keep accurate records, books and accounts.

(9) Adopt procedures which supplement these regulations and facilitate their enforcement. Such procedures shall include limitations on sales to minors, places where liquor may be consumed, identity of persons not permitted to purchase alcoholic beverages, hours and days when outlets may be open for business, and other appropriate matters and controls.

b. Limitation on Powers. In the exercise of its powers and duties under this Ordinance, the Liquor Control Board and its individual members shall not:

(1) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer or distributor or from any licensee.

(2) Waive the immunity of the Peoria Tribe of Indians of Oklahoma from suit without the express written consent and resolution of the Business Committee.

c. *Inspection Rights.* The premises on which liquor is sold or distributed shall be open for inspection by the Liquor Control Board and/or its staff at all reasonable times for the purposes of ascertaining whether the rules and regulations of the Business Committee and this ordinance are being complied with.

Section 5. Sales of Liquor

a. *License Required.* A person or entity who is licensed by the Peoria Tribe of Indians of Oklahoma may make retail sales of liquor in their facility and the patrons of the facility may consume said liquor within the facility. The introduction and possession of liquor consistent with this Section shall also be allowed. All other purchases and sales of liquor on tribal lands shall be prohibited. Sales of liquor and alcoholic beverages on tribal lands may only be made at businesses that hold a Peoria Liquor License.

b. *Sales for Cash.* All liquor sales on tribal lands shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the payment for purchases with use of credit cards such as Visa, Master Card, American Express, etc.

c. *Sale for Personal Consumption.* All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverages on tribal lands is prohibited. Any person who is not licensed pursuant to this Ordinance who purchases an alcoholic beverage on tribal lands and sells it, whether in the original container or not, shall be guilty of a violation of this ordinance and shall be subjected to paying damages to the Peoria Tribe of Indians of Oklahoma as set forth herein.

Section 6. Licensing and Application

a. *Procedure.* In order to control the proliferation of establishments on tribal lands that sell or serve liquor by the bottle or by the drink, all persons or entities that desire to sell liquor on tribal lands must apply to the Peoria Liquor Control Board for a license to sell or serve liquor.

b. *Application.* Any enrolled member of the Peoria Tribe twenty-one (21) years of age and older, or an enrolled member of a federally recognized tribe twenty-one (21) years of age and older, or other person twenty-one years of age and older, may apply to the Liquor Control Board for a license to sell or serve liquor. Any person or entity applying for a license to sell or serve liquor on tribal lands must fill in the application provided for this purpose by the Peoria Tribe of Indians of Oklahoma and pay such application fee as may be set from time to time by the Liquor Control Board. Said application must be filled out completely in order to be considered. A separate application and license will be required for each location where the applicant intends to serve liquor.

c. *Licensing Requirements.* The person applying for such license must make a showing once a year, and must satisfy the Liquor Control Board that he/she is a person of good character, having never been convicted of violating any of the laws prohibiting the traffic in any spirituous, vinous, fermented or malt liquors; that he/she has never been convicted of violating any of the gambling laws of this state, or any other state of the United States, or of this or any other Tribe; that he/she has not had, preceding the date of his/her application for a license, a felony conviction of any of the laws commonly called "prohibition laws'; and that he/she has not had any permit or license to sell any intoxicating liquors revoked in any county of this state, or any other state, or of any Tribe; and that at the time of his/her application for a license, he/she is not the holder of a retail liquor dealer's permit or license from the United States Government to engage in the sale of intoxicating liquor.

d. *Processing of Application.* The Liquor Control Board shall receive and process applications and related matters. All actions by the Liquor Control Board shall be by majority vote. A quorum of the Liquor Control Board is that number of members set forth in Section 3, paragraph (e) of this Ordinance. The Liquor Control Board may, by resolution, authorize a staff representative to issue licenses for the sale of liquor and beer products.

e. *Issuance of License.* The Liquor Control Board may issue a license if it believes that such issuance is in the best interests of the Peoria Tribe of Indians of Oklahoma. The purpose of this Ordinance is to permit liquor sales and consumption at facilities located on designated tribal lands. Issuance of a license for any other purposes will not be considered to be in the best interests of the Peoria Tribe of Indians of Oklahoma.

f. *Period of License.* Each license shall be issued for a period not to exceed one (1) year from the date of issuance.

g. *Renewal of License.* A licensee may renew its license if the licensee has complied in full with this Ordinance; provided however, that the Liquor Control Board may refuse to renew a license if it finds that doing so would not be in the best interests of health and safety of the Peoria Tribe of Indians of Oklahoma.

h. *Revocation of License.* The Liquor Control Board may suspend or revoke a license due to one or more violations of this Ordinance upon notice and hearing at which the licensee is given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

i. *Hearings.* Within fifteen (15) days after a licensee is mailed written notice of a proposed suspension or revocation of the license, of the imposition of fines or of other adverse action proposed by the Liquor Control Board under this Ordinance, the licensee may deliver to the Liquor Control Board a written request for a hearing on whether the proposed action should be taken. A hearing on the issues shall be held before a person or persons appointed by the Liquor Control Board and a written decision will be issued. Such decisions will be considered final unless an appeal is filed with the Tribal Court within fifteen (15) calendar days of the date of mailing the decision to the licensee. The Tribal Court will then conduct a hearing and will issue an order, which is final with no further right of appeal. All proceedings conducted under all sections of this Ordinance shall be in accord with due process of law.

j. *Non-transferability of Licenses.* Licenses issued by the Liquor Control Board shall not be transferable and may only be utilized by the person or entity in whose name it is issued.

Section 7. Taxes

a. As a condition precedent to the conduct of any operations pursuant to a license issued by the Liquor Control Board, the licensee must obtain from the Peoria Tribal Tax Commission such licenses, permits, tax stamps, tags, receipts, or other documents or things evidencing receipt of any license or payment of any tax or fee administered by the Peoria Tribal Tax Commission or otherwise showing compliance with the tax laws of the Tribe.

b. In addition to any other remedies provided in this Ordinance, the Liquor Control Board may suspend or revoke any licenses issued by it upon the failure of the licensee to comply with the obligations imposed upon the licensee by the General Revenue and Taxation Act of the Peoria Tribe of Indians of Oklahoma, or any rule, regulation, or order of the Peoria Tribal Tax Commission.

Section 8. Rules, Regulations and Enforcement

a. In any proceeding under this ordinance, conviction of one unlawful sale or distribution of liquor shall establish prima facie intent of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this ordinance.

b. Any person who shall in any manner sell or offer for sale or distribution or transport liquor in violation of this Ordinance shall be subject to civil damages assessed by the Liquor Control Board.

c. Any person within the boundaries of tribal lands who buys liquor from any person other than a properly licensed facility shall be guilty of a violation of this ordinance.

d. Any person who keeps or possesses liquor upon his person or in any place or on premises conducted or maintained by his principal or agent with the intent to sell or distribute it contrary to the provisions of this Section, shall be guilty of a violation of this Ordinance.

e. Any person who knowingly sells liquor to a person who is obviously intoxicated or appears to be intoxicated shall be guilty of a violation of this Ordinance.

f. Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink liquor in any public conveyance shall be guilty of an offense. Any person who shall drink liquor in a public conveyance shall be guilty of a violation of this Ordinance.

g. No person under the age of twenty-one (21) years shall consume, acquire or have in his possession any liquor or alcoholic beverage. No person shall permit any other person under the age of twenty-one (21) years to consume liquor on his premises or any premises under his control. Any person violating this prohibition shall be guilty of a separate violation of this Ordinance for each and every drink so consumed.

h. Any person who shall sell or provide any liquor to any person under the age of twenty-one (21) years shall be guilty of a violation of this Ordinance for each sale or drink provided.

i. Any person who transfers in any manner an identification of age to a person under the

age of twenty-one (21) years for the purpose of permitting such person to obtain liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the underage person shall be a requirement of finding a violation of this Ordinance.

j. Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification that falsely purports to show the individual to be over the age of twenty-one (21) years shall be guilty of violating this Ordinance.

k. Any person guilty of violation of this Ordinance shall be liable to pay the Peoria Tribe of Indians of Oklahoma the amount of up to $1,000 per violation as civil damages to defray the Tribe's cost of enforcement of this Ordinance.

l. When requested by the provider of liquor, any person shall be required to present official documentation of the bearer's age, signature and photograph. Official documentation includes one of the following:

(1) Driver's license or identification card issued by any state department of motor vehicles;

(2) United States Active Duty Military identification card; or

(3) Passport.

m. The consumption or possession of liquor on premises where such consumption or possession is contrary to the terms of this Ordinance will result in a declaration that such liquor is contraband. Any tribal agent, employee or officer who is authorized by the Liquor Control Board to enforce this Ordinance shall seize all contraband and preserve it in accordance with provisions established for the preservation of impounded property. Upon being found in violation of the ordinance, the party owning or in control of the premises where contraband is found shall forfeit all right, title and interest in the items seized which shall become the property of the Peoria Tribe of Indians of Oklahoma.

Section 9. Abatement

a. Any room, house, building, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance or of any other tribal law relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all property kept in and used in maintaining such place, is hereby declared a nuisance.

b. The Chairman of the Liquor Control Board or, if the Chairman fails or refuses to do so, by a majority vote, the Liquor Control Board shall institute and maintain an action in the Tribal Court in the name of the Peoria Tribe of Indians of Oklahoma to abate and perpetually enjoin any nuisance declared under this Section. In addition to the other remedies at tribal law, the Tribal Court may also order the room, house, building, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond or sufficient sum from $1,000 to $15,000, depending upon the severity of past offenses, the risk of offenses in the future, and any other appropriate criteria, payable to the Tribe and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance or of any other applicable tribal laws. If any conditions of the bond are violated, the bond may be applied to satisfy any amounts due to the Tribe under this Ordinance.

Section 10. Severability and Effective Date

a. If any provision under this Ordinance is determined by court review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other persons or circumstances.

b. This Ordinance shall be effective on such date as the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

c. Any and all previous liquor control enactments of the Business Committee which are inconsistent with this Ordinance are hereby rescinded.

Section 11. Amendment and Construction

a. This Ordinance may only be amended by vote of the Peoria Business Committee.

b. Nothing in this ordinance shall be construed to diminish or impair in any way the rights or sovereign powers of the Peoria Tribe or its Tribal Government other than the due process provision at Section 6(i), which provides that licensees whose licenses have been revoked or suspended may seek review of that decision in Tribal Court.

c. Certification

The foregoing Liquor Control Ordinance of the Peoria Tribe of Indians of Oklahoma was duly amended, enacted and approved by the Business Committee of the Peoria Tribe of Indians of Oklahoma this 2nd day of November, 2004, by a vote of:

7 For; _____ Against; _____ Abstain

John P. Froman,

Chief, Peoria Tribe of Indians of Oklahoma.

Attest:

Hank Downum,

Secretary, Peoria Tribe of Oklahoma.

[FR Doc. 05–7680 Filed 4–15–05; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CA 668 _05_1610_PG_083A]

Santa Rosa and San Jacinto Mountains National Monument Advisory Committee Notice of Call for Public Nominations for National Monument Advisory Committee

AGENCIES: Bureau of Land Management, Interior and Forest Service, Agriculture.

ACTION: Call for nominations for the appointment to one open position on the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee (MAC).

SUMMARY: The Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (Act) required the establishment of a citizens advisory committee to advise the Secretary of the U.S. Department of the Interior and the Secretary of the U.S. Department of Agriculture on resource management issues associated with the Santa Rosa and San Jacinto Mountains National Monument. Today the National Monument Advisory Committee provides advice to the Secretaries on issues regarding the implementation of the National Monument Management Plan.

This notice is an open request for the public to submit nomination applications for one (1) National Monument Advisory Committee (MAC) position which will expire in November, 2007.

The National Monument Advisory Committee is managed under the provisions of the Federal Advisory Committee Act. The call for open nomination is for the appointment of a representative for:

- Pinyon Community Council.

Nominations applications are available on-line at *http://www.ca.blm.gov/palmsprings/santarosa/santa _rosa _national_monument.html*; or may be requested by telephone or fax at (phone) 760–251–4800, (fax) 760–251–4899; via mail by writing to Santa Rosa and San Jacinto Mountains National Monument Advisory Committee Nominations, Attn: National Monument Manager—Application Request, c/o Bureau of Land Management, Palm Springs—South Coast Field Office, P.O. Box 581260, North Palm Springs, California 92258; (e-mail) *ca_srsj_nm@ca.blm.gov*; or visiting either the Palm Springs—

South Coast Field Office at 690 West Garnet Avenue, or the National Monument Visitor Center at 51–500 Highway 74, Palm Desert, California 92260.

DATES: Submit completed nominations, to the address listed below no later than 60 days after the date of publication of this notice in the **Federal Register**.

ADDRESSES: Santa Rosa and San Jacinto Mountains National Monument Advisory Committee Nominations, Attn: National Monument Manager, c/o Bureau of Land Management, Palm Springs—South Coast Field Office, P.O. Box 581260, North Palm Springs, California 92258–1260.

Telephone, Fax, and E-Mail: (Phone) (760) 251–4804; (fax) (760) 251–4899; (e-mail) *ca_srsj_nm@ca.blm.gov.*

FOR FURTHER INFORMATION CONTACT: Frank Mowry, Writer-Editor, Santa Rosa and San Jacinto Mountains National Monument, (760) 251–4822.

SUPPLEMENTARY INFORMATION: As directed by the Act, the Secretary of the Interior and the Secretary of Agriculture have jointly established an advisory committee for the Santa Rosa and San Jacinto Mountains National Monument. The National Monument Advisory Committee's purpose is to advise the Secretaries with respect to the implementation of the National Monument Management Plan. The National Monument Advisory Committee meets several times a year. Their purpose is to gather and analyze information, conduct studies and field examinations, hear public testimony, ascertain facts, and, in an advisory capacity only, develop recommendations concerning the implementation of the National Monument Management Plan. The designated Federal officer, or their designee, in connection with special needs for advice, may call additional meetings as necessary.

In accordance with the National Monument Advisory Committee Charter, any individual or organization may nominate one or more persons to serve on the National Monument Advisory Committee. Individuals may nominate themselves for National Monument Advisory Committee membership. To make a nomination, individuals must submit a completed nomination form; letters of reference, a recommendation from Pinyon Community Council and other community interests or organizations; and any other information explaining the nominee's qualification, to the office listed above. Applications must be completed in full following application instructions. Note: Incorrectly completed or incomplete applications will be rejected. Nomination applications become the property of the Department of the Interior, Bureau of Land Management, Santa Rosa and San Jacinto Mountains National Monument and will not be returned. Nominations may be made for the following category of interest, as specified in the Act:

- A representative of Pinyon Community Council.

Nominations to the National Monument Advisory Committee should describe and document the proposed member's qualifications for membership. Nomination forms will be available on-line through the National Monument's Web site at *http://www.ca.blm.gov/palmsprings/santarosa/santa _rosa _national_monument.html.* Forms may be picked up in person by visiting the Bureau of Land Management, Palm Springs—South Coast Field Office, 690 West Garnet Avenue, North Palm Springs, CA 92258, from the National Monument Visitor Center at 51–500 Highway 74, Palm Desert, CA 92262. Forms may be requested by telephone or fax at: (phone) (760) 251–4800; (760) 862–9984; (fax) (760) 251–4899; or in writing to the National Monument at either the BLM; or via e-mail at *ca_srsj _nm@ca.blm.gov.*

National Monument Advisory Committee members are appointed for 3-year terms. The Secretary of the Interior will make appointments to the National Monument Advisory Committee with the concurrence of the Secretary of Agriculture. All National Monument Advisory Committee members are volunteers and serve without pay, but will be reimbursed for travel and *per diem* expense at the current rates for government employees under 5 U.S.C. 5703.

Dated: February 17, 2005.

Gail Acheson,

Bureau of Land Management, Palm Springs—South Coast, Field Office Manager.

Dated: February 17, 2005.

Danella George,

Santa Rosa and San Jacinto Mountains, National Monument Manager.

Dated: February 17, 2005.

Laurie Rosenthal,

District Ranger, San Jacinto Ranger District, San Bernardino National Forest.

[FR Doc. 05–7710 Filed 4–15–05; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

[WO–640–1020–00–241E]

Establishment of the Sonoran Desert National Monument Advisory Council

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Sonoran Desert National Monument Advisory Council—Notice of Establishment.

SUMMARY: This notice announces the establishment of the Bureau of Land Management's Sonoran Desert National Monument Advisory Council by the Secretary of the Interior (Secretary) in accordance with the provisions of the Federal Advisory Committee Act (FACA) of 1972, 5 U.S.C. Appendix. A copy of the Council charter will be filed with the appropriate committees of Congress and the Library of Congress in accordance with Section 9(c) of FACA.

The Federal Land Policy and Management Act, as amended, requires the Secretary to establish advisory councils to provide advice concerning the problems relating to land use planning and the management of public lands within the areas for which the advisory councils are established. The Council will provide representative counsel and advice to BLM on the planning and management of public lands as well as advice on public land resource issues. Council members will be residents of the State(s) in which the Council has jurisdiction and will be appointed by the Secretary.

FOR FURTHER INFORMATION CONTACT: Melanie Wilson Gore, Intergovernmental Affairs (640), Bureau of Land Management, 1620 L Street, NW., Room 406 LS, Washington, DC 20036, telephone (202) 452–0377.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary, through the BLM, on a variety of planning and management issues associated with the management of the Sonoran Desert National Monument. The Council responsibilities include providing advice to BLM public land planning, management and uses of the Sonoran Desert National Monument area.

The Council will consist of 12 members. Specifically, the membership will consist of representatives of various industries and interests concerned with the management, protection, and utilization of the public lands. These include (a) representatives of Native American interests; (b) a representative of dispersed recreation; (c) a representative of mechanized recreation; (d) a representative of the of State of

Arizona, recommended by the Governor; (e) a representative of environmental interests; (f) an elected official from a city or county in the vicinity of the Monument; (g) a holder of a livestock grazing permit or a representative of permittees on the allotments within the Monument area; (h) a representative of rural communities around the Monument area; (i) representatives of the sciences from among wildlife biology, archaeology, ecology, botany, history, social sciences or other applicable disciplines; and (j) representatives of county interests appointed by nominees submitted by the Supervisors of Maricopa and Pinal Counties.

Membership will include individuals who have expertise, education, training, or practical experience in the planning and management of the public lands and their resources and who have knowledge of the geographical jurisdiction(s) of the Council.

Certification

I hereby certify that the establishment of the Sonoran Desert National Monument Advisory Council is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources and facilities administered by the Bureau of Land Management.

Dated: March 4, 2005.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 05–7711 Filed 4–15–05; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–0777–XZ–241A]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held May 3, 2005 from 1 p.m. to 5:15 p.m. and will continue on May 4, 2005 from 8 a.m. to 2 p.m.

ADDRESSES: San Luis Valley Information Center, 947 1st Avenue, Monte Vista, CO 81144.

FOR FURTHER INFORMATION CONTACT: Ken Smith, (719) 269–8500.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Royal Gorge Field Office and San Luis Valley, Colorado. Planned agenda topics on May 3 include: Manager updates on current land management issues; a travel management plan update and local land exchanges in the San Luis Valley. On May 4 the Council will tour and discuss issues at various sites included in the current travel management planning process. All meetings are open to the public. The public is encouraged to make oral comments to the Council at 1:15 a.m. on May 3 or written statements may be submitted for the Councils consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. The public is also welcome to attend the field tour on May 4, however they may need to provide their own transportation. Summary minutes for the Council Meeting will be maintained in the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Meeting Minutes and agenda (10 days prior to each meeting) are also available at: *www.blm.gov/rac/co/frrac/co_fr.htm.*

Dated: March 25, 2005.

Linda McGlothlen,

Acting Royal Gorge Field Manager.

[FR Doc. 05–7675 Filed 4–15–05; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–100–6333–PH; GP2–0195]

Meetings: Resource Advisory Committees—Roseburg District

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting notices for the Roseburg District Bureau of Land Management (BLM) Resource Advisory Committee under Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393).

SUMMARY: This notice is published in accordance with Section 10(a) (2) of the Federal Advisory Committee Act. Meeting notice is hereby given for the Roseburg District BLM Resource Advisory Committee pursuant to Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000, Public Law 106–393 (the Act). Topics to be discussed by the Roseburg District BLM Resource Advisory Committee include operating procedures, evaluation criteria for projects, technical details of projects, and merits of projects.

DATES: The Roseburg Resource Advisory Committee will meet at the BLM Roseburg District Office, 777 N.W. Garden Valley Boulevard, Roseburg, Oregon 97470, 9 a.m. to 4 p.m., on April 18, June 6, June 20, and June 27, and there will be a field trip on May 23, 2005.

SUPPLEMENTARY INFORMATION: Pursuant to the Act, five Resource Advisory Committees have been formed for western Oregon BLM districts that contain Oregon & California (O&C) Grand Lands and Coos Bay Wagon Road lands. The Act establishes a six-year payment schedule to local counties in lieu of funds derived from the harvest of timber on federal lands, which have dropped dramatically over the past 10 years.

The Act creates a new mechanism for local community collaboration with federal land management activities in the selection of projects to be conducted on federal lands or that will benefit resources on federal lands using funds under Title II of the Act. The Roseburg District BLM Resource Advisory Committee consists of 15 local citizens (plus 6 alternates) representing a wide array of interests.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the Roseburg District BLM Resource Advisory Committee may be obtained from Jake Winn, Roseburg District Office, 777 Garden Valley Blvd, Roseburg, Oregon 97470, or *jake_winn@or.blm.gov,* or on the Web at *www.or.blm.gov.*

Dated: April 8, 2005.

Jay Carlson,

Roseburg District Manager.

[FR Doc. 05–7679 Filed 4–15–05; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–400–1120–PH]

Notice of Public Meeting, Coeur d'Alene District Resource Advisory Council Meeting; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Coeur d'Alene District Resource Advisory Council (RAC) will meet as indicated below.

DATES: May 17 and 18, 2005. The meeting will be held at the Sacajawea Inn located at 1824 Main Street, Lewiston, Idaho on May 17 from 10:30 a.m. to 5 p.m. and on May 18 from 8 a.m. to about 3 p.m. The public comment period will be from 8 a.m. to 9 a.m. on May 18, 2005.

FOR FURTHER INFORMATION CONTACT: Stephanie Snook, RAC Coordinator, BLM Coeur d'Alene District, 1808 N. Third Street, Coeur d'Alene, Idaho 83814 or telephone (208) 769–5004.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The agenda for the May 17 and 18, 2005 meeting will include: Idaho Off-Highway Vehicle Outreach Project, Fish and Game Comprehensive Wildlife Conservation Strategy, upcoming review of Draft Alternatives for the Coeur d'Alene and Cottonwood Field Office Resource Management Plans, Lower Salmon River proposed mineral withdrawal, proposed fuel reduction projects, and reports on the Fee Demo Subgroup meeting, Idaho RAC Chair meeting and other meetings/events of interest.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM as provided above.

Dated: April 13, 2005.

Lewis M. Brown,

District Manager.

[FR Doc. 05–7783 Filed 4–15–05; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO930–05–9260NQ–COQB]

Notice of Availability of the Draft Alamosa River Watershed Restoration Master Plan

AGENCIES: Bureau of Land Management, Department of the Interior, lead; Fish and Wildlife Service; cooperating agency; United States Forest Service, Department of Agriculture, cooperating agency.

ACTION: Notice of Release of Draft Alamosa River Watershed Restoration Master Plan.

SUMMARY: This notice advises the public and other agencies of availability of the Draft Alamosa River Watershed Restoration Master Plan (ARWRMP) for comment. The draft plan describes the Alamosa River environment and the impacts to watershed resources and land uses, and briefly describes proposed restoration projects. It comprehensively addresses all watershed restoration needs, including those resulting from injuries pursuant to the federal Natural Resource Damage Assessment and Restoration (NRDAR) regulations in CFR 43 part 11, as well as restoration needs arising from other impacts. The draft plan also outlines several sets of projects based on competing needs and limited funding, and proposes a preferred restoration alternative, consisting of a project set that best addresses the various resource impacts. The preferred alternative provides for natural resource restoration within the Alamosa River watershed. The draft plan envisions funds from the NRDAR settlement, along with matching funds, grants, and other funding sources, to support the preferred alternative. The restoration actions ultimately undertaken will result from proposals for specific actions that respond to the needs and selected projects identified in the preferred restoration alternative.

DATES: A public meeting will be held to present the draft plan and to respond to comments and questions. This meeting will be held on March 21, 2005 at 6:30 p.m. at Centauri School just south of La Jara, Colorado on highway 285. Persons may comment in writing on the draft plan at the addresses given below for Rob Robinson. The 30 day comment period will end April 14, 2005.

ADDRESSES: Persons may obtain copies of the draft document and comment on the draft by writing, telephoning, faxing, or e-mailing: Rob Robinson at the Bureau of Land Management, 2850 S. Youngfield Street, Lakewood, Colorado 80215, phone 303–239–3642, fax 303–239–3799, email: *rob_robinson@blm.gov*. The document is also available at the following Internet address: *http://mountain-prairie.fws.gov/nrda/Summitville.htm/*. Copies of the document will be available for on-site review in the Del Norte Public Library, 190 Grand Avenue, Del Norte, CO 81131 or U.S. Department of Agriculture, Conejos County Natural Resources Conservation Service, 15 Spruce, La Jara, CO 81140.

SUPPLEMENTARY INFORMATION: The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, more commonly known as the federal "Superfund" law) [42 U.S.C. 9601, et seq.] and the Federal Water Pollution Control Act, commonly known as the Clean Water Act (CWA) [33 U.S.C. 1251, *et seq.*] authorize States, federally recognized Tribes, and certain federal agencies, which have the authority to manage or control natural resources, to act as "trustees" on behalf of the public, to restore, rehabilitate, replace, and/or acquire natural resources equivalent to those harmed by hazardous substance releases. The U.S. Department of the Interior (represented by the Bureau of Land Management and the U.S. Fish and Wildlife Service), U.S. Department of Agriculture (represented by the U.S. Forest Service), the State of Colorado (represented by the Departments of Law, Natural Resources, and Public Health and the Environment) are Trustees for natural resources considered in this Natural Resource Damage Assessment and Restoration (NRDAR) project, pursuant to subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300.600 and 300.610) and Executive Order 12580.

The objective of the NRDAR process in the Alamosa River watershed is to compensate the public, through restoration actions, for losses to natural resources and services that have been caused by releases of toxic metals into the watershed. Restoration activities will be funded in part by natural resource damages recovered in settlement from the party responsible for recent contamination emanating from the Summitville mine in the upper watershed. The damages received must be used to restore, rehabilitate, replace

and/or acquire the equivalent of those natural resources that have been injured.

The Trustees have a Memorandum of Agreement which establishes a Trustee Council to develop and implement a restoration plan for ecological restorations in the Alamosa River watershed. The Trustees followed the NRDAR regulations found at 43 CFR part 11 for development of the draft plan. The Trustees have worked together, in a cooperative process, to determine appropriate restoration activities to address natural resource injuries caused by Summitville releases of hazardous substances, as well as other watershed impacts identified during planning. The draft plan addresses the Trustees' overall approach to restore, rehabilitate, replace or acquire the equivalent of natural resources injured by the release of toxic metals into the Alamosa River watershed environment. Comments received during the above public comment period will be incorporated into a final document as appropriate.

Authority: 42 U.S.C. 4321–4347.

Dated: February 25, 2005.

Robert H. Robinson,

Summitville Trustee Council Representative, Division of Energy, Lands and Minerals, Colorado State Office, Bureau of Land Management.

[FR Doc. 05–7709 Filed 4–15–05; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–538]

In the Matter of Certain Audio Processing Integrated Circuits, and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 14, 2005, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of SigmaTel, Inc., of Austin, Texas. A letter supplementing the complaint was filed on April 6, 2005. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain audio processing integrated circuits, and products containing same, by reason of infringement of claim 10 of U.S. Patent No. 6,137,279 and claim 13 of U.S. Patent No. 6,633,187. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent limited exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: David H. Hollander, Jr., Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2746.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2004).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 11, 2005, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain audio processing integrated circuits or products containing same by reason of infringement of claim 10 of U.S. Patent No. 6,137,279 or claim 13 of U.S. Patent No. 6,633,187, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—SigmaTel, Inc., 1601 S. MoPac Expressway, Suite 100, Austin, TX 78746.

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Actions Semiconductor Co., 15–1 NO.1, HIT Road, Tangjia, Zhuhai, Guangdong, China 519085.

(c) David H. Hollander, Jr., Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such response will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting a response to the complaint will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: April 12, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–7718 Filed 4–15–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–388–391 and 731–TA–816–821 (Review)]

Cut-to-Length Carbon Steel Plate From France, India, Indonesia, Italy, Japan, and Korea

AGENCY: International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the countervailing duty orders on cut-to-length carbon steel plate from India, Indonesia, Italy, and Korea and the antidumping duty orders on cut-to-length carbon steel plate from France, India, Indonesia, Italy, Japan, and Korea.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty orders on cut-to-length carbon steel plate from India, Indonesia, Italy, and Korea and the antidumping duty orders on cut-to-length carbon steel plate from France, India, Indonesia, Italy, Japan, and Korea would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: April 8, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On April 8, 2005, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (70 FR 110, January 3, 2005) was adequate, and that the respondent interested party group response with respect to France was adequate, but found that the respondent interested party group responses with respect to India, Indonesia, Italy, Japan, and Korea were inadequate. However, the Commission determined to conduct full reviews concerning subject imports from India, Indonesia, Italy, Japan, and Korea to promote administrative efficiency in light of its decision to conduct a full review with respect to subject imports from France. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: April 13, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–7717 Filed 4–15–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: firearms transaction record part II—intrastate non-over-the-counter.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** volume 70, number 18, page 4150 on January 28, 2005, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 18, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Firearms Transaction Record Part II—Intrastate Non-Over-the-Counter.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: ATF F 4473 Part II (5300.9). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for-profit. The form is used to determine the eligibility of a person to receive a firearm from a Federal firearms licensee and to establish the identity of the

buyer. The form is also used in law enforcement investigations to trace firearms or to confirm criminal activity.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 500 respondents will complete a 20 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 167 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 12, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–7726 Filed 4–15–05; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: search for artifacts and memorabilia.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 70, Number 26, page 6910 on February 9, 2005, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 18, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Search for Artifacts and Memorabilia.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None. The search document is used to aid the Historic Archives Program with discovering and obtaining artifacts and memorabilia pertaining to the history, mission, and spirit of the Bureau of Alcohol, Tobacco, Firearms and Explosives to develop exhibits for the new National Headquarters building.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that 1,900 respondents will complete a 10 minute search document.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 317 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: April 12, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–7735 Filed 4–15–05; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Pretesting Activities for Surveys for Implementing the Prison Rape Elimination Act of 2003.

The Department of Justice (DOJ), Office of Justice Programs (OJP), Bureau of Justice Statistics (BJS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until June 17, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Allen J. Beck, Ph.D., Bureau of Justice Statistics, 810 Seventh Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New Information Collection.

(2) *Title of the Form/Collection:* Pretesting Activities for Surveys for Implementing the Prison Rape Elimination Act of 2003.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Justice Statistics, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: State, Local, or Tribal Government, Federal Government, Business or other for-profit, Not-for-profit institutions. The work under this clearance will be used to develop surveys to produce estimates for the incidence and prevalence of sexual assault within correctional facilities as required under the Prison Rape Elimination Act of 2003 (Public Law 108–79).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 8,472 respondents will spend approximately 30 minutes on average responding to the pretesting activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 4,308 total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530 (phone: 202–616–1167).

Dated: April 13, 2005.

Brenda E. Dyer,

Department Deputy Clearance Officer, PRA, Department of Justice.

[FR Doc. 05–7723 Filed 4–15–05; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: census of medical examiner and coroner offices.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** volume 69, number 243, page 76013 on December 20, 2004, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 18, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Census of Medical Examiner and Coroner Offices.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form Number:* ME/C–1. Bureau of Justice Statistics, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, county, and local government. *Other:* None. Under 42 U.S.C. 3732 (Attachment 1), the Bureau of Justice Statistics (BJS) is authorized to collect and analyze statistical information regarding the operation of the criminal justice system at the Federal, state, and local levels. Medico-legal death investigation systems are an essential component of the larger criminal justice system. The Census of Medical Examiner and Coroner Offices (CMECO) is a new BJS data collection that will provide a national picture of medico-legal death investigation systems, including personnel, expenditures, functions, workload, and resource needs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 3,200 respondents will each complete a 1-hour data collection form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 3,200 hours.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 13, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–7724 Filed 4–15–05; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 11, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or E-Mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: New collection.

Title: Unemployment Insurance Facilitation of Claimant Reemployment.

OMB Number: 1205–0NEW.

Frequency: Quarterly.

Affected Public: State, Local, or Tribal Government; Federal Government.

Number of Respondents: 53.

Number of Annual Responses: 212.

Total Burden Hours: 2,120.

Estimated Time per Response: 10 Hours.

Total annualized capital/startup costs: $185,500.

Total annual costs (operating/maintaining systems or purchasing services): $79,500.

Description: The Department of Labor requests approval to establish a system to collect data at the state level on the percentage of individuals who become reemployed in the calendar quarter subsequent to the quarter in which they receive their Unemployment Insurance (UI) payment. This data will be used to measure performance for the Department's Government Performance and Results Act of 1993 goal of facilitating the reemployment of UI claimants.

Ira L. Mills,

Departmental Clearance Officer/Team Leader.

[FR Doc. 05–7687 Filed 4–17–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 8, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail:*king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Revision of a currently approved collection.

Title: Consumer Price Index Commodities and Services Survey.

OMB Number: 1220–0039.

Type of Response: Reporting.

Affected Public: Business or other for-profit; Not-for-profit institutions; and State, Local, or Tribal Government.

Activity	Total number of respondents	Frequency	Total annual responses	Hours per response (average)	Estimated burden hours
Pricing	42,314	Monthly/ Bimonthly	385,904	.33	127,348
Outlet and Item Rotation/Initiation	12,634	Annual	12,634	1.0	12,634
Item Re-initiation	440	Annual	440	1.0	440
Test pricing	1,900	Annual	1,900	.65	1,235
Totals:	57,288		400,878		141,657

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The collection of prices directly from retail establishments is essential for the timely and accurate calculation of the commodities and services component of the Consumer Price Index. Respondents include retail establishments throughout the country.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–7688 Filed 4–15–05; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 8, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Revision of a currently approved collection.

Title: Report on Current Employment Statistics.

OMB Number: 1220–0011.

Form Number: BLS–790 Series.

Type of Response: Reporting.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, local, or tribal government.

Form	Number of respondents	Minutes per report	Frequency of response	Annual responses	Annual burden hours
BLS–790A—Natural Resources and Mining	1,400	10	Monthly	16,800	2,800
BLS–790B—Construction	12,800	10	Monthly	153,600	25,600
BLS–790C—Manufacturing	18,000	10	Monthly	216,000	36,000
BLS–790E—Service Providing Industries	153,300	10	Monthly	1,839,600	306,600
BLS–790G—Public Administration	56,700	5	Monthly	680,400	56,700
BLS–790S—Education	4,000	5	Monthly	48,000	4,000
BLS–790F1, F2, F3 (Fax Forms)	36,400	10	Monthly	436,800	72,800
Total	282,600			3,391,200	504,500

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Current Employment Statistics program provides current monthly statistics on employment, hours, and earnings, by industry. CES data on employment, hours, and earning by industry are among the most visible and widely-used Principal Federal Economic Indicators (PFEIs). CES data are also the timeliest of all PFEIs, with their release by BLS in the Employment Situation on the first Friday of most months. The statistics are fundamental inputs in economic decision processes at all levels of government, private enterprise, and organized labor.

Proposed Changes to the Current Employment Statistics Survey: The Bureau of Labor Statistics (BLS) is planning several changes to the Current Employment Statistics (CES) survey to improve its relevance to the needs of primary data users, as well as its value as an input to other key economic statistics. To implement the needed changes while maintaining the viability of the CES program as a high volume, quick turnaround, voluntary survey, BLS carefully reviewed the public's use of CES data to determine if reductions could be made in some series as a tradeoff for significant data improvements. The reductions help to maintain the viability of the CES survey by keeping the survey form at one-page in length and the number of data items requested of employers to a minimum.

Planned Changes

The planned improvements to the CES are:

New data on the hours and regular earnings of all employees.

New data on total earnings—both regular and irregular pay—for all employees.

The CES series that BLS proposes to discontinue to accommodate the above improvements are:

Women worker employment series.

Production or nonsupervisory worker hours and earnings series.

A brief discussion of the benefits of the planned improvements and the reasons for discontinuing the CES women and production and nonsupervisory workers series follows.

Discontinuation of CES women workers series—The CES plans to discontinue the collection and publication of data on women workers with the release of May 2005 data scheduled for publication in July 2005. The Bureau has three reasons for proposing to drop the CES women workers series.

The first is that the series imposes a significant reporting burden on survey respondents because payroll records do not typically include gender identification. BLS relies upon the voluntary cooperation of approximately

155,000 businesses each month (representing about 400,000 individual worksites) in providing information from their payroll records on the employment, hours, and earnings of their workers. In an increasingly difficult data-collection environment, survey response burden is a crucial factor in survey design.

Second, the CES women workers series are little used. Recent BLS analysis of information from its public use website found that while there was an average of 130,000 requests per month for CES national estimates, only about one-half of one percent of those requests were for the women worker employment series. Additionally, an informal internet literature search by BLS found almost no usage of CES women worker series. Articles which addressed women's employment and earnings issues nearly all used data from the BLS Current Population Survey (CPS) as their source.

Third, BLS will continue to provide extensive labor market information on women, primarily from the CPS, a monthly survey of about 60,000 households. From the CPS, users have access to data on women's employment, unemployment, and earnings by industry, occupation, education, age, marital status, and other characteristics.

BLS routinely publishes information in various formats on women in the workplace. CPS data on women, for instance, are summarized in two recurring publications:

Women in the Labor Force: A Databook
http://www.bls.gov/cps/wlf-databook.pdf.

Highlights of Women's Earnings
http://www.bls.gov/cps/cpswom2003.pdf.

Examples of regularly-issued CPS-based news releases that include data on women are:

Usual Weekly Earnings of Wage and Salary Workers
http://www.bls.gov/news.release/pdf/wkyeng.pdf.

Employment Characteristics of Families
http://www.bls.gov/news.release/pdf/famee.pdf.

College Enrollment and Work Activities of High School Graduates
http://www.bls.gov/news.release/pdf/hsgec.pdf.

Beginning with the release of January 2005 data, Current Population Survey data on employed women by industry is available monthly in Table A–23 of the BLS periodical Employment and Earnings. The new table is available on the BLS Web site at *ftp://ftp.bls.gov/pub/suppl/empsit.cpseea23.txt*, and shows essentially the same industry detail as that shown in Table B–13, the table that currently provides the establishment data on women. Table A–23 will be available on the BLS Web site each month coincident with the publication of the Employment Situation news release.

New data on all employee hours and earnings series—The CES program currently publishes series on the average hours and earnings of production workers in the goods-producing industries and non-supervisory workers in the service-providing industries. Production and non-supervisory workers account for about 80 percent of all employment measured by the CES survey. The new all employee hours and earnings series will cover all workers and therefore provide more comprehensive information than the present series for analyzing economic trends. They will also provide improved input for other major economic indicators, including series on nonfarm productivity and personal income. BLS has tested the collection of all employee hours and earnings data with CES respondents and found the data to be available from the payroll records of most employers. The CES survey will begin collecting all employee payroll and hours data in mid-2005. Publication of the first all employee hours and earnings series, on an experimental basis, is scheduled for mid-2006. Publication of official published series is scheduled for early 2007.

New data on gross monthly earnings—This series will have a broader scope than the base CES earnings data. The current CES average hourly and weekly earnings series for production and non-supervisory workers, as well as the new series planned for all employees are designed to measure the regular earnings of workers; they exclude bonuses and other irregular payments received by employees from their employers. The gross monthly earnings series will include these irregular payments providing an additional and more comprehensive measure of earnings. The base average hourly earnings series will continue to provide a measure of underlying wage trends exclusive of irregular payments. The gross monthly earnings series is expected to be particularly valuable for improving the accuracy of preliminary estimates of personal income in the national income accounts. Pilot tests with CES survey respondents indicate that most will be able to readily provide this information from their payroll records. The CES survey will begin collecting gross monthly earnings data in mid-2005. Publication of the first gross monthly earnings, on an experimental basis, is scheduled for mid-2006. Publication of official published series is scheduled for early 2007.

Discontinuation of production/non-supervisory worker hours and earnings series—These series will be phased out after the new all employee hours and earnings series are well established. The production/non-supervisory worker series limited scope makes them of limited value in analyzing economic trends. Just as important to this decision, the production and non-supervisory worker hours and payroll data have become increasingly difficult to collect, because these categorizations are not meaningful to survey respondents. Many survey respondents report that it is not possible to tabulate their payroll records based on the production/non-supervisory definitions. Discontinuation of the production/non-supervisory worker hours and earnings series is scheduled for early 2010.

Public Comment

In accordance with the requirements of the Paperwork Reduction Act of 1995, BLS posted a notice describing these planned changes in the **Federal Register** on December 22, 2004 *[http://a257.g.akamaitech.net/7/257/2422/06jun20041800/edocket.access.gpo.gov/2004/E4–3731.htm]*. The 60-day public comment period for this **Federal Register** notice ended on February 22, 2005.

Comments Received Following the First Federal Register Notice and BLS Response

Extensive comments were received as a result of the pre-clearance consultation **Federal Register** notice, Volume 69, Number 245, published on December 22, 2004.

1. A few commenters supported the ELS plan for Current Employment Statistics (CES) program changes, including former BLS Commissioner Katharine Abraham and the Bureau of Economic Analysis. Supporters of the plan voiced a common opinion, as expressed by Dr. Abraham: "The positive reason for dropping the women worker question is to make room on the CES survey instrument for the new all-employee questions the BLS has proposed. The lack of timely information on all-employee earnings has been a long-standing problem for the Bureau of Economic Analysis in its construction of the national income and product accounts and the lack of information on all employee hours is a potential source of bias in BLS estimates

of the rate of growth in productivity. Because the survey sample is so large and because responses must be collected within a very short timeframe, it is not feasible to collect more than a small number of elements on the CES survey."

2. A small number of the comments received expressed concern about the loss of production worker hours and earnings series, believing it should continue to be published in addition to the proposed all employee hours and earnings data. BLS is planning a multi-year overlap period (July 2006–December 2009) when both all employee and production worker hours and earnings series will be published. We will reassess our plans to drop the production worker hours and earnings series about a year before the planned discontinuation date, drawing on the experience of data users and survey respondents during the overlap period before making a final decision.

3. The majority of comments objected to the planned discontinuation of the women worker employment series, but many appeared to be based on a misunderstanding of the CES data. They referenced the presumed loss of data on women's earnings, occupations, or other information that have in fact never been available from the CES program. In all likelihood, the commenters were confusing the CES with the Current Population Survey (CPS) or household survey. The household survey does provide data on earnings, occupations, and other labor force characteristics by gender. Collection of all this data through the CPS will continue.

Following are additional specific comments regarding the planned discontinuation of CES women worker series. The comments are grouped by the three reasons BLS has cited for proposing to discontinue the series.

Use of CES Women Worker Series

4. A number of commenters indicated that CES women worker data were widely used by researchers. BLS reviewed all of the articles cited by commenters as well as conducting our own informal internet search for research on women's employment issues. Of the scores of articles on this topic, only 6 articles (covering a 20-year span) were found that contained any CES women worker data; these papers all used additional data sources in conjunction with the CES information.

5. A number of comments indicated that the CES data on women workers were necessary to formulate public policy for working women and to track women's progress in the workplace. However, without information on occupation, hours, or earnings by gender, the CES provides relatively little information for these purposes. The CPS provides much more information on the employment and labor force characteristics of women and thus is more useful for formulating policy or evaluating women's progress.

CPS Data on Women as a Substitute for CES Data on Women

(Note the italicized comments included below are drawn verbatim from a form letter used by the majority of commenters.)

6. With a gender breakdown, the payroll survey is capable of painting a reliable picture of where women are working across industries and business cycles. Without a gender breakdown, that picture becomes far more difficult to obtain. While the CPS is valuable for other types of information, its smaller sampling size produces a greater margin for error than the CES survey. It is true that CPS data are subject to larger sampling error than the CES estimates owing to the smaller sample size of the CPS. However, because the CPS provides many more characteristics for women workers, it is an overall richer source of data for women workers than the CES. In addition, while we have publicly stated that the CES is superior to the CPS for analyzing month-to-month trends, we believe that such short term measures are not appropriate for most assessments of the changing status of women (or any demographic group) in the labor market. When examining longer term trends, the advantage the CES has in sample size declines in importance. The two surveys have displayed similar trends for women's employment growth over the past several years.

7. The CPS' reliance on household interviews introduces the possibility of subjective reporting bias that does not exist with the payroll survey. All surveys are potentially subject to non-sampling errors or biases of various types. While we have no quantitative measures of the degree of non-sampling error in the household versus the payroll survey, it is likely that the payroll survey provides better industry coding than the household survey because the codes originate from businesses.

8. The CPS historical time series of employment by industry is not seasonally adjusted and not as long as the CES employment by industry time series. The CPS North American Industry Classification System (NAICS)-based time series begins in 2000. The CES NAICS-based time series begins in 1964. As part of the conversion to NAICS, CPS industry data for 2000 through 2002 were re-coded using the new industry classification system. BLS provided this re-coded information to the public via microdata files and its website. This information could be used by researchers to reconstruct the CPS series for earlier time periods. Additionally, the large amount of research on women's issues that uses the CPS data suggests that the lack of seasonal adjustment of the CPS industry series is not a major liability.

The Respondent Burden of CES Women Workers Data

9. Some commenters indicated that reporting employment data for women is not an added burden for businesses, because they are already subject to EEO reporting requirements. While it is true that most large firms are required to comply with EEO by submitting an employer information report (EEO–1), this is a once-a-year report while the CES is a monthly report. Additionally, the individuals who complete the CES report often indicate that gender information is not present on their standard payroll records and that they do not have ready access to the data. As evidence of respondent burden, out of every six employers who provide total employment counts, one does not provide the additional data on female employment.

10. Some respondents indicated that hours and earnings for women along with other demographic information should be added to the CES survey. Others questioned whether the BLS rationale of eliminating women worker collection to make room for other data items of more interest was necessary.

The CES is a large survey (400,000 worksites) which operates under very tight time constraints (data are published each month, only three weeks after the reference period); it relies on voluntary self-reporting from most of its sample members. Because of this demanding production environment, BLS believes that it is important to minimize the number of data items collected and to request data that are readily available on payroll records. These measures help minimize respondent burden and therefore maximize the number of surveyed businesses that are willing and able to supply data. Maximizing the number of survey responses is important to ensuring reliable estimates. The CES estimates of nonfarm employment which appear in the BLS Employment Situation news release are among the nation's most visible and sensitive economic indicators. BLS needs to ensure that the reliability of these

estimates is not jeopardized by overloading the survey.

11. Some commenters indicated that the CES survey was mandatory, thus there should be no problem in collecting any type of data. Others suggested that because the survey was voluntary, it did not generate a respondent burden, because businesses were free to refuse.

The CES survey is mandatory by State law in five States (California, Oregon, North Carolina, South Carolina, and Washington). In all other States the CES survey is voluntary. It is precisely because of the largely voluntary nature of the survey that BLS must minimize the reporting burden to businesses. If the survey is perceived as too time consuming or burdensome, a high refusal rate may result, which would decrease the accuracy of the published estimates.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–7689 Filed 4–15–05; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 11, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Powered Industrial Trucks (29 CFR 1910.178).

OMB Number: 1218–0242.

Frequency: On occasion; Initially; Annually; and Triennially.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Federal Government; and State, local, or tribal government.

Number of Respondents: 999,000.

Number of Annual Responses: 2,181,839.

Estimated Time Per Response: Ranges from 2 minutes to mark an approved truck to 6.50 hours to train new truck operators.

Total Burden Hours: 773,205.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $209,790.

Description: Paragraph (a)(4) of 1910.178 requires that employers obtain the manufacturer's written approval before modifying a powered industrial truck in a manner that affects its capacity and safe operation; if the manufacturer grants such approval, the employer must revise capacity, operation, and maintenance instruction plates, tags, and decals accordingly. For front-end attachments not installed by the manufacturer, paragraph (a)(5) mandates that employers provide a label (marking) on the truck that identifies the attachment, as well as the weight of both the truck and the attachment when the attachment is at maximum elevation with a laterally centered load. Paragraph (a)(6) specifies that employers must ensure that the markers required by paragraphs (a)(3) through (a)(5) remain affixed to the truck and are legible.

Paragraphs (l)(1) through (l)(6) of the Standard contain the paperwork requirements necessary to certify the training provided to powered industrial truck operators. Accordingly, these paragraphs specify the following requirements for employers:

Paragraph (l)(1)—Ensure that trainees successfully complete the training and evaluation requirements of paragraph (l) prior to operating a truck without direct supervision.

Paragraph (l)(2)—Allow trainees to operate a truck only under the direct supervision of an individual with the knowledge, training, and experience to train operators and to evaluate their performance, and under conditions that do not endanger other employees. The training program must consist of formal instruction, practical training, and evaluation of the trainee's performance in the workplace.

Paragraph (l)(3)—Provide the trainees with initial training on each of 22 specified topics, except on topics that the employer demonstrates do not apply to the safe operation of the truck(s) in the employer's workplace.

Paragraphs (l)(4)(i) and (l)(4)(ii)—Administer refresher training and evaluation on relevant topics to operators found by observation or formal evaluation to operate a truck unsafely, involved in an accident or near-miss incident, or assigned to operate another type of truck, or if the employer identifies a workplace condition that could affect safe truck operation.

Paragraph (l)(4)(iii)—Evaluate each operator's performance at least once every three years.

Paragraph (l)(5)—Train rehires only in specific topics that they performed unsuccessfully during an evaluation and that are appropriate to the employer's truck(s) and workplace conditions.

Paragraph (l)(6)—Certify that each operator meets the training and evaluation requirements specified by paragraph (l). This certification must include the operator's name, the training date, the evaluation date, and the identity of the individual(s) who performed the training and evaluation.

Requiring markers notifies employees of the conditions under which they can safely operate powered industrial trucks, thereby preventing such hazards as fires and explosions caused by poorly designed electrical systems, rollovers/tipovers that result from exceeding a truck's stability characteristics, and falling loads that occur when loads exceed the lifting capacities of attachments. Certification of training and evaluation provides a means of informing employers that their employees received the training, and demonstrated the performance necessary to operate a truck within its capacity and control limitations. Therefore, by ensuring that employees

operate only trucks that are in proper working order, and do so safely, employers prevent severe injury and death to truck operators and other employees who are in the vicinity of the trucks. Finally, these paperwork requirements are the most efficient means for an OSHA compliance officer to determine that an employer properly notified employees regarding the design and construction of, and modifications made to, the trucks they are operating, and that an employer provided them with the required training.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–7690 Filed 4–15–05; 8:45 am]

BILLING CODE 4510–26–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Publication of the Office of Federal Procurement Policy (OFPP) Policy Letter 05–01, Developing and Managing the Acquisition Workforce

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

SUMMARY: In accordance with section 37(b)(3) of the OFPP Act, as amended (41 U.S.C. 433(b)(3)), the Administrator for Federal Procurement Policy is authorized to issue policies to promote uniform implementation of a program to develop the federal acquisition workforce. OFPP is publishing Policy Letter 05–01, Developing and Managing the Acquisition Workforce, which more broadly defines the acquisition workforce and more closely aligns civilian and defense acquisition workforce requirements. This Policy Letter applies to all executive agencies, except those subject to the Defense Acquisition Workforce Improvement Act (DAWIA) (10 U.S.C. 1741–46).

OFPP Policy Letter 05–01 supersedes and rescinds OFPP Policy Letter 92–3, Procurement Professionalism Program Policy—Training for Contracting Personnel, and Policy Letter 97–01, Procurement System Education, Training and Experience Requirements for Acquisition Personnel.

DATES: The effective date of OFPP Policy Letter 05–01 is April 15, 2005.

FOR FURTHER INFORMATION CONTACT: Lesley A. Field, Office of Federal Procurement Policy, Office of Management and Budget, New Executive Office Building, Room 9013, 725 17th Street, NW., Washington, DC 20503 (202 395–7579 or 202 395–4761).

Availability: OFPP Policy Letter 05–01 and rescinded Policy Letters 92–3 and 97–01 may be obtained on: *http://www.acqnet.gov/AcqNet/Library/OFPP/PolicyLetters.* Paper copies of these documents may be obtained by calling (202) 395–7579.

SUPPLEMENTARY INFORMATION: The development and professionalism of the federal acquisition workforce is a priority for OFPP and supports the Office of Management and Budget's focus on human capital and financial management. The acquisition workforce is a federal asset upon which the government depends for mission accomplishment, and OFPP is committed to ensuring that the workforce is trained and developed to meet the government's current and future mission needs.

The principal purposes of Policy Letter 05–01 are: (1) To define the acquisition workforce to include additional acquisition-related functions and create a multi-disciplined acquisition community, (2) to align the civilian (non-Department of Defense) and defense acquisition workforce training requirements, and (3) to emphasize the importance to federal managers and the workforce of continuous learning, to include training on critical subjects such as ethics, performance-based contracting, and other timely and topical areas.

The acquisition function continues to become more integrated into agency core business processes, and the developmental needs of the workforce are changing. This progression is reflected in the Services Acquisition Reform Act of 2003 (SARA) (Pub. L. 108–136), which defines acquisition more broadly to include, among traditional contracting functions, requirements definition, measurement of contract performance, and technical and management direction. Additionally, SARA requires agency Chief Acquisition Officers to develop and maintain an acquisition career management program and ensure the development of an adequate, professional workforce. Policy Letter 05–01 articulates specific responsibilities to implement these SARA requirements.

OFPP Policy Letters 92–3 and 97–01, which are rescinded, established an emphasis on the development of the acquisition workforce but did not prescribe a core, government-wide curriculum. Policy Letter 92–3 established standards for skill-based training in contracting and purchasing functions and articulated core tasks. Policy Letter 97–01, which was developed in response to the requirements of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401(3)), required senior procurement executives to develop agency career management programs and establish policies and procedures, including training requirements, to ensure that the workforce was trained adequately. While these letters established a strong framework for managing the workforce, training content and delivery were not necessarily consistent across civilian agencies or consistent with the defense acquisition workforce requirements prescribed by DAWIA.

Policy Letter 05–01 aligns core civilian agency acquisition workforce training requirements with those for the defense workforce. The Department of Defense (DOD) curriculum reflects the competencies required to perform the tasks articulated in Policy Letter 92–3, and later referenced in Policy Letter 97–01. This alignment will ensure that our federal acquisition workforce has common, core training, and will promote workforce mobility. Section 1.603–2 of the Federal Acquisition Regulation (48 CFR 1) will be modified to reflect the requirements of the new Letter.

The Letter also emphasizes the importance of continuous learning. For example, employees in the GS–1102 series will now need eighty continuous learning points every two years—twice the current requirement. This emphasis on continuous learning in areas such as ethics, performance-based contracting, and other critical areas, ensures that federal managers and the acquisition workforce adhere to ethical contracting practices, apply sound business judgment, and otherwise engage in responsible stewardship of taxpayer dollars. Many of these continuous learning opportunities are available free of charge on the Federal Acquisition Institute (FAI) Web site on *http://www.fai.gov* and through the Defense Acquisition University on *http://www.dau.mil.*

FAI and DAU are forming a partnership to advance the capabilities of our federal acquisition workforce. To address the changing nature of the acquisition environment, DAU is currently restructuring the contracting curriculum. As new courses are completed, course content will be made available to training providers to obtain equivalencies for the new offerings. Civilian agencies depend on the private training provider community for course delivery, and these providers need time to develop core courses and request equivalencies. Additionally, employees may already be scheduled to take

comparable courses or may have completed a significant part of the previous DOD curriculum. Therefore, civilian agencies should use October 1, 2005, as a general guideline in adopting the DOD curriculum, but may reasonably extend the transition time to accommodate agency and employee needs. FAI will provide guidance and information on transition as the coursework is developed and classes become available.

David H. Safavian,

Administrator.

[FR Doc. 05–7651 Filed 4–13–05; 3:14 pm]

BILLING CODE 3110–01–P

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, April 21, 2005, and Friday, April 22, 2005, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 9:30 a.m. on April 21, and at 9 a.m. on April 22.

Topics for discussion include findings and votes on congressionally mandated studies on critical access hospitals; risk adjustment and other issues related to the adjusted average per capita cost (AAPCC); and handling costs of drugs in the hospital outpatient department. The Commission will also discuss and vote on recommendations related to Medicare Advantage plans, possible improvements in Medicare dialysis policy, and implementation issues with the new Medicare Part D benefit. Other topics will include: a study of outcomes and spending for beneficiaries who have had a hip or knee replaced, the use of clinical- and cost-effectiveness information by Medicare, hospital and physician efficiency measurement, and a discussion of Medicare physician fee schedule issues. MedPAC will also review CMS's preliminary estimate of the physician update for 2006.

Agendas will be e-mailed approximately one week prior to the meeting. The final agenda will be available on the Commission's Web site (*http://www.MedPAC.gov*).

ADDRESSES: MedPAC's address is: 601 New Jersey Avenue, NW., Suite 9000, Washington, DC 20001. The telephone number is (202) 220–3700.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 220–3700.

Mark E. Miller,

Executive Director.

[FR Doc. 05–7728 Filed 4–15–05; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL AERONAUTICS AND SPACE ADMINSTRATION

[Notice (05–076)]

NASA Earth Science and Applications from Space Strategic Roadmap Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Earth Science and Applications from Space Strategic Roadmap Committee.

DATES: Wednesday, May 11, 2005, 8:30 a.m. to 5:30 p.m., Thursday, May 12, 2005, 8 a.m. to 5 p.m. eastern standard time.

ADDRESSES: The Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon Johnston, 202–358–4685.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the meeting room. Attendees will be requested to sign a register. At the discretion of the chair, part of the meeting may be conducted through break-out subcommittee sessions that will also be open to the public up to the seating capacity of the meeting rooms. The agenda for the meeting is as follows:

—Draft strategic roadmap report presentation developed by NASA staff based on subcommittee and individual member inputs.
—Review and discussion of strategic roadmap report presentation.
—Consensus on modifications to presentation version of roadmap report.
—Agreement on direction for direction for June 1 document version of strategic roadmap report.
—Subcommittee and individual editorial assignments for June 1 document version of strategic roadmap report.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: April 11, 2005.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–7606 Filed 4–15–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINSTRATION

[Notice (05–74)]

NASA Solar System Exploration Strategic Roadmap Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Solar System Exploration Strategic Roadmap Committee.

DATES: Tuesday, May 3, 2005, 8 a.m. to 5 p.m., Wednesday, May 4, 2005, 8 a.m. to 5 p.m.

ADDRESSES: University of Maryland Inn and Conference Center, 3501 University Blvd. East, Adelphi, MD 20740.

FOR FURTHER INFORMATION CONTACT: Dr. Carl Pilcher, 202–358–0291.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the meeting room. Attendees will be requested to sign a register.

The agenda for the meeting is as follows:

- Review goals, decision points, and Pathways.
- Develop draft Roadmap text from Pathways.
- Generate a preliminary set of affordability indicators that will allow refinement during integration.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: April 11, 2005.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–7604 Filed 4–15–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINSTRATION

[Notice (05–073)]

NASA Sun-Solar System Connection Strategic Roadmap Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Sun-Solar System Connection Strategic Roadmap Committee.

DATES: Thursday, May 12, 2005, 8:30 a.m. to 5 p.m., and Friday, May 13, 2005, 8:30 a.m. to 5 p.m. mountain daylight time.

ADDRESSES: National Center for Atmospheric Research, 1850 Table Mesa Drive, Boulder, Colorado 80305.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Giles, 202–358–1762.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the meeting room. Attendees will be requested to sign a register.

The agenda for the meeting is as follows:

- Reports on Sun-Solar System Connection Roadmap foundation work.
- Review of joint interests with Earth Science Roadmap effort.
- Prioritization of science objectives and missions under study.
- Finalize Sun-Solar System Connection Roadmap documentation.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: April 11, 2005.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–7603 Filed 4–15–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINSTRATION

[Notice (05–075)]

NASA Universe Exploration Strategic Roadmap Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Universe Exploration Strategic Roadmap Committee.

DATES: Tuesday, May 3, 2005, 8:30 a.m. to 5 p.m., Wednesday, May 4, 2005, 8:30 a.m. to 5 p.m. Pacific daylight time.

ADDRESSES: Crowne Plaza Hotel Seattle, 1113 6th Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Salamon, 202–358–0441.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the meeting room. Attendees will be requested to sign a register.

The agenda for the meeting is as follows:

- Discussion of overall roadmap strategy.
- Discussion of draft roadmap sections.
- Roadmap integration working sessions.
- Plans and assignments for roadmap completion.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: April 11, 2005.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–7605 Filed 4–15–05; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants".

2. *Current OMB approval number:* 3150–0155.

3. *How often the collection is required:* One-time submission with application for renewal of an operating license for a nuclear power plant and occasional collections for holders of renewed licenses.

4. *Who is required or asked to report:* Commercial nuclear power plant licensees who wish to renew their operating licenses.

5. *The number of annual respondents:* 17 respondents.

6. *The number of hours needed annually to complete the requirement or request:* Approximately 148,000 hours (128,000 hours one-time reporting burden and 20,000 hours recordkeeping burden).

7. *Abstract:* 10 CFR Part 54 of the NRC regulations, "Requirements for Renewal of Operating Licensees for Nuclear Power Plants," specifies the procedures, criteria, and standards governing nuclear power plant license renewal, including information submittal and recordkeeping requirements, so that the NRC may make determinations that extension of the license term will continue to ensure the health and safety of the public.

Submit, by June 17, 2005, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 12th day of April 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 05–7656 Filed 4–17–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Environmental Assessment and Finding of No Significant Impact Related to Exemption of Material for Proposed Disposal Procedures for the Connecticut Yankee Atomic Power Company License DPR–061, East Hampton, CT

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Theodore Smith, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7E18, Washington, DC 20555–00001. Telephone: (301) 415–6721; e-mail *tbs1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) staff is considering a September 16, 2004, request by the Connecticut Yankee Atomic Power Company (CYAPCO or Licensee), License DPR–61, to dispose of demolition debris from decommissioning the Haddam Neck Plant (HNP) in East Hampton, Connecticut. The request was submitted pursuant to Section 20.2002 of Title 10 of the Code of Federal Regulations (10 CFR 20.2002), "Method of Obtaining Approval of Proposed Disposal Procedures." The licensee proposes to demonstrate that the material is acceptable for burial at a Subtitle C, Resource Conservation and Recovery Act (RCRA) hazardous waste disposal facility in accordance with 10 CFR 20.2002. The RCRA facility is regulated by the State of Idaho Department of Environmental Quality, and any disposal must comply with State requirements. This action, if approved, would also exempt the slightly contaminated material from further Atomic Energy Act (AEA) and NRC licensing requirements. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has determined that a Finding of No Significant Impact (FONSI) is appropriate.

II. Environmental Assessment

Background

The waste material (the demolition debris) intended for disposal includes flooring materials, concrete, rebar, roofing materials, structural steel, soils associated with digging up foundations, and concrete and/or pavement or other similar solid materials. Soils remediated for the purpose of meeting the final status survey requirements of the HNP License Termination Plan (LTP) (i.e., exceed the Derived Concentration Guideline Levels [DCGL] in the LTP) are not included in this action. CYAPCO intends to scabble off surface concrete where contamination or activation levels are high, and to dispose of this material at radioactive waste disposal facilities. The demolition debris will originate from the destruction and removal of structures and paved surfaces at the HNP site, after the structure/surface has been decontaminated to remove areas that are highly contaminated. The underlying soil will be surveyed in accordance with CYAPCO's LTP.

The physical form of this demolition debris will be that of bulk material of various sizes ranging from the size of sand grains up to occasional monoliths with a volume of several cubic feet. The material will be dry solid waste containing no absorbents or chelating agents. The mass of demolition debris originating from the decommissioning of the HNP is estimated to be approximately 45,000 metric tons (50,000 tons). After compaction, the estimated volume of material to be disposed of is approximately 30,500 cubic meters (40,000 cubic yards).

The licensee has demonstrated by calculation that the potential dose consequence is less than 30 microsieverts per year (μSv/y) (3.0 millirem per year [mrem/y]), as a result of the proposed burial of demolition debris in a RCRA facility.

Proposed Action

The proposed action would approve the removal of approximately 45,000 metric tons (50,000 tons) of demolition debris from the HNP, transportation of the debris, and disposition of the debris at the U.S. Ecology facility in Grand View, Idaho. The proposed action also would exempt the low-contamination material from further Atomic Energy Act and NRC licensing requirements. The licensee has conservatively assumed a radionuclide inventory for the demolition debris and calculated the potential dose as less than 30 microsieverts per year (μSv/y) (3.0 millirem per year [mrem/y]), if all the material were disposed of in such a facility. The proposed action is in accordance with the licensee's application dated September 16, 2004, and supplements dated December 17, 2004, March 1, 2005, and March 29, 2005, requesting approval.

Need for Proposed Action

The licensee needs to dispose of 45,000 metric tons (50,000 tons) of demolition debris since the HNP site is currently undergoing licensed decontamination and decommissioning in accordance with the LTP. Characterization and conservative modeling of the material to be included as demolition debris have been used to develop overall averages for radionuclide concentrations. These averages are listed below in Table 1. The licensee proposes to dispose of 45,000 metric tons (50,000 tons) of demolition debris at U.S. Ecology, Idaho, which is a Subtitle C, RCRA hazardous waste disposal facility. This proposed action, would also require NRC to exempt the slightly contaminated material authorized for disposal from further AEA and NRC licensing requirements.

TABLE 1.—OVERALL RADIONUCLIDE CONCENTRATIONS

Radionuclide	Average concentration in becquerel per gram (Bq/g)	Average concentration in picoCuries per gram (pCi/g)
H-3	9.7e+00	2.6e+02
C-14	3.6e−01	9.7e+00
Mn-54	6.3e−05	1.7e−03
Fe-55	5.2e−03	1.4e−01
Co-60	1.0e−02	2.8e−01
Ni-63	6.3e−02	1.7e+00
Sr-90	1.1e−03	3.0e−02
Nb-94	4.8e−05	1.3e−03
Tc-99	2.4e−04	6.5e−03
Ag-108m	7.4e−05	2.0e−03
Cs-134	1.8e−04	4.9e−03
Cs-137	3.6e−02	9.7e−01
Eu-152	1.9e−04	5.0e−03
Eu-154	1.4e−04	3.8e−03
Eu-155	1.4e−04	3.9e−03
Pu-238	1.4e−04	3.7e−03
Pu-239	4.4e−05	1.2e−03
Pu-241	1.9e−03	5.1e−02
Am-241	2.4e−04	6.6e−03
Cm-243	4.1e−05	1.1e−03

Alternatives to the Proposed Action

Alternatives to the proposed action include: (1) Taking no action, (2)

decontaminating the buildings and structures before demolition, or decontaminating the debris, (3) decontaminating and conducting final status surveys of the buildings, and (4) handling demolition debris as low-level radioactive waste and shipping it to a low-level waste facility. CYAPCO has determined that disposal of these demolition wastes in a Subtitle C, RCRA hazardous waste disposal facility is less costly than alternatives 2, 3 and 4. Disposal of the demolition debris in the manner proposed is protective of public health and safety, and is the most cost-effective alternative.

Environmental Impacts of the Proposed Action

The 45,000 metric tons (50,000 tons) of demolition debris will come from the HNP containment building, residual heat exchanger facility, the waste disposal building, the auxiliary building, the spent fuel pool and building, the service building, and facility soils, asphalt and other small structures. The HNP is located in the Town of Haddam, Middlesex County, Connecticut, on the east bank of the Connecticut River at a point 21 miles south-southeast of Hartford, Connecticut and 25 miles northeast of New Haven, Connecticut. The reactor was permanently shutdown on December 5, 1996, and the site is currently undergoing active decommissioning. The current site is approximately 430 acres. The distance between the HNP and U.S. Ecology, Idaho, is approximately 2,500 miles. The driving time would be approximately 50 hours (assuming average speed of 50 miles per hour).

The NRC has completed its evaluation of the proposed action and concludes there are no significant radiological environmental impacts associated with the disposal of 45,000 metric tons (50,000 tons) of demolition debris to U.S. Ecology, Idaho, which is a Subtitle C, RCRA hazardous waste disposal facility. The licensee's analysis used conservative estimates of the average radionuclide concentrations based on ongoing site characterization. The licensee analyzed the dose to a transport driver, loader, disposal facility worker, and long-term impacts to a resident. Each of the analyses conservatively estimated the exposure to less than 30 μSv (3.0 mrem) total dose per year. The proposed action will not significantly increase the probability or consequences of accidents and there is no significant increase in occupational or public radiation exposures.

With regard to potential non-radiological impacts, the HNP is considered to be a potentially historically significant site. Potential impacts from site decommissioning and dismantlement were previously considered as part of the HNP LTP review. Site decommissioning is being conducted in accordance with mitigation measures established by the State Historical Preservation Office, which included documentation of HNP facility in accordance with the professional standards of the National Park Service's Historic American Engineering Record. There is no additional impact to historic archaeological resources resulting from alternate disposal location for demolition debris.

The disposal of demolition debris does not affect non-radiological plant effluents. There may be a slight decrease in air quality and slight increase in noise impacts during the loading and transportation the demolition debris. However, there are no expected adverse impacts to air quality as a result of the loading and transportation of the demolition debris.

CYAPCO estimates that transportation of the demolition debris will require between 2,500–3,000 truck shipments. CYACPO is engaging the local community and government officials for awareness and coordination of the shipping activities in the area immediately surrounding the HNP. There is no anticipated overall impact from the alternate disposal as the shipping effort represents a small fraction of the national commercial freight activity. The total tonnage to be shipped represents 0.0005 percent of the total U.S. annual commercial freight trucking activity (based on 2002 data). Similarly, the total ton-miles for the alternate disposal represents 0.0087 percent of the total U.S. annual commercial freight trucking activity in the same time period. Additionally, these activities will be short in duration and minimal as compared to other activities at the HNP. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

The proposed action and attendant exemption of the material from further AEA and NRC licensing requirements will not significantly increase the probability or consequences of accidents. In addition, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). The result of the no-action alternative is that the demolition debris would remain on site until disposition sometime in the future. Therefore, the impacts therefore be limited to the site, and there would be no transportation impacts and no disposal considerations or impacts until sometime in the future.

Two of the alternatives to the proposed action would be to decontaminate the buildings and structures prior to demolition or final status survey. The environmental impacts as a result of these alternatives would decrease air quality, and increase the noise and water usage, as necessary, during the decontamination process. Additionally, there would be an increase in occupational exposure as a result of the decontamination process.

Disposing of the demolition debris in a low-level waste disposal facility is another alternative to the proposed action. This alternative has similar environmental impacts as the proposed action, but is more costly.

Agencies and Persons Consulted

This EA was prepared by Theodore B. Smith, M.S., Environmental Engineer, Decommissioning Directorate, Division of Waste Management and Environmental Protection (DWMEP). NRC staff determined that the proposed action is not a major decommissioning activity and will not affect listed or proposed endangered species, nor critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. Likewise, NRC staff determined that the proposed action is not the type of activity that has the potential to cause previously unconsidered effects on historic properties, as consultation for site decommissioning has been conducted previously. There are no additional impacts to historic properties associated with the disposal method and location for demolition debris. Therefore, no consultation is required under Section 106 of the National Historic Preservation Act. The NRC provided a draft of its Environmental Assessment (EA) to the following individuals: Mike Firsick, Supervisor, Connecticut Department of Environmental Protection, Radiological Health Section, 79 Elm Street, Hartford, CT 06106–5127. Doug Walker, Senior Health Physicist, State INEEL Oversight Program, 900 North Skyline, Suite B, Idaho Falls, ID 83402–1718.

The State of Connecticut questioned the basis for the conclusion that impacts to air quality and noise were minimal, and expressed concern about operation of diesel fuel trucks in the state, since the state is in non-attainment (*i.e.* out of compliance with the Environmental Protection Agency standards) for ozone pollution.

NRC staff considered the state's comment, and provides the following clarifying information:

Transportation impacts for decommissioning nuclear facilities were considered in NUREG–0586, Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities, Supplement 1, dated November 2002, and determined to be not significant.

The 2,500–3,000 shipments scheduled to occur is a very small fraction of the total number of operating diesel vehicles in the state of Connecticut. Ninety-nine percent of Connecticut school buses run on diesel. Discounting the approximately 360 buses which have had some form of emission reducing equipment retrofit, this still represents 5,680 buses a day operating for 9 months a year. This figure does not include city mass transit systems or other commercial shipping. The operation of unmodified diesel engine school buses in the State of Connecticut represents over one million vehicle days of operation annually. The proposed CYAPCO action represents 0.27 percent of the unmodified diesel school bus traffic in a year in the State of Connecticut, and therefore, is not considered significant.

Further, for the "moderate" non-attainment classification of the Haddam Neck and surrounding area, EPA has established an attainment date of June 2010. Due to the relatively quick breakdown of the ozone affecting chemicals compounds in diesel exhaust, the proposed shipping campaign will have no impact on ozone attainment in Connecticut in 2010.

On February 14, 2005, several comments were received from the State of Idaho Department of Environmental Quality. In response to Idaho's comments and requests, statements have been added to the *Introduction* to clarify that waste disposal at the U.S. Ecology RCRA C facility must comply with their state issued RCRA C permit, and to identify the proposed exemptions in the *Need for Proposed Action* section.

Idaho also requested NRC to identify the exemption criteria, and to identify when and where the exemption takes effect. This information will be included in the Safety Evaluation Report and response to CYAPCO.

Idaho requested NRC to clarify how the proposed action relates to regulation of transuranic elements in waste from NRC-licensed facilities. There are five transuranic radionuclides identified in CYAPCO's proposal; three isotopes of plutonium, americium-241, and curium-243. The plutonium isotopes are considered special nuclear material, subject to 10 CFR Part 70, while the americium and curium isotopes are byproduct materials subject to 10 CFR Part 30. As such, all the transuranic materials in the proposed action would be subject to specific exemption under either 10 CFR 30.11 or 10 CFR 70.17.

Idaho requested NRC staff to identify to what extent NRC's evaluation relied upon U.S. Ecology's current performance assessment, waste acceptance criteria and verification, health and safety plan, post-closure requirements, radiation monitoring, and waste handling procedures. NRC staff's dose assessment relied only upon general RCRA facility operating practices and did not require detailed information about U.S. Ecology's facility as part of our analysis.

Finally, the U.S. Ecology site currently accepts other non-NRC licensed radiological material, in accordance with their acceptance criteria. Idaho identified that if NRC determines that the CYAPCO decommissioning waste is exempt from its regulation, Idaho would have to assess the cumulative effects of this additional waste stream, and evaluate regulatory and permitting changes that may apply to U.S. Ecology's RCRA license.

State licensing requirements notwithstanding, NRC staff have concluded that, since the conservatively modeled dose contribution from demolition debris is small (less than 30 μSv/y (3.0 mrem/y)), it would not constitute a significant increase in the cumulative dose at a RCRA C or other facility.

III. Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Sources Used

—Connecticut Yankee Atomic Power Company letter CY–04–168, dated September 16, 2004, Request for Approval of Proposed Procedures in Accordance with 10 CFR 20.2002 for alternate disposal at the U.S. Ecology Hazardous Waste Treatment and Disposal Facility in Idaho. (ML042800489).
—Connecticut Yankee Atomic Power Company letter CY–04–252, dated December 17, 2004, Supplemental Information. (ML043570446).
—Connecticut Yankee Atomic Power Company letter CY–05–057, dated March 1, 2005, Supplemental Information. (ML050680216).
—Connecticut Yankee Atomic Power Company letter CY–05–090, dated March 29, 2005, Supplemental Information (ML050960492).
—NRC 10 CFR 20.2002, "Method of Obtaining Approval of Proposed Disposal Procedures"
—NUREG–1640, "Radiological Assessment for Clearance of Materials from Nuclear Facilities."
—NUREG–1748, "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs."
—US DOT, Bureau of Transportation Statistics, "Transportation Statistics Annual Report," September 2004.
—US DOT, Bureau of Transportation Statistics, "Freight Shipments in America," April 2004.
—US EPA Health Assessment Document for Diesel Engine Exhaust.
—US EPA Designation for 8-Hour Nonattainment Areas in New England Questions and Answers.
—Connecticut Department of Environmental Protection Diesel Risk Reduction Strategies.
—Evaluation of Test Data Collected in 2001 and 2002 from Connecticut's Inspection/Maintenance Program, July 2004.
—NUREG –0586, Supplement 1, Generic Environmental Impact Statement of Decommissioning of Nuclear Facilities, November 2002.
—State of Idaho Department of Environmental Quality letter dated February 7, 2005.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: (1) ML042800489 for the licensee's exemption request letter of September 16, 2004, (2) ML043570446 for the licensee's supplement of

December 17, 2004, (3) ML050680216 for the licensee's supplement of March 1, 2005 and (4) ML050960492 for the licensee's supplement of March 29, 2005. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 8th day of April, 2005.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Deputy Director, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 05–7657 Filed 4–15–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Updated notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on April 20 and 21, 2005. Although the dates of the ACMUI public meeting remain April 20 and 21, as originally published in the February 28, 2005 notice (see 70 FR 9611), this notice is meant to alert interested parties that the time for the ACMUI's briefing to the Commission has changed. See heading below entitled "Date and Time for Commission Briefing" for details. A sample of agenda items to be discussed during the public sessions includes: (1) Status of Rulemaking: Pt. 35 Training and Experience; (2) Status and Update: Redefining Medical Events; (3) Case Experience in Using I–125 Seeds as Markers; (4) FDA Radiation Dose Limits for Human Research Subjects Using Certain Radiolabeled Drugs, and (5) Establishing Guidance on Exceeding Dose Limits for Members of the Public who would serve as Caregivers to Persons undergoing Radiopharmaceutical Therapy. To review the agenda, see *http://www.nrc.gov/reading-rm/doc-collections/acmui/agenda/* or contact *arm@nrc.gov*.

Purpose: Discuss issues related to 10 CFR 35, Medical Use of Byproduct Material.

Date and Time for Closed Session Meeting: April 21, 2005, from 8 a.m. to 10 a.m. This session will be closed so that NRC staff can brief the ACMUI on sensitive information regarding protective security measures, and so that the ACMUI can discuss internal personnel matters.

Dates and Times for Public Meetings: April 20, 2005, from 8 a.m. to 5 p.m.; and April 21, 2005, from 10 a.m. to 5 p.m.

Address for Public Meetings: Bethesda North Marriott Hotel, 5701 Marinelli Road, North Bethesda, MD 20552–2785.

Date and Time for Commission Briefing: April 20, 2005, from 3:15 to 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: Angela R. McIntosh, telephone (301) 415–5030; e-mail *arw@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Conduct of the Meeting

Leon S. Malmud, M.D., will chair the meeting. Dr. Malmud will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Angela R. McIntosh, U.S. Nuclear Regulatory Commission, Two White Flint North, Mail Stop T8F5, 11545 Rockville Pike, Rockville, MD 20852–2738. Submittals must be postmarked by April 1, 2005, and must pertain to the topics on the agenda for the meeting.

2. Questions from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection on NRC's Web site (*www.nrc.gov*) and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738, telephone (800) 397–4209, on or about July 20, 2005. This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, *U.S. Code of Federal Regulations*, Part 7.

4. Attendees are requested to notify Angela R. McIntosh at (301) 415–5030 of their planned attendance if special services, such as for the hearing impaired, are necessary.

Dated at Rockville, Maryland, this 12th day of April, 2005.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 05–7655 Filed 4–17–05; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; Board of Directors Meeting

TIME AND DATE: Thursday, April 28, 2005, 10 a.m. (open portion); 10:15 a.m. (closed portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Meeting open to the Public from 10 a.m. to 10:15 a.m.; Closed portion will commence at 10:15 a.m. (approx.)

MATTERS TO BE CONSIDERED:

1. President's Report.
2. Testimonials: Alan P. Larson, Peter S. Watson and Grant L. Aldonas.
3. Approval of January 27, 2005 minutes (open portion).

FURTHER MATTERS TO BE CONSIDERED: (Closed to the public 10:15 a.m.)

1. Finance Project—India, Indonesia, Sri Lanka, Thailand, Bangladesh, Kenya, Malaysia.
2. Finance Project—Zambia.
3. Finance Project—Asia.
4. Finance Project—Afghanistan.
5. Approval of January 27, 2005 Minutes (closed portion).
6. Pending Major Projects.
7. Reports. Update on project in India

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: April 14, 2005.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 05–7782 Filed 4–14–05; 12:40 pm]

BILLING CODE 3210–01–M

POSTAL RATE COMMISSION

[Order No. 1436; Docket No. R2005–1]

Postal Rate and Fee Changes

AGENCY: Postal Rate Commission.

ACTION: Notice and order in omnibus rate filing.

DATES: May 2, 2005: Deadline for notices of intervention, answers to

motions and comments on request for expedition; May 5, 2005: Prehearing conference.

ADDRESSES: File notices of intervention and other documents electronically via the Commission's Filing Online system at *http://www.prc.gov*.

SUMMARY: This document informs the public that the United States Postal Service has filed a request for an expedited decision on proposed changes in essentially all domestic postage rate and fee changes, and notes that the Commission has taken several procedural steps in response to the filing. The request does not identify any proposed changes in mail classification or rate structure. The request, on average, seeks an across-the-board increase of 5.4 percent; however, there are limited (and in some instances, significant) exceptions.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharman, General Counsel, (202) 789–6818.

SUPPLEMENTARY INFORMATION:

I. Introduction

Summary. This notice and order (Order) informs the public that on April 8, 2005, the United States Postal Service filed a formal Request with the Postal Rate Commission for an expedited recommended decision on proposed changes in domestic postage rates and fees for all classes of mail and special services, with the exception of Confirm, which is a special service.[1] The Request does not identify any classification or rate structure changes. Interested persons are urged to carefully review the Service's filing in its entirety to determine the impact of the proposals.

The Request is unique in that it is premised on several policy conclusions associated with funding a pending escrow obligation associated with Public Law 108–18.[2] These conclusions entail, among others, a decision to seek a 5.4 percent across-the-board increase for most rates and fees, with certain limited (but in at least three instances, significant) exceptions. The exceptions are attributed to a statutory requirement (in the case of Within County Periodicals mail); reported increases in costs (for Registered Mail and the Periodicals Re-entry Application), and rounding conventions (in many instances).

Significant exceptions. The Service's Within County proposal entails a 5.4 percent decrease on average. USPS–T–28 at 14. The Registered Mail fee proposals entail increases of around 70 percent. Id. at Exhibit USPS–28A, Table 10 at 57. The fee for Periodical Re-entry Application increases by 12.5 percent. Id. at 55.

Costing support. The Service asserts that the proposed across-the-board approach treats all mail categories and services equally, while relegating specific costing issues to a secondary role in the supporting record.

First-Class stamp. The price of the First-Class stamp under the Service's proposal would increase by 2 cents, thereby going from 37 cents to 39 cents. The rate for additional ounces of First-Class Mail would increase by 1 cent, from 23 cents to 24 cents.

Interest in expedition and settlement. The Service seeks maximum expedition of its Request, early implementation of resulting rates and fees (in calendar 2006), and suggests, based on efforts underway prior to filing, that there is a strong likelihood that all material issues can be settled.

Initial action. This Order summarizes key features of the filing, including accompanying notices, motions and requests, and institutes a formal proceeding for consideration of the Service's proposals. It sets May 5, 2005 as the date for a prehearing conference, identifies certain other deadlines, and takes several preliminary procedural steps. The latter include authorization of settlement proceedings, based in part on the Service's representations that substantial support for settlement already exists, and appointment of the Postal Service as settlement coordinator.

II. Establishment of Formal Docket

The Request was filed pursuant to chapter 36 of title 39, United States Code, based on the Service's determination that such changes would be in the public interest and in accordance with policies of that title. The Commission hereby institutes a proceeding under 39 U.S.C. 3622, designated as Docket No. R2005–1, Postal Rate and Fee Changes, to consider the instant request. In the course thereof, participants may propose alternatives to the Service's proposal, and the Service itself may revise, supplement, or amend its filing. The Commission's review of the Request, including any revisions, alternatives proposed by others, or options legally within the purview of the Service's request, may result in recommendations that differ from proposed rates and fees.

III. Availability, Web Site Posting

The Commission has posted the Request and related material on its Web site at *http://www.prc.gov*. Additional Postal Service filings in this case will also be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov*.

The Request and related documents are available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Monday through Friday, except on federal government holidays. Docket section personnel can be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846. The Service addresses how intervenors can obtain paper copies of its filing in Notice of the United States Postal Service Regarding Availability and Distribution of Paper Copies of the Postal Service Direct Case, April 8, 2005 (Notice Regarding Distribution).

IV. Contents of the Service's Filing

The Service's Docket No. R2005–1 filing includes its formal Request, along with an explicit request for expedition; six attachments; 33 pieces of testimony (and related exhibits) presented by 31 witnesses; and 116 library references.[3] Witness Potter (USPS–T–1) addresses the policy rationale underlying the Request, which centers mainly on the aforementioned CSRS escrow funding obligation. Witness Alenier (USPS–T–33) presents "roadmap" testimony in compliance with Commission rule 53(b). This testimony includes, among other pertinent information, two attachments, captioned Roadmap Testimony Quick Reference Guide (Attachment 1) and Postal Testimony Flowchart (Attachment 2). A master list of library references also appears in Notice of the United States Postal Service of Filing of Master List of Library References, April 8, 2005.

[1] Request of the United States Postal Service for a Recommended Decision on Changes in Rates of Postage and Fees for Postal Services, Docket No. R2005–1, April 8, 2005 (Request); United States Postal Service Request for Expedition and Early Consideration of Procedures Facilitating Settlement Efforts, April 8, 2005 (Request for Expedition). The Service's rationale for excluding Confirm from its Request is presented in Notice of the United States Postal Service Regarding Exclusion of Confirm Service from General Rate Proceeding, April 8, 2005 (Notice Regarding Confirm Service).

[2] The Postal Civil Service Retirement System Funding Reform Act of 2003.

[3] The Service has prepared, but withheld, one library reference (USPS–LR–K–85) pending resolution of a request for protective conditions. *See* Motion of United States Postal Service for Waiver and for Protective Conditions for Library Reference that Includes Costs and Other Data Associated with the FedEx Transportation Agreement, April 8, 2005 (Combined Waiver Motion).

Witness Robinson (USPS–T–27) addresses rate levels; witness Taufique (USPS–T–28) reviews current and proposed rates.

Attachments to the Request. Attachment A, Requested Changes in Rates and Fees, identifies requested changes in the Domestic Mail Classification Schedule (DMCS). Attachment B, Specification of the Rules, Regulations, and Practices That Establish Standards of Service and Conditions of Mailability, addresses Commission rule 54(b)(2), and designates the contents of the Domestic Mail Manual (DMM) as specifying those rules, regulations and practices establishing conditions of mailability and standards of service. It also provides a copy of the table of contents of the DMM (updated as of March 17, 2005). The DMM is available for review on the Postal Service's Web site, *http://www.USPS.gov.*

Attachment C is the certification, required by rule 54(p), attesting to the accuracy of cost statements and other documentation submitted with the Request. Attachment D consists of a report of the Service's independent auditors, and includes related audited financial statements. Attachment E is an index that identifies witnesses, the numerical designation of each piece of testimony, related exhibits and library references, and attorney contacts. Attachment F is a compliance statement addressing pertinent provisions of rules 53, 54 and 64, and refers to a separate notice and motion for waiver related to the alternate cost presentation required by these rules.

The Service contemporaneously filed several motions pertaining to library references, including one that seeks protective conditions. It also filed, including the Library Reference Notice, several notices.

I. Summary of the Nature and Impact of the Proposed Changes

Defining feature. The defining feature of the Service's Request is that it is based on several policy judgments linked solely to funding an escrow obligation. This obligation was imposed by Public Law 108–18, and requires the Service to begin annual funding of an escrow account in fiscal year 2006.[4] The escrow amount, which the law identifies as an operating expense, is $3.1 billion. The Service expresses an intention to withdraw the case should the referenced law be changed in a fashion that precludes the need to meet this obligation.

The escrow obligation gives rise to several related policy conclusions on the part of Postal Service regarding the need for, amount, timing and nature of its Request. In particular, the Service concludes that it must file a request now so that it will have revenue to meet this obligation; that it would not seek an increase at this time in the absence of this obligation; that all costs related to this obligation are institutional; that an across-the-board approach is appropriate, except in situations involving a statutory requirement, significantly higher reported costs, or rounding conventions; and that no classification and rate structure changes should be proposed. These conclusions, in turn, drive the Service's request for maximum expedition, based on a belief that this case can be settled, and its interest in early implementation of resulting rate and fee changes.

Proposed changes. The Service presents a summary of the percentage changes in proposed rates relative to current rates at USPS–T–27, Exhibit USPS–27D. These percentages are reproduced below:

	Docket No. R2005–1 proposed percentage change
First-Class Mail:	
Letters and Sealed Parcels ..	5.3
Cards	4.9
Priority Mail	5.4
Express Mail	5.5
Periodicals:	
Within County	*–5.4*
Outside County	5.4
Standard Mail:	
Regular	5.4
Nonprofit	5.5
Enhanced Carrier Route	5.5
Nonprofit Enhanced Carrier Route	6.0
Package Services:	
Parcel Post	5.4
Bound Printed Matter	5.5
Media Mail	5.4
Library Mail	5.7
Total All Mail	5.4

See also USPS–T–28 in its entirety for other representations of proposed percentage rate changes. A summary of proposed percentage changes for special services appears at USPS–T–27, Exhibit USPS–27F and at USPS–28, Exhibit USPS–28A, Table 10 at 53–59.

VI. Expedition and Settlement

In its separate but related Request for Expedition, the Service seeks early resolution of its Request, expresses interest in implementing the proposed rate and fee changes in early calendar year 2006, and suggests that that there is a strong likelihood that most, if not all, participants will sign a Stipulation and Agreement. It documents efforts toward achieving a settlement that have been underway for some time, and therefore seeks maximum expedition of its Request. These include, among others, discussions and individual consultations, a general letter corresponding with all parties of record in Docket No. R2001–1. This letter outlines the Service's proposal, reports on the general state of negotiations with prospective participants up to that point, and invites all prospective participants to engage in further discussions leading to settlement. Id. at 5–6. The letter is set out as an attachment to the Request for Expedition.

The Service suggests that consideration of the request could be completed in less than 10 months (the statutory maximum) without interfering with the Commission's interests or compromising participants' due process rights. It further maintains that several benefits (primarily associated with implementation) would flow from completing the case even one month earlier than the statutory maximum.

The Service states that the distinct circumstances of this case and the nature of its proposals have improved settlement potential relative to the settlement posture of Docket No. R2001–1. Id. at 5. It notes that it has been consulting individually with mailers, mailer associations, and other likely participants in upcoming proceedings. Id. at 5. In particular, it states that it has consulted 38 out of 64 participants in Docket No. R2001–1, as well as some organizations and individual mailers who do not typically intervene separately from their membership in associations. Id. at 8.

The Service believes that many of the interim dates in the overall procedural schedule can be advanced, relative to previous omnibus proceedings, and that other aspects, such as discovery, can be compressed. The Service's proposed schedule is set out in an attachment to the Request for Expedition.

VII. Postal Service Notice Regarding Exclusion of Confirm Service From Request

The Service does not propose any change in the fees for Confirm service.[5]

[4] Additional information on the escrow requirement is provided in USPS–T–1.

[5] Confirm is a special service that was recommended and approved as a result of Docket No. MC2002–1. It involves the use of PLANET

Continued

The Service briefly reviews the introduction, development and current status of this offering in its Notice Regarding Confirm Service. It generally concludes that Confirm has shown promise in actual operations, but has experienced significant implementation complications; has attracted a base of customers who are still learning how to use this offering; and has encountered a market that is relatively slow to react. Notice Regarding Confirm Service at 1–2.

The Service's assessment is that Confirm is being offered in the context of comparatively rapid evolution of the Confirm infrastructure and steep learning curves for both customers and the Postal Service in determining how Confirm can best be used. Given this context, it has determined that an in-depth review of Confirm operations and performance and an evaluation of its price structure is warranted. It therefore concludes that it would be premature to propose increased fees at this time. The Service further states that it is evaluating its options, including the potential for changing the structure of the fee schedule, and expects that it will address both fees and service aspects of Confirm in a separate, future proceeding. Id. at 2–3.

VIII. Motions for Waiver of Various Commission Rules, Including a Combined Pleading Seeking Protective Conditions Prior to Filing USPS–LR–K–85

Motions for waiver of certain provisions of the library references rules for Category 1, 2, 3 and 5 library references.[6] In four separate motions, the Service seeks waiver, to the extent deemed necessary, of the Commission's rules on library references for documents in the following categories: Category 1 (Data Reporting Systems); 2 (Witness Foundational Material); 3 (Reference Material); and 5 (Disassociated Material). Each motion clearly identifies the library references proposed to be covered by the waiver request. *See* Motion of the United States Postal Service Requesting Waiver of the Commission Rules with Respect to Category 1 Library References; Motion of the United States Postal Service Requesting Waiver of the Commission Rules with Respect to Category 2 Library References; Motion of the United States Postal Service Requesting Waiver of the Commission Rules with Respect to Category 3 Library References; and Motion of the United States Postal Service Requesting Waiver of the Commission Rules with Respect to Category 5 Library References, all filed April 8, 2005 (Waiver Motions). Answers to the referenced Waiver Motions are due no later than May 2, 2005.

Combined motion for waiver of certain rules and request for protective conditions in connection with FedEx transportation agreement (USPS–LR–K–85). The Postal Service has prepared, but not filed, USPS–LR–K–85, Calculation of FedEx Variability. This document is identified as a category 2 library reference sponsored by witness Nash (USPS–T–17). Combined Waiver Motion at 1. The Service's reason for withholding this document is its interest in application of protective conditions. The proposed conditions appear as Attachment A to the Service's Combined Waiver Motion. The Service also seeks waiver of relevant portions of rules 31(k) and 54 for this document.

In support of its interest in protective conditions, the Service states the FedEx agreement contains commercially sensitive information, given that it includes daily volume information and cost data for fuel charges, non-fuel charges, and handling charges, all on a daily basis, as well as applicable contract prices. Id. at 1. It also, among other things, notes that similar conditions were granted by the Postal Rate Commission in Docket No. R2001–1 for FedEx data. Id. at 2–3, citing Presiding Officer's Ruling No. R2001–1/5 (October 31, 2001). Answers to the Service Combined Waiver Motion are due no later than May 2, 2005.

IX. Participation

The Commission invites participation in this case by interested persons. Commission rules allow a participant to elect full, limited or commenter status. Persons electing full or limited status shall file notices of intervention conforming to Commission rules no later than May 2, 2005. Persons seeking to intervene on a full or limited basis after that date must file a motion for intervention. Commenters do not need to file intervention notices or motions; instead, they may direct their comments to the attention of Steven W. Williams, Secretary of the Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001. Commenters may also submit their views via electronic mail by addressing them to *prc-admin@prc.gov*. Persons unsure of their intervention status under the Commission's rules or seeking more information on how to participate in this case should contact Shelley S. Dreifuss, Director of the Commission's Office of the Consumer Advocate, by telephone at (202) 789–6837 or via electronic mail at *dreifusss@prc.gov*.

X. Representation of the Interests of the General Public

The Commission designates Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, to represent the interests of the general public in this proceeding, pursuant to 39 U.S.C. 3624(a). Ms. Dreifuss shall direct the activities of Commission personnel assigned to assist her and, at an appropriate time, provide the names of these employees for the record. Neither Ms. Dreifuss nor the assigned personnel shall participate in or advise as to any Commission decision in this proceeding, other than in their designated capacity.

XI. Prehearing Conference Date; Other Scheduling Matters

The Commission will hold a prehearing conference on Thursday, May 5, 2005, at 10 a.m. in the Commission's hearing room, 1333 H Street NW., Suite 300, Washington, DC 20268–0001. The Commission appreciates the Service's interest in and efforts related to an expedited schedule. The intervention deadline and date for the prehearing conference responds in part to this interest. It is anticipated that the Presiding Officer will promptly issue a ruling addressing topics to be discussed at the prehearing conference and inviting participants to suggest other relevant topics. Other procedural matters, including the compressed schedule the Service seeks, will be addressed shortly. It is ordered:

1. The Commission hereby institutes Docket No. R2005–1 for consideration of the Service's request for omnibus rate and fee changes.

2. The Commission will sit en banc in this proceeding.

3. Notices of intervention will be accepted through May 2, 2005.

4. Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public in this proceeding.

5. The Commission authorizes settlement negotiations, without prejudice to participants' opportunity to seek a hearing.

6. The Commission appoints the Postal Service as settlement coordinator.

7. A prehearing conference will be held on Thursday, May 5, 2005, at 10 a.m. in the Commission's hearing room.

8. Comments on the need for expedition and procedures for

barcodes to track mail as it flows through the system.

[6] Library reference categories are identified in Commission rule 31(b)(2).

facilitating settlement of this case are due no later than May 2, 2005.

9. Answers to the Motion of the United States Postal Service for Waiver and for Protective Conditions for Library Reference that Includes Costs and Other Data Associated with the FedEx Transportation Agreement, filed April 8, 2005, are due no later than May 2, 2005.

10. Answers to Motion of the United States Postal Service Requesting Waiver of the Commission Rules with Respect to Category 1 Library References, filed April 8, 2005, are due no later than May 2, 2005.

11. Answers to the Motion of the United States Postal Service Requesting Waiver of the Commission Rules with Respect to Category 2 Library References, filed April 8, 2005, are due no later than May 2, 2005.

12. Answers to the Motion of the United States Postal Service Requesting Waiver of the Commission Rules with Respect to Category 3 Library References, filed April 8, 2005, are due no later than May 2, 2005.

13. Answers to the Motion of the United States Postal Service Requesting Waiver of the Commission Rules with Respect to Category 5 Library References, filed April 8, 2005, are due no later than May 2, 2005.

14. The Secretary shall cause this Notice and Order to be published in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. 05–7613 Filed 4–15–05; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Request for Comments on the Strategic Transformation Plan 2006–2010

AGENCY: Postal Service.

ACTION: Request for comments.

SUMMARY: This Notice addresses the Postal Service's Strategic Transformation Plan 2006–2010.

By law, beginning in 1997, the Postal Service ™ is required to publish a five-year plan outlining its goals, targets, and strategies, and to update and revise its five-year plan at intervals of no less than 3 years. In support of its strategic planning process, the law requires the Postal Service to solicit and consider the ideas, knowledge, and opinions of those potentially affected by or interested in its Five-Year Strategic Plan.

In addition, at the request of Congress, in 2002 the Postal Service prepared a comprehensive plan for the structural transformation of the postal system to meet the challenges of serving the American public. This first Transformation Plan covered the years 2002–2006. A major component of the next Five-Year Strategic Plan, covering 2006–2010, will be the extension of the Postal Service's Transformation Plan through the same period. This notice asks for public comment concerning the development and drafting of the Postal Service's combined document, the *Strategic Transformation Plan 2006–2010.*

DATES: Comments must be received by May 15, 2005.

ADDRESSES: Those responding are requested to e-mail their comments to *transform@usps.gov.* Those wishing to send written comments should mail them to USPS Office of Strategic Planning, Stakeholder Feedback, 475 L'Enfant Plaza, SW., Room 5142, Washington, DC 20260–5142. All stakeholders are encouraged to view the Postal Service's Web page dedicated to soliciting comments on its Strategic Transformation Plan 2006–2010 located at *http://www.usps.com/strategicplanning/2006–2010.htm.* Stakeholders are requested to review the content of this Web site before submitting comments.

FOR FURTHER INFORMATION CONTACT: George R. Bagay (202) 268–4159.

SUPPLEMENTARY INFORMATION:

Five-Year Strategic Plan Statutory Background

The Government Performance and Results Act of 1993 (GPRA), Public Law 103–62, was enacted to make Federal programs more effective and publicly accountable by requiring agencies to institute results-driven improvement efforts, service-quality metrics, and customer satisfaction programs. Other statutory goals were to improve Congressional decision-making and the internal management of the United States government. Because of the Postal Service's position as an independent establishment of the Executive Branch of the government of the United States, section 7 of the law amended the Postal Reorganization Act to insert similar provisions for performance management in the Postal Service. (*See* 39 U.S.C. 2801–2805.)

Section 2802 of title 39, United States Code, requires the Postal Service to update and revise its strategic plan at least every 3 years. This plan must contain:

(1) A comprehensive mission statement covering the major functions and operations.

(2) General goals and objectives, including outcome-related goals and objectives, for the major functions and operations.

(3) Descriptions of how these goals and objectives are to be achieved and of the operational processes; skills and technology; and the human, capital, information, and other resources required to meet the goals and objectives.

(4) A description of how the performance goals included in the annual performance plan required under section 2803 will be related to the general goals and objectives in the strategic plan.

(5) An identification of the key factors external to the Postal Service and beyond its control that could significantly affect the achievement of its general goals and objectives.

(6) A description of the program evaluations used in establishing or revising general goals and objectives, with a schedule for future program evaluations. (See 39 U.S.C. 2802(a).)

The law also requires annual performance plans linking the organizational goals in the Strategic Plan with ongoing operations. Finally, the law requires the preparation of annual performance reports, which review and compare actual performance with the performance targets stated in the annual plans. (See 39 U.S.C. 2804.)

In order to include public participation in this planning process, the statute provides that the Postal Service, as it develops each new iteration of the Strategic Plan, "shall solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan, and shall advise the Congress of the contents of the plan." (See 39 U.S.C. 2802(d).)

Transformation Background

On April 4, 2001, the Comptroller General of the United States advised the House of Representatives Committee on Government Reform that the Postal Service "faces major challenges that collectively call for a structural transformation if it is to remain viable in the 21st century." He called on the Postal Service, in conjunction with all stakeholders, to prepare a comprehensive plan identifying "the actions needed to address the Service's financial, operational, and human capital challenges and establish a time frame and specify key milestones for achieving positive results." On June 14, 2001, the Chair and ranking members of the Committee on Governmental Affairs and its Postal Oversight Subcommittee wrote to Postmaster General John E.

Potter asking that a Transformation Plan be developed. The Postal Service presented this first Transformation Plan covering the years 2002– 2006 to Congress in April 2002. The Transformation Plan has made possible a number of successes to date: postal rates have remained stable since mid-2002, debt has declined by $9.5 billion, and a total of $4.3 billion in incremental annual savings have put the service well on its way to five straight years of productivity gains. At the same time, the Postal Service has achieved record customer satisfaction levels, provided record end-to-end service performance, and developed innovative postal products and services including Click-N-Ship®, Negotiated Pricing Agreements (NSAs), and Priority Mail® flat-rate boxes.

Following up on the April 2002 Transformation Plan, the Postal Service published two Transformation Plan Progress Reports, one in November 2003, and one in November 2004, and incorporated a discussion of Transformation Plan progress into its annual Comprehensive Statement on Postal Operations to Congress. All of these Postal Service plans and documents, along with other key Postal Service transformation, planning, and financial documents, can be found online at *http://www.usps.com/strategicplanning*.

To maintain this significant momentum, the Postal Service plans to extend its ongoing transformation by developing the Strategic Transformation Plan 2006–2010 with the participation of its stakeholders. This plan will focus on Postal Service-wide organizational strategies along with detailed cross-functional strategies engineered to enhance value to our customers. Publication is planned for September 30, 2005, with subsequent annual updates.

As a nation, we need to know how we can best structure our postal system in the years ahead to meet evolving needs. The Postal Service has a mission to serve every address in a growing nation. Its networks, with associated costs, are constantly expanding to accommodate new deliveries roughly equivalent to those for the cities the size of Chicago and Baltimore, year after year. Until recently, during a long period of strong economic expansion, the Postal Service benefited from growing mail volumes, with increasing postage revenue sufficient to pay for the expanding network, and kept postage rates in line with inflation. Because of the successes achieved as a result of the April 2002 Transformation Plan, the Postal Service has improved its productivity during this period at an unprecedented rate. Nevertheless, changes in competition and technology suggest that, while a system for delivery of hard-copy mail will still be important, the volume of mail in the system may not grow enough in the future to keep pace with the growth in infrastructure required to serve an ever-growing number of addresses. The Postal Service currently lacks many of the tools that private businesses have to deal with revenue deficiencies. In addition, its service responsibilities prevent abandoning unprofitable locations or new addresses.

Discussion of the Postal Service Mission, Vision, and Objectives

In 1970, Congress enacted the Postal Reorganization Act, transforming the former Post Office Department into the United States Postal Service. The intent was to ensure that the former department became a self-sustaining Federal entity, operating more like a business. The Postal Reorganization Act states that the Postal Service will have the "basic and fundamental" responsibility to provide postal services to bind the nation together through the personal, educational, literary, and business correspondence of the people. Prompt, reliable, and efficient postal services must be extended to patrons in all areas and to all communities.

The objective of transformation was stated in the April 2002 Transformation Plan and the Strategic Plan 2004–2008. The plans acknowledge the assistance of the full range of stakeholders in the postal industry and a firm commitment to all stakeholders, especially our customers. In order to maintain our financial viability and fulfill our universal service mission, we commit that we will:

- Foster growth by increasing the value of postal products and services to our customers;
- Improve operational efficiency; and
- Enhance the performance-based culture.

It is for the purpose of maintaining its transformative vision and momentum through the Transformation Plan 2006–2010 that we ask stakeholders once again to share their views on the future of the nation's mail service.

Solicitation of Comments

Although all comments and feedback are welcome, we are seeking current, updated suggestions and commentary rather than resubmission of material already provided as part of previous stakeholder outreach efforts. Comments can be especially helpful to the Postal Service in analyzing external trends that will shape the demand for postal services over the next five years. The following fundamental changes have previously been identified as likely to reshape the delivery services marketplace:

Changing Customer Needs

With access to more information and options than ever before, customers have a broad range of choices for delivery of messages, money, and merchandise—our three businesses. Customer requirements for postal services and entrenched network structures and service patterns may be changing. The Postal Service's Strategic Transformation Plan 2006–2010 is intended to meet these changing customer requirements while continuing to transform the Postal Service into an organization that is "easier to use" and more responsive to customer needs. The Postal Service intends to "partner" with customers and industry participants to add value to customer transactions.

Eroding Mail Volumes

Electronic alternatives, particularly bill presentment and payment, pose a definite and substantial risk to First-Class Mail" volume and revenue within the next 5–10 years. This could, in turn, have a negative impact on First-Class Mail rates.

Rising Costs

Despite major gains in efficiency and productivity through automation, the costs of maintaining an ever-expanding postal network are increasing, especially costs outside the direct control of the Postal Service, such as retirement and health benefit liabilities.

Fixed Costs

Universal service requires a significant infrastructure to deliver postal services. Almost half of current Postal Service costs are spent on these resources, and that level does not change when volume or productivity increases or decreases. This makes cost containment most challenging.

Merging of Public and Private Operators into Global Networks

Former national foreign postal services, some privatized, have entered the U.S. domestic market.

Increasing Security Concerns

Rising security concerns require sophisticated countermeasures.

Are these factors still relevant? Which ones are relevant and which are not? Are some more important than others? Is the rate of change for each factor increasing or decreasing? Are there

other factors that warrant consideration? What are they? In developing the Strategic Transformation Plan 2006–2010, the Postal Service would like to receive stakeholders' views and comments on these and other long-term external changes, issues, and trends.

The Postal Service also invites comment on its long-range organizational goals, or objectives, published most recently in the Preliminary Annual Performance Plan for 2005 as part of the FY 2004 Comprehensive Statement on Postal Operations. The Postal Service has employed long-range goals, or objectives, as part of a strategic planning process for over two decades, along with systematic performance assessments. The Postal Service has developed a disciplined process to establish goals, objectives, indicators, and targets; assign resources to programs that support achievement of the targets; implement the programs; and review performance. Stakeholder input will also support and enhance the performance process.

The United States Postal Service maintains a Web page dedicated to soliciting comments on its Strategic Transformation Plan 2006–2010: *http://www.usps.com/strategicplanning/2006-2010.htm*. Stakeholders are requested to review this Web site, and may submit emails or send written comments. Interested parties are encouraged to complete the survey presented on the Web page, and, if desired, respond to the following questions included on the survey:

- If there were one change you could write into Transformation 2006–2010 for the Postal Service, what would it be?
- What is most important to your organization in the next five years, and how can the Postal Service best help you?
- What should the Postal Service look like in five years? What are the most important changes that should be made?
- What is the proper balance among the multiple goals of the Postal Service (universal service, financial self-sufficiency, public services, cost management and productivity, workplace and workforce improvement, effective products and services, responsive customer support)?
- What information should the Postal Service be providing to stakeholders?

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 05–7750 Filed 4–15–05; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 11Ab2–1, SEC File No. 270–882, OMB Control No. 3235–0043; Form SIP, SEC File No. 270–882, OMB Control No. 3235–0043.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 11Ab2–1 (Form of Application and Amendments) and Form SIP establish the procedures by which a Securities Information Processor ("SIP") files and amends its SIP registration form. The information filed with the Commission pursuant to Rule 11Ab2–1 and Form SIP is designed to provide the Commission with the information necessary to make the required findings under the Act before granting the SIP's application for registration. In addition, the requirement that a SIP file an amendment to correct any inaccurate information is designed to assure that the Commission has current, accurate information with respect to the SIP. This information is also made available to members of the public.

Only exclusive SIPs are required to register with the Commission. An exclusive SIP is a SIP that engages on an exclusive basis on behalf of any national securities exchange or registered securities association, or any national securities exchange or registered securities association which engages on an exclusive basis on its own behalf, in collecting, processing, or preparing for distribution or publication, any information with respect to (i) transactions or quotations on or effective or made by means of any facility of such exchange or (ii) quotations distributed or published by means of any electronic quotation system operated by such association. The Federal securities laws require that before the commission may approve the registration of an exclusive SIP, it must make certain mandatory findings. It takes a SIP applicant approximately 400 hours to prepare documents which include sufficient information to enable the Commission to make those findings. Currently, there are only two exclusive SIPs registered with the Commission; The Securities Information Automation Corporation ("SIAC") and The Nasdaq Stock Market, Inc. ("Nasdaq"). SIAC and Nasdaq are required to keep the information on file with the Commission current, which entails filing a form SIP annually to update information. Accordingly, the annual reporting and recordkeeping burden for Rule 11Ab2–1 and Form SIP is 400 hours. This annual reporting and recordkeeping burden does not include the burden hours or cost of amending a Form SIP because the Commission has already overstated the compliance burdens by assuming that the Commission will receive one initial registration pursuant to Rule 11Ab2–1 on Form SIP a year.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information 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 collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: April 7, 2005.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–1802 Filed 4–15–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of E–Z–EM, Inc. To Withdraw Its Common Stock, $.10 Par Value, From Listing and Registration on the American Stock Exchange LLC File No. 1–11479

April 8, 2005.

On April 1, 2005, E–Z–EM, Inc., a Delaware corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"),

pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.10 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

On March 30, 2005, the Board of Directors ("Board") of the Issuer approved resolutions to withdraw the Security from listing and registration on Amex and to list the Security on The Nasdaq National Market Systems ("Nasdaq"). The Issuer stated that the Board determined that Nasdaq is a more efficient and better structured marketplace that may provide the Issuer with a variety of advantages over Amex, including, but not limited to, a screen-based electronic marketplace with competing market makers, increased liquidity, faster trade execution time and better execution quality. The Board also stated that it believes that the public's positive perception of Nasdaq marketplace may provide better identity and improved visibility for the Issuer. The Issuer stated that it expects trading in the Security on Nasdaq to begin April 12, 2005.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of Delaware, in which it is incorporated, and provided written notice of withdrawal to Amex.

The Issuer's application relates solely to withdrawal of the Security from listing on the Amex and from registration under Section 12(b) of the Act,[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before May 3, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–11479 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number 1–11479. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–7639 Filed 4–15–05; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51534; File No. SR–MSRB–2005–05]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendment to Rule G–8, on Recordkeeping, to Add Requirement for Predispute Arbitration Agreements With Customers, and Amendment to Rule A–11, on Indemnification, to Delete Obsolete References to Arbitrators

April 12, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 21, 2005, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the MSRB. The MSRB filed an amendment to the proposed rule change on April 1, 2005.[3] The MSRB has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(iii) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. However, the MSRB has set an effective date of May 1, 2005, to coincide with recent amendments to NASD Rule 3110(f), on predispute arbitration agreements with customers.[6] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission a proposed rule change consisting of technical amendments to Rule G–8, on recordkeeping, and Rule A–11, on indemnification. The MSRB has set an effective date for the amendments of May 1, 2005. The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org*), at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The amendment replaces, in its entirety, the previously filed proposed rule language to MSRB Rule G–8 with new language to conform with the language of NASD Rule 3110(f) that is set to become effective on May 1, 2005 ("Amendment No. 1").

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(6).

[6] In November 2004, the SEC approved amendments to NASD Rule 3110(f) that require NASD member firms to modify their predispute arbitration agreements with customers to provide enhanced disclosure about the arbitration process. The amendments also require NASD members to provide copies of predispute arbitration agreements and relevant arbitration forum rules to customers upon request; clarify the use of certain limiting provisions; and require firms seeking to compel arbitration of claims initiated in court to arbitrate all of the claims contained in the complaint if the customer so requests. *See* Release No. 34–50713 (November 22, 2004), effective May 1, 2005.

Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1997, the MSRB determined that it was no longer cost-effective to continue operating an arbitration program since so few cases were being filed with its program. Accordingly, the MSRB amended Rule G–35, on arbitration, to provide that it would not accept any new arbitration claims filed on or after January 1, 1998 (the "1997 Amendments").[7] The MSRB noted that any customer or securities dealer with a claim, dispute or controversy against a dealer involving its municipal securities activities may submit that claim to the arbitration forum of any self-regulatory organization ("SRO") of which the dealer is a member, including NASD. Bank dealers, however, are unique in that they are subject to MSRB rules but are not members of any other SRO. Thus, it was necessary to provide an alternative arbitration forum for claims involving the municipal securities activities of bank dealers. The 1997 Amendments accomplished this by providing that as of January 1, 1998 every bank dealer, as defined in Rule D–8,[8] shall be subject to NASD's Code of Arbitration Procedure for every claim, dispute or controversy arising out of or in connection with the municipal securities activities of the bank dealer acting in its capacity as such, and that bank dealers shall abide by NASD's Code as if they were "members" of NASD for purposes of arbitration. The enforcement mechanism for bank dealers was not altered by the amendments; the bank regulatory agencies continue to be responsible for the inspection and enforcement of bank dealers' municipal securities activities, including arbitration.

At the time of the 1997 Amendments, the MSRB agreed to continue operating its arbitration program in order to administer its current, open cases and any new claims received prior to January 1, 1998, but stated that it would discontinue administering its program when all such cases were closed. On May 14, 2002, the MSRB transferred its final, open case to NASD. Accordingly, in August 2002, the MSRB submitted a filing to the SEC to delete Sections 1 through 37 of Rule G–35, on arbitration, thereby effectively discontinuing the operation of its arbitration program.[9] The filing also incorporated by reference into Rule G–35 the NASD Code of Arbitration Procedure and all future amendments thereto.[10]

When the MSRB deleted Sections 1 through 37 of its arbitration code in 2002, the requirements governing predispute arbitration agreements (previously in Section 36 of Rule G–35) were also deleted. While Rule G–35 currently provides that bank dealers shall abide by the NASD Code of Arbitration Procedure, NASD's requirement for predispute arbitration agreements is not contained in that Code. Instead, the NASD requirement is set forth in its Rule 3110, on books and records, and IM–3110(f), on customer account information. NASD Rule 0116, on application of NASD rules to exempted securities, provides that NASD Rule 3110 and the related interpretive materials (among other rules and interpretive materials) do not apply to municipal securities. Thus, there currently is no requirement specifically governing the way bank dealers or municipal-only dealers use predispute arbitration agreements with customers. To remedy this situation, the MSRB is filing a technical amendment to Rule G–8, on recordkeeping, to add such a requirement. The language of the proposed amendment tracks the language of NASD Rule 3110(f), on predispute arbitration agreements with customers, as recently amended.[11] The proposed amendment to Rule G–8 will become effective on May 1, 2005, to coincide with the effective date of NASD's recent amendments to its Rule 3110(f). In addition, the MSRB is filing a technical amendment to Rule A–11, on indemnification, to delete its obsolete references to arbitrator indemnification.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with sections 15B(b)(2)(C) and (D) of the Act,[12] which provide that MSRB rules shall:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * * [and] if the Board deems appropriate, provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities. * * *

The MSRB believes that the proposed rule change is consistent with these provisions in that it would provide for the protection of investors and the public interest by ensuring that there is a requirement governing the use of predispute arbitration agreements with customers by brokers, dealers and municipal securities dealers, including bank dealers and municipal-only dealers. The proposed rule change also would ensure consistent treatment across the securities markets regarding the use of such agreements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will result in any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, and the MSRB provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

[7] File No. SR–MSRB–97–04, approved in Release No. 34–39378 (December 1, 1997).

[8] Rule D–8 defines "bank dealer" to mean a municipal securities dealer which is a bank or a separately identifiable department or division of a bank as defined in Rule G–1.

[9] File No. SR–MSRB–2002–09 (August 19, 2002), approved in Release No. 34–46666 (October 16, 2002).

[10] At the request of the SEC's Division of Market Regulation, the MSRB requested that, pursuant to section 36 of the Act and Rule 0–12 thereunder, the SEC grant an exemption from the requirements of section 19(b) of the Act and Rule 19b–4 thereunder to allow the MSRB to incorporate by reference into Rule G–35 any changes to the NASD's Code without requiring that the MSRB submit a separate filing for each such change. *See* letter from Diane G. Klinke, General Counsel, MSRB, to Jonathan G. Katz, Secretary, SEC, dated April 4, 2002. The SEC granted this exemption in Release No. 34–49260 (February 17, 2004).

[11] *See* note 6, above.

[12] 15 U.S.C. 78o–4(b)(2)(C), (D).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2005–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–MSRB–2005–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2005–05 and should be submitted on or before May 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jill M.Peterson,

Assistant Secretary.

[FR Doc. 05–7650 Filed 4–15–05; 8:45 am]

BILLING CODE 8010–01–U

[15] *See* section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on April 1, 2005, the date that the MSRB filed Amendment No. 1.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51533; File No. SR–MSRB–2005–06]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Frequency of Updates from the National Do-Not-Call Registry Pursuant to Rule G–39

April 12, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 23, 2005, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the MSRB. The MSRB has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission a proposed rule change amending Rule G–39, on telemarketing, to require a broker, dealer or municipal securities dealer that seeks to qualify for the safe harbor set forth in Rule G–39 to, among other things, use a process to prevent telephone solicitations to any telephone number in a version of the national do-not-call registry obtained from the administrator of the registry no more than thirty-one (31) days prior to the date any call is made. This proposed amendment is consistent with recent amendments to the comparable do-not-call rules of the Federal Trade Commission ("FTC") and the Federal Communications Commission ("FCC"). The proposed rule change will become effective on May 1, 2005. The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org*), at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2003, the FTC, via its Telemarketing Sales Rule, and the FCC, via its Miscellaneous Rules Relating to Common Carriers, established requirements for sellers and telemarketers to participate in a national do-not-call registry.[5] Since June 2003, consumers have been able to enter their home telephone numbers into the national do-not-call registry, which is maintained by the FTC. Under rules of the FTC and FCC, sellers and telemarketers generally are prohibited from making telephone solicitations to consumers whose numbers are listed in the national do-not-call registry. The FCC's do-not-call rules apply to brokers, dealers and municipal securities dealers while the FTC's rules do not.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The do-not-call rules of the FCC and FTC are very similar in terms of substance, in part, because Congress directed the FCC to consult with the FTC to maximize consistency between their respective do-not-call rules. *See* The Do-Not-Call Implementation Act, 108 P.L. 10, 117 Stat. 557 (Mar. 11, 2003).

[6] *See* 15 U.S.C. § 6102(d)(2)(A), which provides that "The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to * * *[among other persons, brokers or dealers] * * *" The FTC's do-not-call rules were promulgated under 15 U.S.C. § 6102. The FCC's

In July 2003, the SEC requested that the MSRB amend its telemarketing rules to require brokers, dealers and municipal securities dealers to participate in the national do-not-call registry.[7] Because brokers, dealers and municipal securities dealers are subject to the FCC's do-not-call rules, the MSRB modeled its rules in this area after those of the FCC and codified these do-not-call requirements in Rule G–39, with minor modifications tailoring the rules to broker, dealer and municipal securities dealer activities and the securities industry. The SEC approved these rules in January 2004.[8]

Safe Harbor Provision for the National Do-Not-Call Registry Requirements

The FCC and FTC each provided persons subject to their respective do-not-call rules a "safe harbor" providing that a seller or telemarketer is not liable for a violation of the do-not-call rules that is the result of an error if the seller or telemarketer's routine business practice meets certain specified standards. The MSRB has provided a parallel safe harbor in paragraph (c) of Rule G–39; this safe harbor is limited to a violation of subparagraph (a)(iii) of Rule G–39, which prohibits initiating any telephone solicitation to any person who has registered his or her telephone number with the national do-not-call registry.

Today, to be eligible for this Rule G–39 safe harbor, a broker, dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer must demonstrate that the broker, dealer or municipal securities dealer's routine business practice meets four standards. First, the broker, dealer or municipal securities dealer must have established and implemented written procedures to comply with the national do-not-call rules. Second, the broker, dealer or municipal securities dealer must have trained its personnel, and any entity assisting it in its compliance, in procedures established pursuant to the national do-not-call rules. Third, the broker, dealer, or municipal securities dealer must have maintained and recorded a list of telephone numbers that the broker, dealer or municipal securities dealer may not contact. Fourth, the broker, dealer or municipal securities dealer must use a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the FTC no more than three months prior to the date any call is made, and must maintain records documenting this process.

Shortly after the MSRB's rules were approved, Congress instructed the FTC to amend it telemarketing rules to require use of a national do-not-call registry no more than thirty-one days old.[9] Accordingly, in March 2004, the FTC amended its Telemarketing Sales Rule to require sellers and telemarketers seeking to qualify for the FTC's do-not-call safe harbor to use a version of the national do-not-call registry obtained from the FTC no more than thirty-one days prior to the date any call is made. In August 2004, the FCC adopted a conforming amendment to its Miscellaneous Rules Relating to Common Carriers, requiring that persons who seek to qualify for a similar safe harbor provided in the rule use a version of the national do-not-call registry obtained from the administrator of the national do-not-call registry (*i.e.*, the FTC) no more than thirty-one days prior to the date any call is made.[10] The FTC and FCC rule amendments took effect on January 1, 2005.

The MSRB is proposing to amend Rule G-39 to conform to this change in the rules of the FTC and FCC. The MSRB believes that this change is necessary to maintain the consistency between the telemarketing rules of the MSRB and the FTC and FCC (particularly given that the FCC's rules already directly apply to broker-dealers), and that investors generally expect the MSRB's telemarketing standards to be comparable to those of the FTC and FCC. Additionally, under the Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994, the SEC has requested that the MSRB amend its do-not-call rules to conform to the recent amendments to the FTC's do-not-call rules.

The MSRB's proposed rule change would take effect on May 1, 2005. Accordingly, under the proposed rule change, effective May 1, 2005, a broker, dealer or municipal securities dealer seeking to qualify for the safe harbor in Rule G–39 would be required to use a process to prevent telephone solicitations to any telephone number in a version of the national do-not-call registry obtained from the administrator of the registry (*i.e.*, the FTC) no more than thirty-one days prior to the date any call is made.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[11] which provides that MSRB rules shall:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *

The MSRB believes that the proposed rule change will increase the protection of investors by enabling investors who do not want to receive telephone solicitations to receive the benefits and protections of the national do-not-call registry sooner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will result in any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from March 23, 2005, the date on

rules are not subject to this limitation and apply to all sellers and telemarketers.

[7] The Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 (codified at 15 U.S.C. § 6102) requires the SEC to promulgate telemarketing rules substantially similar to those of the FTC or to direct self-regulatory organizations to promulgate such rules unless the SEC determines that such rules are not in the interest of investor protection.

[8] Exchange Act Release No. 49127 (January 26, 2004); 69 FR 4548 (January 30, 2004).

[9] 69 FR 16368 (Mar. 29, 2004). The FTC indicated that it was directed to amend its rules by Congress in the Consolidated Appropriations Act of 2004, Pub. L. 108-199, 188 Stat 3 (requirement in Division B, Title V).

[10] 69 FR 60311 (Oct. 8, 2004); CG Docket No. 02–278, FCC 04–204 (adopted Aug. 25, 2004; released Sept. 21, 2004). The FCC indicated that while Congress did not direct the FCC to amend its do-not-call rule, it determined to do so, in part, because it is required to consult and coordinate with the FTC with respect to, and maximize the consistency of, their respective do-not-call rules. 69 FR 60313.

[11] 15 U.S.C. 78o–4(b)(2)(C).

which it was filed, and the MSRB provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2005–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–MSRB–2005–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2005–06 and should be submitted on or before May 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–1804 Filed 4–15–05; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[15] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51521; File No. SR–OCC–2004–17]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Calculating Net Capital Under OCC Rule 307

April 11, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 27, 2004, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC Rule 307 by adopting Interpretation and Policy .01 ("IP .01") thereunder that would require clearing members that could otherwise take advantage of Commission Rule 15c3–1(a)(6) under the Act to include the risk-based haircuts associated with proprietary securities positions in determining their compliance with OCC's minimum net capital requirements.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to add IP .01 to OCC Rule 307. Rule 307 requires a clearing member to compute its "net capital," "aggregate indebtedness," and "debt-equity total" in accordance with Commission Rule 15c3–1 under the Act for purposes of OCC Rules.[3] The proposed rule change would require clearing members that could otherwise take advantage of Commission Rule 15c3–1(a)(6) to deduct the risk-based haircuts associated with proprietary securities positions in determining their compliance with OCC's minimum net capital requirements.[4] Although the exemption in Rule 15c3–1(a)(6) from the securities haircuts in Rule 15c3–1(c)(2)(vi) and Appendix A under Rule 15c3–1 ensures from a systemic standpoint that capital exists to support open positions, it does not ensure that capital is maintained in the entity to which OCC has credit exposure. As a result, OCC is exposed to the volatility of the positions relative to the clearing member's net income without any reserve against net capital. OCC believes that the exemption in Rule

[2] The Commission has modified parts of these statements.

[3] OCC Rule 307 provides that a clearing member that is registered as a futures commission merchant and is not otherwise required to calculate net capital in accordance with Rule 15c3–1 may instead calculate net capital as required under the rules of the Commodity Futures Trading Commission.

[4] Rule 15c3–1 requires that every broker or dealer maintain net capital no less than the minimum net capital as set forth by the rule. Paragraph (c) of the rule defines net capital as the net worth of a broker or dealer, adjusted by among other things, securities haircuts that are set forth in paragraph (c)(vi) and appendix A of the rule. Paragraph (a)(6) allows market makers, specialists, and certain other dealers to elect to apply paragraph (a)(6)(iii) in lieu of paragraph (c)(vi) or Appendix A under Rule 15c3–1. In general, paragraph (a)(6)(iii) requires that a dealer maintain a liquidating equity with respect to securities positions in his market maker or specialist account at least equal to 25 percent of the market value of the long positions and 30 percent of the market value of the short positions.

15c3–1(a)(6) gives those clearing members added leverage enabling them to expand positions to several times their net capital.

In order to provide an adjustment period for those clearing members that may be affected by IP .01, IP .01 will not take effect until July 27, 2005, for firms that are clearing members at the time when it becomes effective.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act, as amended, because it is designed to help assure the safeguarding of securities and funds which are in the custody or control of OCC or for which OCC is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–OCC–2004–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–OCC–2004–17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *www.optionsclearing.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2004–17 and should be submitted on or before May 9, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–1807 Filed 4–15–05; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51519; File No. SR–PCX–2005–37]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Adjusting the Implementation Date of Previously Adopted PCXE Listing Fees for Exchange-Traded Funds and Closed-End Funds

April 11, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 29, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and II below, which Items have been prepared by PCX. The Exchange filed this proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(3) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX, through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE"), is proposing to adjust the implementation date of previously adopted PCXE listing fees for Exchange-Traded Funds ("ETFs") and Closed-End Funds ("CEFs") to April 1, 2005.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(3).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission previously approved a rule proposal by the Exchange to adopt new listings fees for ETFs and CEFs (collectively "Funds") listed by the PCXE for trading on the Archipelago Exchange, a facility of the PCXE.[5] In this rule proposal, the Exchange proposed a non-refundable application processing fee, a one-time original listing fee per Fund issuer or family of Funds, and an annual maintenance fee based on the aggregate total shares outstanding of the Funds listed by the same Fund issuer or family of Funds. The Exchange proposed to implement these fees specific to Funds effective June 21, 2004.

The Exchange now seeks to adjust the implementation date of the Funds' listing fees to April 1, 2005. In February 2005, due to an administrative oversight, the Exchange inadvertently invoiced currently listed Funds for their 2005 annual maintenance fee based on the prior fee schedule. Because the Exchange discovered the error after the Fund issuers had already received the incorrect invoice, the Exchange decided to revise the effective date of implementation rather than withdraw and resubmit corrected invoices. As a result, all listed Funds paid a lower annual maintenance fee than they would otherwise have paid under the new fee schedule. Under these circumstances, the Exchange believes that this adjustment is appropriate as all listed Fund issuers were treated similarly and none were negatively impacted.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its OTP Holders, OTP Firms, ETP Holders, issuers, and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(3) of Rule 19b–4 thereunder,[9] because it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2005–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2005–37. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–37 and should be submitted on or before May 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc: 05–7644 Filed 4–15–05; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Securities Exchange Act Release No. 50591 (October 26, 2004), 69 FR 63427 (November 1, 2004) (SR–PCX–2004–63).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(3).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Consensus Standards, Light-Sport Aircraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; Request for comments.

SUMMARY: This notice announces the availability of a consensus standard relating to the provisions of the Sport Pilot and Light-Sport Aircraft rule issued July 16, 2004, and effective September 1, 2004. ASTM International Committee F37 on Light Sport Aircraft developed this standard with FAA participation. By this Notice, the FAA finds this standard acceptable for certification of the specified aircraft under the provisions of the Sport Pilot and Light-Sport Aircraft rule.

DATES: Comments must be received on or before June 17, 2005.

ADDRESSES: Comments may be mailed to: Federal Aviation Administration, Small Airplane Directorate, Programs and Procedures Branch, ACE–114, Attention: Larry Werth, Room 301, 901 Locust, Kansas City, Missouri 64106.

Comments may also be e-mailed to: Comments-on-LSA-Standard@faa.gov. All comments must be marked: Consensus Standards Comments, and must specify the standard being addressed by ASTM designation and title.

FOR FURTHER INFORMATION CONTACT: Larry Werth, Light-Sport Aircraft Program Manager, Programs and Procedures Branch (ACE–114), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4147; e-mail: *larry.werth@faa.gov*.

SUPPLEMENTARY INFORMATION: This notice announces the availability of a consensus standard relating to the provisions of the Sport Pilot and Light-Sport Aircraft rule. ASTM International Committee F37 on Light Sport Aircraft developed this standard.

Comments Invited: Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the consensus standard number and be submitted to the address specified above. All communications received on or before the closing date for comments will be forwarded to ASTM International Committee F37 for consideration. The standard may be changed in light of the comments received. The FAA will address all comments received during the recurring review of the consensus standard and will participate in the consensus standard revision process.

Background: Under the provisions of the Sport Pilot and Light-Sport Aircraft rule, and revised Office of Management and Budget (OMB) Circular A–119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities", dated February 10, 1998, industry and the FAA have been working with ASTM International to develop consensus standards for light-sport aircraft. These consensus standards satisfy the FAA's goal for airworthiness certification and a verifiable minimum safety level for light-sport aircraft. Instead of developing airworthiness standards through the rulemaking process, the FAA participates as a member of Committee F37 in developing these standards. The use of the consensus standard process assures government and industry discussion and agreement on appropriate standards for the required level of safety.

The FAA has reviewed the standard presented in this NOA for compliance with the regulatory requirements of the rule. Any light-sport aircraft issued a special light-sport airworthiness certificate, which has been designed, manufactured, operated and maintained, in accordance with this and previously accepted ASTM consensus standards provides the public with the appropriate level of safety established under the regulations. Manufacturers who choose to produce these aircraft and certificate these aircraft under 14 CFR part 21, §§ 21.190 or 21.191 are subject to the applicable consensus standard requirements. The FAA maintains a listing of all accepted standards at afs600.faa.gov.

The Effective Period of Use

The consensus standard listed in this notice may be used unless the FAA publishes a specific notification otherwise.

The Consensus Standards

The FAA finds the following consensus standard acceptable for certification of the specified aircraft under the provisions of the Sport Pilot and Light-Sport Aircraft rule:

ASTM Designation F2483–05, titled: Standard Practice for Maintenance and the Development of Maintenance Manuals for Light Sport Aircraft.

Availability

This consensus standard is copyrighted by ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959. Individual reprints of this standard (single or multiple copies, or special compilations and other related technical information) may be obtained by contacting ASTM at this address, or at (610) 832–9585 (phone), (610) 832–9555 (fax), through *service@astm.org* (e-mail), or through the ASTM Web site at *http://www.astm.org*. To inquire about standard content and/or membership, or about ASTM International Offices abroad, contact Daniel Schultz, Staff Manager for Committee F37 on Light Sport Aircraft: (610) 832–9716, *dschultz@astm.org*.

Issued in Kansas City, Missouri on April 7, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–7631 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application 05–10–C–00–MCO To Impose, Use the Revenue From, Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Orlando International Airport, Orlando, FL.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose, use the revenue from, impose and use the revenue from a PFC at Orlando International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 18, 2005.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office; 5950 Hazeltine National Drive, Suite 400; Orlando, Florida 32822

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. C.W. Jennings of the Greater Orlando Aviation Authority at the following address: Greater Orlando Aviation Authority, Orlando International Airport, One Airport Boulevard, Orlando, Florida 32827–4399. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Greater Orlando Aviation Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Vernon P. Rupinta, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, (407) 812–6331, Extension 124. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose the revenue from a PFC at Orlando International Airport and use at Orlando International Airport and Orlando Executive Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 29, 2005, the FAA determined that the application to impose, use the revenue from, impose and use the revenue from a PFC

submitted by Greater Orlando Aviation Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 21, 2005.

The following is a brief overview of the application.

Proposed charge effective date: May 1, 2016.

Proposed charge expiration date: November 1, 2020.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $232,818,000.

Brief description of proposed project(s): Runway 18L/18R Runway Safety Area (RSA), Improvements (MCO) (Design & Construction); East Airfield Modifications (MCO) (Design Only); West Airfield Taxiway Improvements (MCO) (Design Only); Airfield Pavement Rehabilitation (MCO) (Design & Construction); Implement Sound Insulation & Property Acquisition Program (MCO) (Design & Construction); High Mast Lighting Rehabilitation (MCO) (Design & Construction); Taxiways E & F Rehabilitation (MCO) (Design & Construction); Airsides 1 and 3 Rehabilitation (MCO) (Design & Construction); Airside Terminal 2 Expansion (MCO) (Design & Construction); Extension of Taxiways G1 and H2 (MCO) (Design & Construction); Airside 2 and 4 Ramp Rehabilitation (MCO) (Design & Construction); New Large Aircraft Modifications at West Airfield (MCO) (Design & Construction); Mitigation Management/ Environmental Costs (MCO) (Design & Construction); Reimbursement of Mitigation Management/Environmental Costs (MCO); Airport Exit Road Improvements (MCO) (Design & Construction); Roadway Rehabilitation Project (MCO) (Design & Construction); Cargo Road Extension (MCO); Widening of South Access Road (MCO) (Design & Construction); Enplane/Deplane Drive Expansion Joints & Lighting Rehabilitation (MCO) (Design & Construction); Landside Terminal Emergency Electrical System Improvements (MCO) (Design & Construction); Security Improvement Program (MCO) (Design & Construction); Explosion Detection System (EDS) Implementation (MCO) (Design & Construction); Terminal Improvement Program (MCO) (Design & Construction); Reimbursement of Airfield Improvement Projects (ORL); Airfield Lighting and Drainage Improvements (ORL) (Design & Construction); NAVAID Improvements (ORL) (Design & Construction); East and West Quadrant Ramp Improvements (ORL) (Design & Construction)

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Not applicable

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Greater Orlando Aviation Authority.

Dated: Issued in Orlando, Florida, on April 7, 2005.

W. Dean Stringer,

Manager, Orlando Airport District Office Southern Region.

[FR Doc. 05–7632 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airborne Selective Calling Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of, and requests comment on proposed Technical Standard Order (TSO) C–59a, Airborne Selective Calling (SELCAL) Equipment. This proposed TSO tells persons seeking a TSO authorization or letter of design approval what minimum performance standards (MPS) their SELCAL must meet to be identified with the appropriate TSO marking.

DATES: Comments must be received on or before May 18, 2005.

ADDRESSES: Send all comments on this proposed TSO to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionics Systems Branch (AIR–130), 800 Independence Avenue SW., Washington, DC 20591. ATTN: Mr. David Robinson. Or, you may deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. David Robinson, AIR–130, Room 815, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Telephone (202) 385–4650, FAX: (202) 385–4651.

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the proposed TSO by submitting written data, views, or arguments to the above address. Comments received may be examined, both before and after the closing date, in room 815 at the above address, weekdays except federal holidays, between 8:30 a.m. and 4:30 p.m. The Director, Aircraft Certification Service, will consider all comments received on or before the closing date before issuing the final TSO.

Background

This TSO prescribes the minimum performance standard for airborne selective calling (SELCAL) equipment intended to permit selective calling of individual aircraft over approved communications channels linking the ground station with the aircraft. The system is designed to operate with existing high frequency (HF) and very high frequency (VHF) ground-to-air transmitters and receivers.

How To Obtain Copies

You can view or download the proposed TSO from its online location at: *http://www.airweb.faa.gov/rgl.* At this web page, select "Technical Standard Orders." At the TSO page, select "Proposed Orders." For a paper copy, contact the person list in **FOR FURTHER INFORMATION CONTACT.**

Dated: Issued in Washington, DC, on April 11, 2005.

Susan J. M. Cabler,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 05–7619 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket Number FRA–2005–20758

Applicants: Consolidated Rail Corporation, Mr. R. E. Inman, Assistant Chief Engineer—C& S/ Maintenance, 1000 Howard Boulevard, Room 470, Mount Laurel, New Jersey 08054–2355.

Canadian National Railroad, Mr. David Ferryman, Chief Engineer-U.S. Region, 17641 South Ashland Avenue, Homewood, Illinois 60430–1345.

The Consolidated Rail Corporation (Conrail) and the Canadian National Railroad (CN), jointly seeks approval of the proposed modification of Schaefer Interlocking, milepost 3.08, near Dearborn, Michigan, where the single

Conrail Junction Yard Secondary track, cross at grade, the two CN Schaefer Yard Tracks. The proposed changes consist of the conversion of Schaefer Interlocking from manual to automatic operation.

The reason given for the proposed change is that both Conrail and CN tracks are operated at slow speed, and the conversion of Schaefer Interlocking to a full automatic interlocking, would allow train crews to make moves without contacting the Schaefer Tower block operator, thus reducing radio traffic.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001.

Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on April 12, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–7643 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Link Up International, Corporation

[Docket Number FRA–2005–20426]

The Link Up International Corporation (LUIC) seeks a waiver of compliance from the requirements of Title 49 Code of Federal Regulations (CFR) § 231 Safety Appliance Standards, specifically § 231.1.(a) Handbrake (2) Dimensions. 231.1(a)(2)(ii) The brake wheel may be flat or dished, not less than 15, preferably 16, inches in diameter, of malleable iron, wrought iron, or steel.

LUIC requests this requirement be permanently waived to manufacture handbrake wheels from a high density polyethylene, and with an aluminum or steel insert, over-molded in place.

LUIC contends a composite wheel offers several cost and safety-related advantages over a standard steel wheel. LUIC contends the primary benefit of a composite wheel is weight reduction that will significantly reduce wear to drive shaft bearings that will extend life to the handbrake. LUIC believes there are secondary benefits related to safety by applying the composite wheel with increased torque and reduce personal injuries by having finger ridges and cross-checked etched pattern into the surface to enhance the grip, yet subtle enough to prevent personal injury compared to a steel wheel that can have a rough finish with metal burs. LUIC believes the rail industry will see a significant savings with composite handbrake wheels by purchase price equal to or below standard steel wheels, with longer handbrake life, and elimination of handbrake injuries.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2005–20426) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC. 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room Pl–401 (Plaza Level), 400 Seventh Street SW., Washington. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19377–78). The statement may also be found at *http://dms.dot.gov*.

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

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–7642 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–20923; Notice 1]

Les Entreprises Michel Corbeil Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Les Entreprises Michel Corbeil Inc. (Corbeil) has determined that certain vehicles that it produced in 1998 through 2005 do not comply with S9.3(c) of 49 CFR 571.111, Federal Motor Vehicle Safety Standard (FMVSS) No. 111, "Rearview mirrors." Corbeil has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Corbeil has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Corbeil's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 246 Ford and GM chassis cutaway single and dual wheel school buses manufactured from January 5, 1998 through February 15, 2005. S9.3(c) requires:

> Each school bus which has a mirror installed in compliance with S9.3(a) that has an average radius of curvature of less than 889 mm, as determined under S12, shall have a label visible to the seated driver. The label shall be printed in a type face and color that are clear and conspicuous. The label shall state the following: USE CROSS VIEW MIRRORS TO VIEW PEDESTRIANS WHILE BUS IS STOPPED. DO NOT USE THESE MIRRORS TO VIEW TRAFFIC WHILE BUS IS MOVING. IMAGES IN SUCH MIRRORS DO NOT ACCURATELY SHOW ANOTHER VEHICLE'S LOCATION."

The noncompliant school buses were produced without the required label.

Corbeil indicates in its petition that the number of school buses that are noncompliant is an estimate. Corbeil explains, "As we cannot establish any moment where this situation may have occurred, we have considered the NHTSA time frame from 1998 [when production began] to February 15, 2005 [when the noncompliance was corrected]." Corbeil states that during this period, 8471 of the affected type of school buses were produced. Corbeil further states:

> A count was done within the ready-for-delivery bus yard. * * *From a quantity of 310 vehicles inspected, 9 vehicles were not provided with the label. * * *We have then extrapolated the recall population by [applying the ratio 9/310 or 2.9% to the population of 8471].

Corbeil believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Corbeil states that school bus drivers in general are instructed and aware of the use of these mirrors for pedestrian purposes only. Further, the petitioner asserts that a very small number of vehicles are affected, over a time period of eight years, and that a recall would cost approximately $10,000 Canadian due to the need to recall all 8471 school buses produced from 1998 to 2005 to determine which do not have the label required by S9.3(c). Corbeil has corrected the problem.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 18, 2005.

Authority (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8)

Issued on: April 13, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–7698 Filed 4–15–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Proposed Collection; Comment Request; Suspicious Activity Report by Money Services Businesses

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on a proposed information collection contained in a revised form, Suspicious Activity Report by Money Services Businesses, FinCEN Form 109 (formerly Form TD F 90–22.56). The form will be used by money transmitters, issuers, sellers, and redeemers of money orders and traveler's checks, and currency dealers and exchangers to report suspicious activity to the Department of the Treasury. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before June 17, 2005.

ADDRESSES: Written comments should be submitted to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, *Attention:* PRA Comments—SAR–MSB Form. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov*, again with a caption, in the body of the text, "Attention: PRA Comments—SAR–MSB Form.

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400.

FOR FURTHER INFORMATION CONTACT: FinCEN Regulatory Policy and Programs Division, Forms Administration at (800) 949–2732.

SUPPLEMENTARY INFORMATION:

Title: Suspicious Activity Report by Money Services Businesses.

OMB Number: 1506–0015.

Form Number: FinCEN Form 109 (Formerly TD F 90–22.56).

Abstract: The statute generally referred to as the "Bank Secrecy Act," Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, *inter alia*, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

The Secretary of the Treasury was granted authority in 1992, with the enactment of 31 U.S.C. 5318(g), to require financial institutions to report suspicious transactions. On March 14, 2000, FinCEN issued a final rule requiring certain categories of money services businesses, including money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks, to report suspicious transactions (65 FR 13683). The final rule can be found at 31 CFR 103.20. FinCEN amended the suspicious transaction reporting rule for Money Services Business' by notice in the **Federal Register** dated February 10, 2003, (68 FR 6613), to also apply to currency dealers and exchangers. Currently, Money Services Business' report suspicious activity by filing form TD F 90–22.56, which is being revised, as explained below.

The information collected on the revised form is required to be provided pursuant to 31 U.S.C. 5318(g) and 31 CFR 103.20. This information will be made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel for use in official performance of their duties, for regulatory purposes, and in investigations and proceedings involving terrorist financing, domestic and international money laundering, tax violations, fraud, and other financial crimes.

Suspicious activity reports required to be filed by Money Services Businesses under 31 CFR 103.20, and any suspicious activity reports filed by Money Services Businesses on a voluntary basis will be subject to the protection from liability contained in 31 U.S.C. 5318(g)(3) and the provision contained in 31 U.S.C. 5318(g)(2) which prohibits notification of any person involved in the transaction that a suspicious activity report has been filed.

The draft revised Suspicious Activity Report-Money Services Business is presented only for purposes of soliciting public comment on the form. This form should not be used at this time to report suspicious activity. A final version of the form will be made available at a later date. Current Form TD F 90–22.56 is renumbered as FinCEN Form 109. After consulting law enforcement, FinCEN proposes to revise, simplify, and shorten the format as follows. This action will enhance the industry's ease of completing the form while still obtaining critical information for law enforcement. Part I, Subject Information, item 17, vehicle license number, item 18 customer number, item 19 Occupation, item 20 Endorser name, item 21 bank account number of the endorser, and item 22 bank of first deposit have been deleted. Part II, Suspicious Instrument/ Money Transfer Information has been reformatted to delete the requirement to record and file with the SAR the serial numbers, traveler's checks, and money transfer numbers. The current TD F 90–22–56A, the continuation page, is removed from the Suspicious Activity Report reporting format. A new item in Part II has been added for reporting information about the purchase and redemption of monetary instruments. In addition, two new Part II items to record currency exchanger information have been included. Part IV, specific Law Enforcement Agency Information reporting has been deleted, although the information can be included in Part VI, the Narrative. Finally, the instructions for completing the form have been revised and included as part of the draft.

Type of Review: Revision of currently approved information collection.

Affected public: Business or other for-profit institutions.

Frequency: As required.

Estimated Burden: Reporting average of 30 minutes per response.

Estimated Number of Respondents: 20,000.

Estimated Total Annual Responses: 200,000.

Estimated Total Annual Burden Hours: 100,000 hours.

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 Office of Management and Budget control number. Records required to be retained under the Bank Secrecy Act must be retained for five years.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: April 1, 2005.

William J. Fox,

Director, Financial Crimes Enforcement Network.

Attachment: Suspicious Activity Report by Money Services Business

BILLING CODE 4810–02–P

[1] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the "USA Patriot Act"), Pub. L. 107–56.

FinCEN form 109
(Formerly form TD F 90-22.56)
November 2005
Previous editions will not be accepted after January 2006

Suspicious Activity Report by Money Services Business

Please type or print. Always complete entire report. Items marked with an asterisk * are considered critical. (See instructions.)

OMB No. 1506-0015

Send completed suspicious activity reports to: ***Detroit Computing Center, ATTN SAR-MSB, P.O. Box 33117, Detroit, MI 48232-5980***

1 ☐ Check the box if this report amends a prior report (see item 1 instructions)

Part I Subject Information

2 ☐ Multiple subjects (see item instructions)

3 Subject type (check only one box) a ☐ Purchaser/sender b ☐ Payee/receiver c ☐ Both a & b d ☐ Other

*4 Individual's last name or entity's full name	*5 First name	*6 Middle initial

*7 Address

*8 City	*9 State	*10 Zip Code	*11 Country
		–	

*12 Government issued identification (if available)

a ☐ Driver's license/state I.D. b ☐ Passport c ☐ Alien registration d ☐ Other _____

e Number _____ f Issuing state/country _____

*13 SSN/ITIN (individual) or EIN (entity)	14 Date of birth	15 Telephone number
	___/___/___ (MM DD YYYY)	( ) –

Part II Suspicious Activity Information

*16 Date or date range of suspicious activity	*17 Total dollar amount involved in suspicious activity
From ___/___/___ (MM DD YYYY) To ___/___/___ (MM DD YYYY)	$, , , , .00

*18 Category of suspicious activity (check all that apply)

a ☐ Money laundering b ☐ Structuring c ☐ Terrorist financing d ☐ Other (specify) _____

*19 Financial services involved in the suspicious activity and character of the suspicious activity (check all that apply)

a ☐ Money order b ☐ Traveler's check c ☐ Money transfer
d ☐ Other _____ e ☐ Currency exchange

Check all of the following that apply

(1) ☐ Alters transaction to avoid completing funds transfer record or money order or traveler's check record ($3,000 or more)
(2) ☐ Alters transaction to avoid filing CTR form (more than $10,000)
(3) ☐ Comes in frequently and purchases less than $3,000
(4) ☐ Changes spelling or arrangement of name
(5) ☐ Individual(s) using multiple or false identification documents
(6) ☐ Two or more individuals using the similar/same identification
(7) ☐ Two or more individuals working together
(8) ☐ Same individual(s) using multiple locations over a short time period
(9) ☐ Offers a bribe in the form of a tip/gratuity
(10) ☐ Exchanges small bills for large bills or vice versa

Part II Suspicious Activity Information, Continued 2

*20 Purchases and redemptions (check box P for purchase or box R for redemption)

Instrument	P	R	Issuers	Total Instruments	Total Amount (US Dollars)
Money Orders:	☐	☐			$ .00
	☐	☐			$ .00
	☐	☐			$ .00
Traveler's Checks:	☐	☐			$ .00
	☐	☐			$ .00
	☐	☐			$ .00
Money Transfers	☐	☐			$ .00
	☐	☐			$ .00
	☐	☐			$ .00

*21 Currency Exchanges:	Tendered Currency/Instrument	Country	Received currency	Country	Amount (US Dollars)
☐ If bulk small currency					$ .00
☐ If bulk small currency					$ .00

Part III Transaction Location

22 ☐ Multiple transaction locations

23 Type of business location (check only one) a ☐ Selling location b ☐ Paying location c ☐ Both

*24 Legal name of business	25 Doing business as

*26 Permanent address (number, street, and suite no.)	*27 City	*28 State	*29 Zip Code
			–

*30 EIN (entity) or SSN/ITIN (individual)	*31 Business telephone number	32 Country	33 Internal control/file number
	( ) –		

Part IV Reporting Business

34 ☐ The Reporting Business is the same as the Transaction Location (go to Part V)

*35 Legal name of business	36 Doing business as

*37 Permanent address (number, street, and suite no.)	*38 City	*39 State	*40 Zip Code
			–

*41 EIN (entity) or SSN/ITIN (individual)	*42 Business phone number (include area code)	43 Country	44 Internal report control number
	( ) –		

Part V Contact for Assistance

*45 Last name of individual to be contacted regarding this report	*46 First name	47 Middle initial

*48 Title/Position	*49 Work telephone number	50 Date report prepared
	( ) –	/ / MM DD YYYY

Part VI Suspicious Activity Information - Narrative* 3

Explanation/description of suspicious activity. This section of the report is critical. The care with which it is completed may determine whether or not the described activity and its possible criminal nature are clearly understood by investigators. Provide a clear, complete and chronological description of the activity, including what is unusual, irregular or suspicious about the transaction(s). Use the checklist below, as a guide, as you prepare your description. The description should cover the material indicated in Parts I, II and III, but the money services business (MSB) should describe any other information that it believes is necessary to better enable investigators to understand the suspicious activity being reported.

a. **Describe** conduct that raised suspicion.
b. **Explain** whether the transaction(s) was completed or only attempted.
c. **Describe** supporting documentation and retain such documentation for your file for five years.
d. **Indicate** a time period, if it was a factor in the suspicious transaction(s). For example, specify the time and whether it occurred during AM or PM. If the activity covers more than one day, identify the time of day when such activity occurred most frequently.
e. **Retain** any admission or explanation of the transaction(s) provided by the subject(s) or other persons. Indicate when and to whom it was given.
f. **Retain** any evidence of cover-up or evidence of an attempt to deceive federal or state examiners, or others.
g. **Indicate** where the possible violation of law(s) took place (e.g., main office, branch, agent location, etc.).
h. **Indicate** whether the suspicious activity is an isolated incident or relates to another transaction.
i. **Indicate** for a foreign national any available information on subject's passport(s), visa(s), and/or identification card(s). Include date, country, city of issue, issuing authority, and nationality.
j. **Indicate** whether any information has been excluded from this report; if so, state reasons.
k. **Indicate** whether any U.S. or foreign instrument(s) were involved. If so, provide the amount, name of currency, and country of origin.
l. **Indicate** whether any transfer of money to or from a foreign country, or any exchanges of a foreign currency were involved. If so, identify the currency, country, and sources and destinations of money.
m. **Indicate** any additional account number(s), and any foreign bank(s) account numbers which may be involved in transfer of money.
n. **Identify** any employee or other individual or entity (e.g., agent) suspected of improper involvement in the transaction(s).
o. **For issuers, indicate** if the endorser of money order(s) and/or traveler's check(s) is different than payee. If so, provide the individual or entity name; bank's name, city, state and country; ABA routing number; endorser's bank account number; foreign non-bank name (if any); correspondent bank name and account number (if any); etc.
p. **For selling or paying locations, indicate** if there is a video recording medium or surveillance photograph of the customer.
q. **For selling or paying locations,** if you do not have a record of a government issued identification document, **describe** the type, issuer and number of any alternate identification that is available (e.g., for a credit card specify the name of the customer and credit card number.)
r. **For selling or paying locations,** describe the subject(s) if you do not have the identifying information in Part I or if multiple individuals use the same identification. Use descriptors such as male, female, age, etc.
s. **If amending a prior report,** complete the form in its entirety and note the changes here in Part VI.
t. If a law enforcement agency has been contacted, list the name of the agency and the name of any person contacted, their title, their telephone number, and when they were contacted.

Supporting documentation should not be filed with this report. Maintain the information for your files.

Enter the explanation/description narrative in the space below. If necessary, continue the narrative on a duplicate of this page or a blank page.

Tips on SAR form preparation and filing are available in the SAR Activity Reviews at **www.fincen.gov/pub_reports.html.**

FinCEN Form 109a Suspicious Activity Report by Money Services Business -- Instructions 1

Safe Harbor

Federal law (31 U.S.C. 5318(g)(3)) provides complete protection from civil liability for all reports of suspicious transactions made to appropriate authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this report's instructions or are filed on a voluntary basis. Specifically, the law provides that a financial institution, and its directors, officers, employees and agents, that make a disclosure of any possible violation of law or regulation, including in connection with the preparation of suspicious activity reports, "shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure".

Notification Prohibited

Federal law (31 U.S.C. 5318(g)(2)) provides that a financial institution, and its directors, officers, employees, and agents, who report suspicious transactions to the government voluntarily or as required by 31 CFR 103.20, may not notify any person involved in the transaction that the transaction has been reported.

Notification Required

In situations involving suspicious transactions requiring immediate attention, such as ongoing money laundering schemes, a money transmitter; a currency dealer or exchanger; or an issuer, seller, or redeemer of money orders and/or traveler's checks shall immediately notify, by telephone, an appropriate law enforcement authority. In addition, a timely SAR-MSB form shall be filed, including recording any such notification in Part VI on the form.

A. When To File A Report:

1. Money transmitters; currency dealers and exchangers; and issuers, sellers and redeemers of money orders and/or traveler's checks that are subject to the requirements of the Bank Secrecy Act and its implementing regulations (31 CFR Part 103) are required to file a suspicious activity report (SAR-MSB) with respect to:

a. Any transaction conducted or attempted by, at, or through a money services business involving or aggregating funds or other assets of at least $2,000 (except as described in section "b" below) when the money services business knows, suspects, or has reason to suspect that:

i. The transaction involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the nature, source, location, ownership or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

ii. The transaction is designed, whether through structuring or other means, to evade any regulations promulgated under the Bank Secrecy Act; or

iii. The transaction has no business or apparent lawful purpose and the money services business knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

iv. The transaction involves the use of the money services business to facilitate criminal activity.

b. To the extent that the identification of transactions required to be reported is derived from a review of clearance records or other similar records of money orders or traveler's checks that have been sold or processed, an issuer of money orders or traveler's checks shall only be required to report a transaction or a pattern of transactions that involves or aggregates funds or other assets of at least $5,000.

2. File a SAR-MSB no later than 30 calendar days after the date of initial detection of facts that constitute a basis for filing the report.

3. The Bank Secrecy Act requires that each financial institution (including a money services business) file currency transaction reports (CTRs) in accordance with the Department of the Treasury implementing regulations (31 CFR Part 103). These regulations require a financial institution to file a CTR (FinCEN Form 104) whenever a currency transaction exceeds $10,000. If a currency transaction exceeds $10,000 and is suspicious, a money transmitter, or issuer, seller or redeemer of money orders and/or traveler's checks or currency dealer or exchanger must file two forms, a CTR to report the currency transaction and a SAR-MSB to report the suspicious aspects of the transaction. If the suspicious activity involves a currency transaction that is $10,000 or less, the institution is only required to file a SAR-MSB. Appropriate records must be maintained in each case. See 31 CFR Part 103

B. Abbreviations and Definitions

1. EIN -- Employer Identification Number
2. IRS -- Internal Revenue Service
3. ITIN -- Individual Taxpayer Identification Number
4. SSN -- Social Security Number
5. Instruments -- includes Money order(s) and/or Traveler's Check(s)

C. General Instructions

1. **This form can be e-filed through the Bank Secrecy Act E-filing System. Go to http://bsaefiling.fincen.treas.gov/index.jsp to register.** This form is also available for download on the Financial Crimes Enforcement Network's Web site at www.fincen.gov, or may be ordered by calling the IRS Forms Distribution Center at (800) 829-2437.

2. Send each completed suspicious activity report to:

Detroit Computing Center
ATTN: SAR-MSB
P.O. Box 33117
Detroit, MI 48232-5980

3. Items marked with an **asterisk** (*) are considered critical and are required to be completed if known.

4. Enter a special response in any critical item when the required information is not known or is not applicable. Use the special response "NA" in critical text, date, or identification number items. Use "XX" in state or country items. Use "0" in dollar amount items. In all cases follow the specific special response instructions for each critical item when the required data is not known or applicable. Special responses are not allowed in the critical items in Part III, Part IV, Part V, and Part VI. All required data must be entered in these items.

5. Complete each suspicious activity report by providing as much information as possible on initial and amended reports.

6. Do not include supporting documents when filing the suspicious activity report. Retain a copy of the suspicious activity report and all supporting documentation or business record equivalent in your files for five (5) years from the date of the report. All supporting documentation (such as copies of instruments; receipts; sale, transaction or clearing records; photographs, surveillance audio and/or video recording medium) must be made available to appropriate authorities upon request.

7. If more than one subject is being reported, use as many copies of the Part I Subject Information continuation page as necessary to record the additional subjects. Attach the additional page(s) behind page 1. If more than one transaction location is being reported, use as many copies of the Part III Transaction Location Information continuation page as necessary to record the additional subjects. Attach the additional page(s) behind page 2. If more space is needed for the Part VI Narrative, use as many narrative continuation sheets as necessary to complete the

narrative. Attach the additional pages behind page 3.

If more space is needed to complete any other item, identify that item in Part VI by "item number" and provide the additional information.

8. Type or complete the report using block written letters.

9. Enter all **dates** in MM/DD/YYYY format where MM = month, DD = day, and YYYY = year. Precede any single number with a zero, i.e., 01, 02, etc.

10. Enter all **telephone numbers** with (area code) first and then the seven numbers, using the format (XXX) XXX-XXXX. List fax and international telephone numbers in Part VI.

11. Always enter an **individual's name** by entering the last name, first name, and middle initial (if known). If a legal entity is listed, enter its legal name in the last name item and trade name in the first name item.

12. Enter all **identifying numbers** (alien registration, driver's license/state ID, EIN, ITIN, Foreign National ID, passport, SSN, vehicle license number, etc.) starting from left to right. Do not include spaces or other punctuation.

13. Enter all **ZIP Codes** with at least the first five numbers (ZIP+4, if known).

14. Enter all **monetary amounts** in U.S. Dollars. Use whole dollar amounts rounded up when necessary. Use this format: $000,000,000. If foreign currency is involved, record the currency amount in U.S. Dollars, name, and country of origin in the Part VI narrative.

15. Addresses, general. Enter the permanent street address, city, two letter state/territory abbreviation used by the U.S. Postal Service, and ZIP code (ZIP+4, if known) of the individual or entity. A post office box number should not be used for an individual, unless no other address is available. For an individual also enter any apartment number or suite number and road or route number. If a P.O. Box is used for an entity, enter the street name, suite number, and road or route number. If the address is in a foreign country, enter the city, province or state if Canada or Mexico, and the name of the country. Complete any part of the address that is known, even if the entire address is not known. If the street address, city, or ZIP Code is unknown, enter "NA" in the item. If a state or country is unknown, enter "XX" in the item.

D. Item Preparation Instructions

Item 1. Check the Item 1 box if this report is filed to amend a previously filed SAR-MSB. To amend a report, a new SAR-MSB must be completed in its entirety. Note all amendments in Part VI (see line "s").

Part I Subject Information

Item 2 Multiple subjects. Check this box if multiple subjects are involved. Attach Part I Subject continuation pages behind page 1 to account for all additional subjects involved in the suspicious activity.

Item 3 Subject type. Check box "**a**" if the subject purchased a money order(s) or traveler's check(s) or sent a money transfer(s). Check box "**b**" if the subject cashed a money order(s) or traveler's check(s) or received payment of a money transfer(s). Check box "**c**" if both "**a**" and "**b**" apply. If the transaction is a currency exchange check box "c." Check box "**d**" Other and describe in Part VI if the subject is an individual other than a customer. Examples are MSB employees and agents.

Items 4, 5, and 6 *Name of subject. See General Instruction 11. Enter the name of the subject individual in Items 4 through 6. If the MSB knows that the individual has an "also known as" (AKA) or "doing business as" (DBA) name, enter that name in Part VI. If the subject is an entity, enter the legal name in Item 4 and the trade or DBA name in item 5. If the legal name is not known, enter the DBA name in Item 4. If there is more than one subject, use as many Part I Subject Information continuation pages as necessary to provide the information about each subject. Attach the additional copies behind page 1. When there is more than one purchaser and/or payee (e.g., two or more transactions), indicate in Part VI whether each subject is a purchaser or payee and identify the instrument or money transfer information associated with each subject. If part of an individual's name is unknown, enter "NA" in the appropriate name item. If the subject is an entity, enter "NA" in Item 5 (if the trade or legal name is not known) and in Item 6.

Items 7 - 11 *Permanent address. See General Instructions 13 and 15. Enter "NA" if the street address, city, and ZIP Code items are unknown or not applicable. Enter "XX" if the state or country is not known.

Item 12 *Government issued identification (if available). See General Instruction 12. Check the box showing the type of document used to verify subject identity. If you check box "**d Other**", be sure to specify the type of document used. In box "**e**" list the number of the identifying document. In box "**f**" list the issuing state or country. If more space is required, enter the additional information in Part VI. If the subject is an entity or an individual's identification was not available, check box "d" and enter "NA" in "Other."

Item 13 *SSN/ITIN (individual) or EIN (entity). See General Instruction 12 and definitions. If the subject named in Items 4 through 6 is a U.S. Citizen or an alien with a SSN, enter his or her SSN in Item 13. If that person is an alien who has an ITIN, enter that number. For an entity, enter the EIN. If the SSN, ITIN, or EIN was unknown or not applicable, enter "NA" in this item.

Item 14 Date of birth. See General Instruction 9. If the subject is an individual, enter the date of birth. If the month and/or day is not available or unknown, fill in with zeros (e.g., "01/00/1969" indicates an unknown date in January, 1969).

Item 15 Telephone number. See General Instruction 10. Enter the U.S. home or business number for individual or entity. List foreign telephone numbers and any additional U.S. numbers (e.g., hotel, etc.) in Part VI.

Part II Suspicious Activity Information

Item 16 *Date or date range of suspicious activity. See General Instruction 9. Enter the date of the reported suspicious activity in the "**From**" field. If more than one day is involved, indicate the duration of the activity by entering the first date in the "**From**" field and the last date in the "**To**" field.

Item 17 *Total dollar amount. See General Instruction 14. If the suspicious activity involved only purchases, redemptions, or currency exchanges, enter the total U.S. Dollar value involved in the reported activity. For instance, if multiple money orders from more than one issuer were redeemed, enter the total of all money orders redeemed. If multiple activities are involved, such as a redemption of money orders combined with purchase of a money transfer, enter the largest activity amount in Item 20. For instance, if the transaction involved redeeming $5,000 in money orders and purchase of a $3,500 money transfer, the Item 20 amount would be $5,000.

Item 18 *Category of suspicious activity. Check the box(es) which best identifies the suspicious activity. Check box "b Structuring" when it appears that a person (acting alone, in conjunction with, or on behalf of other persons) conducts or attempts to conduct activity designed to evade any record keeping or reporting requirement of the Bank Secrecy Act. If box "**d**" is checked, specify the type of suspicious activity which occurred. Describe the character of such activity in Part VI. Box "**d**" should only be used if no other type of suspicious activity box adequately categorizes the transaction.

Item 19 *Financial services involved. Check any of boxes "a" through "e" that apply to identify the services involved in the suspicious activity. If box "d" is checked, briefly explain the service on the following line. Check all of boxes "1" through "10" that apply to describe the character of the suspicious activity.

Item 20 *Purchases and redemptions. Enter information about purchases or redemptions of

money orders, traveler's checks, or money transfers. Check the appropriate box in column "P" or "R" to identify the entry as a purchase or redemption. Enter the name of the issuers, the total number of instruments purchased or redeemed, and the total amount of the instruments. You can enter up to three issuers in each instrument category. If more than three issuers are involved, enter the information on the additional issuers in Part VI.

Item 21 *Currency Exchanges. Record up to two currency exchanges made by the subject(s). Check the box "If bulk small currency" if a large number of small bills was used to pay for the currency exchange. Enter the name of the currency or type of monetary instrument used to pay for the exchange, and the two-digit code for the country that issued the currency. An example of this would be "Pesos" for the name of the currency and "MX" representing Mexico as issuer of the currency. Enter the name of the currency received in exchange and the two-digit code for the country that issued the currency. Enter the value of the exchange in U.S. Dollars. If there were more than two currency exchanges, enter the information about the additional exchanges in Part VI.

Part III Transaction Location Information

Item 22 Multiple selling and/or paying business locations. Check the box if the reported activity occurred at multiple selling and/or paying business locations. Fill out as many Part III Transaction Location Information sections as necessary to record all locations. Attach the additional sections behind page 2 of the SAR-MSB.

Item 23 Type of business location(s). Check box "**a**" if this is the selling location where the customer purchases a money order(s) or traveler's check(s), or initiated a money transfer(s), or exchanged currency. Check box "**b**" if this is the paying location where the customer cashed a money order(s) or traveler's check(s) or received payment of a money transfer(s). Check box "**c**" if multiple transactions are reported and the business was both a selling and paying location for one or more transactions.

Item 24 *Legal name of business. Enter the legal name of the business where the transactions took place.

Item 25 Doing business as. Enter the trade name by which the business is commonly known.

Items 26-29, 32 *Transaction location address. Enter the transaction location address by following General Instructions 13 and 15.

Item 30 *EIN (entity) or SSN/ITIN (individual). See General Instruction 12 and definitions. If the business identified in Item 24 has an EIN, enter that number in Item 30. If not, enter individual owner's SSN or ITIN.

Item 31 *Business telephone number. See General Instruction 10. Enter the telephone number of the business listed in Item 24.

Item 32 Country code. Enter the 2-digit country code if not US.

Item 33 Internal report control number. Enter any internal file or report number assigned by the reporting institution to track this report.

Part IV Reporting Business Information

Item 34 Check this box and go to Part V if the reporting business is the same as the Part III Transaction Location. If the reporting business is different, complete Part IV.

Item 35 *Legal name of business. Enter the legal name of the reporting business.

Item 36 Doing business as. Enter the trade name by which the reporting business is commonly known (if other than the legal name).

Items 37-40, 43 *Reporting business address. Enter the reporting business address by following General Instructions 13 and 15.

Item 40 *EIN (entity) or SSN/ITIN (individual). See General Instruction 12 and definitions. If the business identified in Item 35 has an EIN, enter that number in Item 41. If not, enter individual owner's SSN or ITIN.

Item 42 *Business phone number. Enter the telephone number of the reporting business. If the reporting business telephone number is a foreign telephone number, leave Item 44 blank and enter the number in the Part VI Narrative. See General Instruction 10.

Item 43 Country code. Enter the 2-digit country code if not US.

Item 44 Internal control/file number. Enter any internal file or report number assigned by the reporting institution to track this report.

Part V Contact for Assistance

Items 45-47 *Contact individual. Enter the name of the person to be contacted about the SAR-MSB. See General Instruction 11.

Item 48 *Title/position. Enter the job title/position of the contact individual.

Item 49 *Work phone number. Enter the work telephone number of the contact individual. If the number is a foreign telephone number, leave Item 50 blank and enter the number in the Part VI Narrative. See General Instruction 10.

Item 50 Date report prepared. Enter the date the SAR was prepared. See General Instruction 9.

Part VI Suspicious Activity Information -- Narrative*

Enter a narrative describing all aspects of the suspicious activity not covered by form data items. See page 3 of the form for instructions on completing the narrative. If the initial Part VI narrative page is not sufficient, use as many Part VI Narrative continuation pages as necessary to complete the narrative. Attach the continuation pages behind the initial narrative page.

Paperwork Reduction Act Notice

The purpose of this form is to provide an effective means for a money services business (MSB) to notify appropriate law enforcement agencies of suspicious transactions and activities that occur by, through, or at an MSB. This report is authorized by law, pursuant to authority contained in 31 U.S.C. 5318(g). Information collected on this report is confidential (31 U.S.C. 5318(g)). Federal regulatory agencies, State law enforcement agencies, the U.S. Departments of Justice and Treasury, and other authorized authorities may use and share this information. Public reporting and record keeping burden for this form is estimated to average 35 minutes per response, and includes time to gather and maintain information for the required report, review the instructions, and complete the information collection. Send comments regarding this burden estimate, including suggestions for reducing the burden, to the Office of Management and the Budget, Paperwork Reduction Project, Washington, DC 20503 and to the Financial Crimes Enforcement Network, Attn.: Paperwork Reduction Act. P.O. Box 39, Vienna VA 22183-0039. The agency may not conduct or sponsor, and an organization (or a person) is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[FR Doc. 05–7611 Filed 4–15–05; 8:45 am]
BILLING CODE 4810–02–C

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Submission for OMB review; Comment request.

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 continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC may not conduct or sponsor, and a respondent is not required to respond to an information collection that has been extended, revised, or implemented unless it displays a currently valid OMB control number. Currently, the OCC is soliciting comments concerning extension of an information collection titled (MA)-Loans in Areas Having Special Flood Hazards (12 CFR 22). The OCC also gives notice that it has sent the information collection to the Office of Management and Budget (OMB) for review.

DATES: Comments are due by: May 18, 2005.

ADDRESSES: You should direct all written comments to the Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0202, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, 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, 1557–0202, 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, a copy of the collection, or a copy of OCC's submission to OMB by contacting Mary Gottlieb or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0202), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC received no comments in response to its first Paperwork Reduction Act renewal notice regarding this information collection which was published in the **Federal Register** (70 FR 3769) on January 26, 2005.

Title: (MA)-Loans in Areas Having Special Flood Hazards (12 CFR 22).

OMB Number: 1557–0202.

Form Number: None.

Abstract: This information collection covers an existing regulation and involves no change to the regulation or the information collection. The OCC requests only that OMB renew its approval of the information collection in the current regulation. The regulation requires national banks to make disclosures and keep records regarding whether a property securing a loan is located in a special flood hazard area.

This information collection is required by section 303(a) and title V of the Riegle Community Development and Regulatory Improvement Act, Pub. L. 103–325, title V, 108 Stat. 2160, the National Flood Insurance Reform Act of 1994 amendments to the National Flood Insurance Act of 1968 (12 U.S.C. 4104a and 4104b) and the Flood Disaster Protection Act of 1973 (12 U.S.C. 4012a and 4106(b)), and by OCC regulations implementing those statutes located at 12 CFR 22.6, 22.7, 22.9, and 22.10.

The information collections are as follows:

12 CFR 22.6 requires a national bank to use and maintain a copy of the Standard Flood Hazard Determination Form developed by FEMA.

12 CFR 22.7 requires a national bank or its loan servicer, if a borrower has not obtained adequate flood insurance, to notify the borrower to obtain adequate flood insurance or the bank or servicer will purchase flood insurance on the borrower's behalf.

12 CFR 22.9 requires a national bank making a loan secured by a building or a mobile home to advise the borrower and the loan servicer that the property is, or is not, located in a special flood hazard area, if flood insurance is available under the National Flood Insurance Program, and if Federal disaster relief may be available in the event of flooding. The bank must maintain a record of the borrower's and loan servicer's receipts of these notices.

12 CFR 22.10 requires a national bank making a loan secured by a building or a mobile home located in a special flood hazard area to notify FEMA of the identity of the servicer, and of any change in servicers.

These information collections ensure bank compliance with applicable Federal law, further bank safety and soundness, provide protections for banks and the public, and further public policy interests.

Type of Review: Renewal of OMB approval without change.

Affected Public: Businesses or other for-profit.

Number of Respondents: 2,300.

Total Annual Responses: 230,000.

Frequency of Response: On occasion.

Total Annual Burden Hours: 58,650.

Comments: All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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.

Stuart Feldstein,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 05–7614 Filed 4–17–05; 8:45 am]
BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Public Meeting of the President's Advisory Panel on Federal Tax Reform

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice advises all interested persons of the location of the April 18, 2005, public meeting of the President's Advisory Panel on Federal Tax Reform. This meeting was previously announced in 70 FR 18067 (April 8, 2005).

DATES: The meeting will be held on Monday, April 18, 2005, in Adelphi, Maryland, and will begin at 12:30 p.m.

ADDRESSES: The meeting will be held at the Inn and Conference Center, University of Maryland University

College, 3501 University Boulevard East, Adelphi, Maryland 20783. Seating will be available to the public on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: The Panel staff at (202) 927–2TAX (927–2829) (not a toll-free call) or e-mail *info@taxreformpanel.gov* (please do not send comments to this box). Additional information is available at *http://www.taxreformpanel.gov.*

Dated: April 13, 2005.

Mark S. Kaizen,

Designated Federal Officer.

[FR Doc. 05–7714 Filed 4–15–05; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–126024–01]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–105312–98, Reporting of Gross Proceeds Payment to Attorneys.

DATES: Written comments should be received on or before June 17, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6514, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reporting of Gross Proceeds Payment to Attorneys.

OMB Number: 1545–1644.

Regulation Project Number: REG–126024–01.

Abstract: The information is required to implement section 1021 of the Taxpayer Relief Act of 1997. This information will be used by the IRS to verify compliance with section 6045 and to determine that the taxable amount of these payments has been computed correctly.

Current Actions: There is no change to this proposed regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions and Federal, state, local or tribal governments.

The burden is reflected in the burden of Form 1099–MISC.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 11, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1797 Filed 4–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–242282–97]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–242282–97 (TD 8734), General Revision of Regulations Relating to Withholding of Tax On Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Part 35a and of Certain Regulations Under Income Tax Treaties (1.1441–1(e), 1.1441–4(a)(2), 1.1441–4(b)(1) and (2), 1.1441–4(c), (d), and (e), 1.1441–5(b)(2)(ii), 1.1441–5(c)(1), 1.1441–6(b) and (c), 1.1441–8(b), 1.1441–9(b), 1.1461–1(b) and (c), 301.6114–1, 301.6402–3(e), and 31.3401(a)(6)–1(e)).

DATES: Written comments should be received on or before June 17, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Part 35a and of

Certain Regulations Under Income Tax Treaties.

OMB Number: 1545–1484.

Regulation Project Number: REG–242282–97 (formerly INTL–62–90; INTL–32–93; INTL–52–86; INTL–52–94).

Abstract: This regulation prescribes collections of information for foreign persons that received payments subject to withholding under sections 1441, 1442, 1443, or 6114 of the Internal Revenue Code. This information is used to claim foreign person status and, in appropriate cases, to claim residence in a country with which the United States has an income tax treaty in effect, so that withholding at a reduced rate of tax may be obtained at source. The regulation also prescribes collections of information for withholding agents. This information is used by withholding agents to report to the IRS income paid to a foreign person that is subject to withholding under Code sections 1441, 1442, and 1443. The regulation also requires that a foreign taxpayer claiming a reduced amount of withholding tax under the provisions of an income tax treaty must disclose its reliance upon a treaty provision by filing Form 8833 with its U.S. income tax return.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

The burden for the reporting requirements is reflected in the burden of Forms W–8BEN, W08ECI, W–8EXP, W–8IMY, 1042, 1042S, 8233, 8833, and the income tax return of a foreign person filed for purposes of claiming a refund of tax.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 11, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1798 Filed 4–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8717

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8717, User Fee for Employee Plan Determination Letter Request.

DATES: Written comments should be received on or before June 17, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224 or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: User Fee for Employee Plan Determination Letter Request.

OMB Number: 1545–1772.

Form Number: 8717.

Abstract: The Omnibus Reconciliation Act of 1990 requires payment of a "user fee" with each application for a determination letter. Because of this requirement, the Form 8717 was created to provide filers the means to make payment and indicate the type of request.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organization, and not-for-profit institutions.

Estimated Number of Responses: 100,000.

Estimated Time Per Response: 3 Hours 24 minutes.

Estimated Total Annual Burden Hours: 341,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 4, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1799 Filed 4–15–05; 8:45 am]

BILLING CODE 483–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Earned Income Tax Credit Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Earned Income Tax Credit Committee of the Taxpayer Advocacy Panel will be conducted at the Peachtree Federal Summit Building, 401 W. Peachtree St., NW., in Atlanta, Georgia 30308, in Room 530. The Committee will be discussing issues pertaining to the IRS administration of the Earned Income Tax Credit.

DATES: The meeting will be held Friday, May 6, 2005.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Earned Income Tax Credit Committee of the Taxpayer Advocacy Panel will be held Friday, May 6, 2005 from 8:30 a.m. to 12 p.m. e.t. at 401 W. Peachtree St., NW., Atlanta, Georgia 30308 Room 530. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. For information or to confirm attendance, contact Audrey Y. Jenkins as noted above. Notification of intent to participate in the meeting must be made with Ms. Jenkins. If you would like a written statement to be considered, send written comments to Ms. Audrey Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201 or post your comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: April 12, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–1792 Filed 4–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is reviewing public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service brought forward by the Area and Issue Committees.

DATES: The meeting will be held Friday, May 13, 2005, 8 a.m. to 5:30 p.m., and Saturday, May 14, 2005, 8 a.m. to 12:30 p.m., central time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or (414) 297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Friday, May 13, 2005, 8 a.m. to 5:30 p.m., and Saturday, May 14, 2004, 8 a.m. to 12:30 p.m., central time at the Chicago Marriott Downtown, 540 North Michigan Avenue, Chicago, IL 60611. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or (414) 297–1611, or write Barbara Toy, TAP Office, MS–1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to (414) 297–1623, or you can contact us at *http://www.improveirs.org.*

The agenda will include the following: monthly committee summary report, discussion of issues brought to the joint committee, office reports, and discussion of next meeting.

Dated: April 12, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–1793 Filed 4–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, May 9, 2005, at 2 p.m. central time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, May 9, 2005, at 2 p.m. central time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or you can contact us at *http://www.improveirs.org.* This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for additional information.

The agenda will include the following: Various IRS issues.

Dated: April 12, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–1794 Filed 4–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to increasing compliance and lessening the burden for Small Business/Self Employed individuals.

DATES: The meeting will be held Thursday, May 5, 2005.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or (718) 488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be held Thursday, May 5, 2005 from 3 p.m. e.t. to 4:30 p.m. e.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or (718) 488–3557, or write to Marisa Knispel, TAP Office, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or (718) 488–3557, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: April 12, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–1795 Filed 4–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, May 4, 2005.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 (toll-free), or (718) 488–3557 (non toll-free).

SUPPLEMENTARY INFORMATION: An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Wednesday, May 4, 2005 from 3 p.m. e.t. to 4 p.m. e.t. via a telephone conference call. Individual comments will be limited to five minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or (718) 488–3557, or write Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or (718) 488–3557, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: April 12, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–1796 Filed 4–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Clinical Science Research and Development Service Cooperative Studies Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Clinical Science Research and Development Service, Cooperative Studies Scientific Merit Review Board will be held on May 11–12, 2005, at the Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD. Sessions are scheduled to begin at 8 a.m. and end at 3 p.m. each day.

The Board advises the Chief Research and Development Officer through the Director of the Clinical Science Research and Development Service on the policies and program planning for multi-site clinical science projects, ensuring that new and ongoing projects maintain high quality, are based on scientific merit, and are efficiently and economically conducted. In carrying out these responsibilities, the Board makes recommendations on the relevance and feasibility of research proposals, the adequacy of protocols involved, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public for the May 11 and May 12 sessions, from 8 a.m. to 8:30 a.m., for the discussion of administrative matters and the general status of the program. On May 11 and May 12 from 8:30 a.m. to 3 p.m., the meeting will be closed for the Board's review of research and development applications.

Closing the meeting is in accordance with provisions set forth in section 10(d) of Public Law 92–463, as amended by sections 5(c) of Public Law 94–409, and 5 U.S.C. 552b(c)(6) and (c)(9). During the closed sessions of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Those who plan to attend should contact Dr. Grant Huang, Assistant Director, Cooperative Studies Program (125), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 254–0192.

Dated: April 6, 2005.

By Director of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–7610 Filed 4–17–05; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 70, No. 73
Monday, April 18, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Meeting, Sunshine Act

Correction

In notice document 05–7537 appearing on page 19452 in the issue of Wednesday, April 13, 2005, make the following correction:

In the first column, under the **DATE AND TIME** heading, "Thursday, April 21, 2005, a.m. eastern time" should read "Thursday, April 21, 2005, 9 a.m., eastern time."

[FR Doc. C5–7537 Filed 4–15–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
April 18, 2005

Part II

Department of Education

National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority for children with special health care needs.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes one funding priority for the National Institute on Disability and Rehabilitation Research's (NIDRR) Disability and Rehabilitation Research Projects and Centers Program, Rehabilitation Research and Training Centers (RRTC) program. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2005 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before May 18, 2005.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20204–2700. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 245–7462.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed priority in room 6030, 550 12th Street, SW., Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priority in a notice in the **Federal Register.** We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or using additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice in the **Federal Register.** When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom.*

The proposed priority is in concert with NIDRR's 1999–2003 Long-Range Plan (Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. The reference to the topic of this priority may be found in the Plan, Chapter 2, Health and Function. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/rschstat/research/pubs/index.html.*

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Rehabilitation Research and Training Centers

RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disability conditions, or promote maximum social and economic independence for persons with disabilities. Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

General Requirements of Rehabilitation Research and Training Centers

RRTCs must—

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers for national excellence in rehabilitation research for individuals with disabilities, their

representatives, providers, and other interested parties.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the RRTC. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment of approved grant objectives.

Priorities

Background

This priority focuses on children with disabilities who have special health care needs. For purposes of this priority, the term "children with special health care needs" is defined as children who "have or are at increased risk for a chronic physical, developmental, behavioral, or emotional condition and who also require health and related services of a type or amount beyond that required by children generally" (McPherson *et al.* 1998. A New Definition of Children with Special Health Care Needs. Pediatrics 102(1)). A new study using this definition estimates that 9.3 million, or one in eight, children under the age of 18 in the United States have special health care needs (van Dyke *et al.* 2004. Prevalence and Characteristics of Children with Special Health Care Needs, Archives of Pediatrics and Adolescent Medicine, 158:9).

Exactly how many children with special health care needs have disabilities is unclear. Estimates differ depending on the source of the data and how the populations are defined. However, data from a number of sources suggest that there is a substantial proportion of children with special health care needs who have disabilities. For example, according to the National Survey of Children with Special Health Care Needs, 23 percent—nearly one-quarter—of children with special health care needs are affected in their ability to do the things other children do usually, always, or a great deal. The sources also note that income, race, and ethnicity are important factors in a child's experience of disability. (U.S. Department of Health and Human Services, Health Resources and Services Administration, Maternal and Child Health Bureau, The National Survey of Children with Special Health Care Needs Chartbook 2001. Rockville, Maryland: U.S. Department of Health and Human Services, 2004; U.S. Department of Education, Office of Special Education Programs, Data Analysis System; and Americans with Disabilities: Household Economic Studies. U.S. Census Bureau, 1997. Issued February 2001.)

The U.S. Supreme Court, in its 1999 *L.C.* v. *Olmstead* decision, held that title II of the Americans with Disabilities Act prohibits unjustified isolation or segregation of qualified individuals with disabilities through institutionalization. The President issued Executive Order 13217, "Community-based Alternatives for Individuals with Disabilities," which requires Federal agencies to implement the Olmstead decision. The U.S. Department of Health and Human Services reported that children with special health care needs face barriers to community integration that include, but are not limited to, a lack of access to comprehensive, family-centered, community-based care; affordable health care; and transition services to adulthood (U.S. Department of Health and Human Services, Delivering on the Promise, Self-Evaluation to Promote Community Living for People with Disabilities. Report to the President on Executive Order 13217, 2002). Additional difficulties include fragmentation in health care service delivery, and unequal access to care based on factors such as race, ethnicity, income, and the availability of health insurance (Mayer *et al.*, 2004. Unmet Need for Routine and Specialty Care: Data from the National Survey of Children with Special Health Care Needs. Pediatrics, 133(2)).

The American Academy of Pediatrics has called for medical care that is "accessible, continuous, comprehensive, family centered, coordinated, compassionate, and culturally effective" (American Academy of Pediatrics, 2002. Policy Statement: The Medical Home. Pediatrics, 110(1)). Similarly, the March 2004 NIDRR-funded State of the Science Conference, Accessing Care: Building Capacity of Service Delivery Systems for Children and Youth with Disabilities and Special Health Care Needs, concluded that the most optimal way to provide appropriate services to children with disabilities and special health care needs is through a service delivery system that is interconnected, flexible, collaborative, responsive, and that includes provider, family, and child participation. Additionally, access to, funding for, and provider familiarity with assistive technologies and other specialized rehabilitative services are critical for appropriate care.

The Consensus Statement on Health Care Transitions for Young Adults with Special Health Care Needs notes that almost half of a million children with special health care needs transition into adulthood every year in the United States, and that the goal of health care transition is to "maximize lifelong functioning and potential through the provision of high-quality, developmentally appropriate health care services that continue uninterrupted as the individual moves from adolescence to adulthood" (American Academy of Pediatrics, the American Academy of Family Physicians, and the American College of Physicians-American Society of Internal Medicine, 2002. Pediatrics, 11(6): 1304).

Proposed Priority

The Assistant Secretary proposes a priority for one RRTC that must focus on children with disabilities and special health care needs. Applicants must demonstrate how their research and development activities will meet the needs of individuals from traditionally underserved populations including, but not limited to, children from low-income backgrounds.

The RRTC must conduct at least two, but not more than four, of the following research activities:

- Identify, develop, and evaluate models and strategies for implementing effective community-based practices for children with disabilities who have special health care needs;
- Identify, develop, and evaluate models and strategies for effective transition of children and adolescents with disabilities who have special health care needs to adulthood, including access to adult health care services, personal assistance services, and full participation in community life;
- Identify and evaluate strategies for maximizing family partnership and decision-making related to access to and use of home- and community-based services for children with disabilities who have special health care needs;
- Identify and evaluate innovative and effective strategies for facilitating access to service delivery for children with disabilities who have special health care needs, including health care reimbursement, assistive technology, and other specialized rehabilitative services (*e.g.*, physical therapy, occupational therapy, telehealth); and
- Identify and evaluate innovative and effective models for establishing coordination within the service delivery system for children with disabilities who have special health care needs.

In addition to the activities proposed by the applicant to carry out this priority, each RRTC must—

- Conduct a state-of-the-science conference on its respective area of research in the third year of the grant cycle and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant cycle. This conference must include materials from experts internal and external to the RRTC;
- Involve individuals with disabilities in planning and implementing its research, training, and dissemination activities, and in evaluating the RRTC;
- Coordinate on research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer; and
- Identify anticipated outcomes (*i.e.*, advances in knowledge and/or changes and improvements in policy, practice, behavior, and system capacity) that are linked to the applicant's stated grant objectives.

Executive Order 12866

This notice of proposed priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority, we have determined that the benefits of the proposed priority justify the costs.

Summary of Potential Costs and Benefits

The potential costs associated with this proposed priority are minimal while the benefits are significant. Grantees may incur some costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the RRTC program have been well established over the years in that similar projects have been completed successfully. This proposed priority will generate new knowledge and technologies through research, development, dissemination, utilization, and technical assistance projects.

Another benefit of this proposed priority is that the establishment of a new RRTC will support the President's NFI and will improve the lives of persons with disabilities, in particular children with disabilities and special health care needs. The new RRTC will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.133B Rehabilitation Research and Training Centers Program.)

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: April 12, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–7593 Filed 4–15–05; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Monday,
April 18, 2005

Part III

Department of Health and Human Services

Office of the Secretary

45 CFR Parts 160 and 164
HIPAA Administrative Simplification; Enforcement; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 160 and 164

RIN 0991–AB29

HIPAA Administrative Simplification; Enforcement

AGENCY: Office of the Secretary, HHS.

ACTION: Proposed rule.

SUMMARY: The Secretary of Health and Human Services is proposing rules for the imposition of civil money penalties on entities that violate rules adopted by the Secretary to implement the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191 (HIPAA). The proposed rule would amend the existing rules relating to the investigation of noncompliance to make them apply to all of the HIPAA Administrative Simplification rules, rather than exclusively to the privacy standards. It would also amend the existing rules relating to the process for imposition of civil money penalties. Among other matters, the proposed rules would clarify and elaborate upon the investigation process, bases for liability, determination of the penalty amount, grounds for waiver, conduct of the hearing, and the appeal process.

DATES: Comments on the proposed rule will be considered if we receive them at the appropriate address, as provided below, no later than June 17, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Include agency name and "RIN: 0991–AB29."
- E-mail: *CMS0010.Comments@hhs.gov*. Include "RIN: 0991–AB29" in the subject line of the message.
- Mail: U.S. Department of Health and Human Services, Office of General Counsel, Attention: HIPAA Enforcement Rule, 330 Independence Ave., SW., Washington, DC 20201.
- Hand Delivery/Courier: Attention: HIPAA Enforcement Rule, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Instructions: Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Carol Conrad, (202) 690–1840.

SUPPLEMENTARY INFORMATION:

I. Public Participation

We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the RIN number (RIN: 0991–AB29) and by preceding your discussion of any particular provision with a citation to the section of the proposed rule being discussed.

A. Inspection of Public Comments

Comments received timely will be available for public inspection as they are received, generally beginning approximately 6 weeks after publication of this document, at the mail address provided above, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call Karen Shaw, (202) 205–0154.

B. Electronic Comments

We will consider all electronic comments that include the full name, postal address, and affiliation (if applicable) of the sender and are submitted to either of the electronic addresses identified in the **ADDRESSES** section of this preamble. All comments must be incorporated in the e-mail message, because we may not be able to access attachments. Copies of electronically submitted comments will be available for public inspection as soon as practicable at the address provided, and subject to the process described, in the preceding paragraph.

C. Mailed Comments and Hand Delivered/Couriered Comments

Mailed comments may be subject to delivery delays due to security procedures. Please allow sufficient time for mailed comments to be timely received in the event of delivery delays. Comments mailed to the address indicated for hand or courier delivery may be delayed and could be considered late.

D. Copies

To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–866–512–1800) or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you may view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

E. Electronic Access

This **Federal Register** document is available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The web site address is: *http://www.gpoaccess.gov/nara/index.html*. This document is available electronically at the following web sites of the Department of Health and Human Services (HHS): *http://www.hhs.gov/ocr/hipaa/* and *http://www.cms.gov/hipaa/hipaa2*.

F. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive in accordance with the methods described above and by the date specified in the **DATES** section of this preamble. When we proceed with a final rule, we will respond to comments in the preamble to that rule.

II. Background

HHS proposes to amend or renumber existing rules that relate to compliance with, and enforcement of, the Administrative Simplification regulations (HIPAA rules) adopted by the Secretary of Health and Human Services (Secretary) under subtitle F of Title II of HIPAA (HIPAA provisions). These rules are codified at 45 CFR part 160, subparts C and E. In addition, this proposed rule would add a new subpart D to part 160. The new subpart D would contain additional rules relating to the imposition by the Secretary of civil money penalties on covered entities that violate the HIPAA rules. The full set of rules that will ultimately be codified at subparts C, D, and E of 45 CFR part 160 is collectively referred to in this proposed rule as the "Enforcement Rule." Finally, HHS proposes conforming changes to subpart A of part 160 and subpart E of part 164.

The statutory and regulatory background of the proposed rule is set out below. A description of HHS's approach to enforcement of the HIPAA provisions and the HIPAA rules in general, the approach of this proposed

rule in particular, and each section of the proposed rule follows. The preamble concludes with HHS's analyses of impact and other issues under applicable law.

A. Statutory Background

Subtitle F of Title II of HIPAA, entitled "Administrative Simplification," requires the Secretary to adopt national standards for certain information-related activities of the health care industry. The purpose of subtitle F is to improve the Medicare program under title XVIII of the Social Security Act (Act), the Medicaid program under title XIX of the Act, and the efficiency and effectiveness of the health care system, by mandating the development of standards and requirements to enable the electronic exchange of certain health information. Section 262 of subtitle F added a new Part C to Title XI of the Act. Part C (sections 1171–1179 of the Act, 42 U.S.C. 1320d–1320d–8) requires the Secretary to adopt national standards for certain financial and administrative transactions and various data elements to be used in those transactions, such as code sets and certain unique health identifiers. Recognizing that the industry trend toward computerizing health information, which HIPAA encourages, may increase the accessibility of that information, sections 262 and 264 of HIPAA also require the Secretary to adopt national standards to protect the security and privacy of the information.

Under section 1172(a) of the Act, 42 U.S.C. 1320d–1(a), the HIPAA provisions apply only to—

> The following persons:
> (1) A health plan.
> (2) A health care clearinghouse.
> (3) A health care provider who transmits any health information in electronic form in connection with a transaction referred to in section 1173(a)(1).

These entities are collectively known as "covered entities." An additional category of covered entities was added by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173) (MMA). As added by MMA, section 1860D–31(h)(6)(A) of the Act, 42 U.S.C. 1395w–141(h)(6)(A), provides that:

> a prescription drug card sponsor is a covered entity for purposes of applying part C of title XI and all regulatory provisions promulgated thereunder, including regulations (relating to privacy) adopted pursuant to the authority of the Secretary under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

HIPAA requires certain consultations with industry as a predicate to the issuance of the HIPAA standards and provides that most covered entities have up to 2 years (small health plans have up to 3 years) to come into compliance with the standards, once adopted. The statute establishes civil money penalties and criminal penalties for violations. Act, sections 1172(c) (42 U.S.C. 1320d–1(c)), 1175(b) (42 U.S.C. 1320d–4(b)), 1176 (42 U.S.C. 1320d–5), 1177 (42 U.S.C. 1320d–6). HHS enforces the civil money penalties, while the U.S. Department of Justice enforces the criminal penalties.

HIPAA's civil money penalty provision, section 1176(a) of the Act, 42 U.S.C. 1320d–5(a), authorizes the Secretary to impose a civil money penalty, as follows:

> (1) IN GENERAL. Except as provided in subsection (b), the Secretary shall impose on any person who violates a provision of this part [42 U.S.C. § 1320d *et seq.*] a penalty of not more than $100 for each such violation, except that the total amount imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed $25,000.
>
> (2) PROCEDURES. The provisions of section 1128A [42 U.S.C. 1320a–7a] (other than subsections (a) and (b) and the second sentence of subsection (f)) shall apply to the imposition of a civil money penalty under this subsection in the same manner as such provisions apply to the imposition of a penalty under such section 1128A.

For simplicity, we refer throughout this preamble to this provision, the related provisions at section 1128A of the Act, and other related provisions of the Act, by their Social Security Act citations, rather than by their U.S. Code citations.

Subsection (b) of section 1176 sets out limitations on the Secretary's authority to impose civil money penalties and also provides authority for waiving such penalties. Under section 1176(b)(1), a civil money penalty may not be imposed with respect to an act that "constitutes an offense punishable" under the criminal penalty provision. Under section 1176(b)(2), a civil money penalty may not be imposed "if it is established to the satisfaction of the Secretary that the person liable for the penalty did not know, and by exercising reasonable diligence would not have known, that such person violated the provision." Under section 1176(b)(3), a civil money penalty may not be imposed if the failure to comply was due "to reasonable cause and not to willful neglect" and is corrected within a certain time. Finally, under section 1176(b)(4), a civil money penalty may be reduced or entirely waived "to the extent that the payment of such penalty would be excessive relative to the compliance failure involved."

As noted above, HIPAA incorporates by reference certain provisions of section 1128A of the Act. Those provisions, as relevant here, establish a number of requirements with respect to the imposition of civil money penalties. Under section 1128A(c)(1), the Secretary may not initiate a civil money penalty action "later than six years after the date" of the occurrence that forms the basis for the civil money penalty. Under section 1128A(c)(2), a person upon whom the Secretary seeks to impose a civil money penalty must be given written notice and an opportunity for a determination to be made "on the record after a hearing at which the person is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the person." Section 1128A also provides, at subsections (c), (e), and (j), respectively, requirements for: service of the notice and authority for sanctions which the hearing officer may impose for misconduct in connection with the civil money penalty proceeding; judicial review of the Secretary's determination in the United States Court of Appeals for the circuit in which the person resides or maintains his/its principal place of business; and the issuance of subpoenas by the Secretary and the enforcement of those subpoenas. In addition, section 1128A of the Act contains provisions relating to liability for civil money penalties and how they are dealt with, once imposed. For example, section 1128A(d) provides that the Secretary must take into account certain factors "in determining the amount * * * of any penalty," section 1128A(h) requires certain notifications once a civil money penalty is imposed, and section 1128A(l) makes a principal liable for penalties "for the actions of the principal's agent acting within the scope of the agency." These provisions are discussed more fully below.

B. Regulatory Background

As noted above, HIPAA requires the Secretary to adopt a number of national standards to facilitate the exchange, and protect the privacy and security, of certain health information. The Secretary has already adopted many of these HIPAA standards by regulation.

- Regulations implementing the statutory requirement for the adoption of standards for transactions and code sets, Health Insurance Reform: Standards for Electronic Transactions (Transactions Rule), were published on August 17, 2000 (65 FR 50312), and were modified on February 20, 2003 (68 FR 8381). The Transactions Rule

became effective on October 16, 2000, with an initial compliance date of October 16, 2002 for covered entities other than small health plans. The passage of the Administrative Simplification Compliance Act (ASCA), Pub. L. 107–105, in 2001 enabled covered entities to obtain an extension of the compliance date to October 16, 2003 by filing a compliance plan by October 15, 2002. If a covered entity (other than a small health plan) did not file such a plan, it was required to comply with the Transactions Rule by October 16, 2002. All covered entities were required to be in compliance with the Transactions Rule, as modified, by October 16, 2003.

• Regulations implementing the statutory requirement for the adoption of privacy standards, Standards for Privacy of Individually Identifiable Health Information (Privacy Rule), were published on December 28, 2000 (65 FR 82462). The Privacy Rule became effective on April 14, 2001. Modifications to simplify and increase the workability of the Privacy Rule were published on August 14, 2002 (67 FR 53182). Compliance with the Privacy Rule, as modified, was required by April 14, 2003 for covered entities other than small health plans; small health plans were required to come into compliance by April 14, 2004.

The Privacy Rule adopted rules relating to compliance and enforcement. These rules are codified at 45 CFR part 160, subpart C. Subpart C presently applies only to compliance with, and enforcement of, the Privacy Rule.

• Regulations implementing the statutory requirement for the adoption of an employer identifier standard, Health Insurance Reform: Standard Unique Employer Identifier (EIN Rule), were published on May 31, 2002 (67 FR 38009) and became effective on July 30, 2002. The initial compliance date was July 30, 2004 for most covered entities; small health plans have until July 30, 2005 to come into compliance. These regulations were modified on January 23, 2004 (69 FR 3434), effective the same date.

• Regulations implementing the statutory requirement for the adoption of security standards, Health Insurance Reform: Security Standards, were published on February 20, 2003 (68 FR 8334), effective on April 21, 2003. The initial compliance date for covered entities other than small health plans is April 20, 2005; small health plans have until April 20, 2006 to come into compliance.

• An interim final rule promulgating procedural requirements for imposition of civil money penalties, Civil Money Penalties: Procedures for Investigations, Imposition of Penalties, and Hearings (April 17, 2003 interim final rule), was published on April 17, 2003 (68 FR 18895), was effective on May 19, 2003, with a sunset date of September 16, 2004 (as corrected at 68 FR 22453, April 28, 2003). The April 17, 2003 interim final rule adopted a new subpart E of part 160. The sunset date of the April 17, 2003 interim final rule was extended to September 16, 2005 on September 15, 2004 (69 FR 55515).

• Regulations implementing the requirement to issue standards for a unique identifier for health care providers, HIPAA Administrative Simplification: Standard Unique Health Identifier for Health Care Providers (NPI Rule), were issued on January 23, 2004 (69 FR 3434), effective on May 23, 2005. The compliance date is May 23, 2007 for most covered entities; small health plans have until May 23, 2008 to come into compliance.

In addition to the foregoing regulations implementing the HIPAA provisions, HHS has adopted two other regulations that are relevant, for some covered entities, to compliance with those provisions.

• Section 3 of the ASCA amended section 1862 of the Act to require Medicare providers, with certain exceptions, to submit claims to Medicare electronically (and, thus, in conformity with the Transactions Rule) by October 16, 2003. Regulations implementing section 3, Medicare Program: Electronic Submission of Medicare Claims, were published on August 15, 2003 (68 FR 48805), effective on October 16, 2003.

• Regulations implementing the Medicare Prescription Drug Discount Card program under MMA and the statutory provision that Medicare prescription drug discount card sponsors are covered entities under HIPAA, were issued on December 15, 2003 (68 FR 69840), effective the same date. These rules require such sponsors to comply with the HIPAA rules when they become sponsors, except and to the extent that the Secretary temporarily waives the Privacy Rule requirements, and provides some rules regarding how these entities are to comply with the HIPAA rules. The Secretary has indicated that he does not anticipate that it will be necessary to waive the Privacy Rule requirements and has not done so. 68 FR 69871.

III. General Approach

As the discussion above makes clear, the duty to comply with certain HIPAA rules is now a reality for all covered entities. The immediacy of the compliance obligation brings with it the issue of how these rules will be enforced. Accordingly, we discuss below our general approach to enforcement, how the rules proposed below would fit in with the existing components of the Enforcement Rule, and the basic approach of the proposed rule.

A. HHS's General Approach to Enforcement

One of the Secretary's priorities is "One HHS": HHS's public health and welfare mission and message must be consistent, and HHS should speak with one voice. Because of the Secretary's One HHS policy and because there is one statutory provision for imposing civil money penalties on covered entities that violate the HIPAA rules, there is one enforcement and compliance policy for the HIPAA rules. We are committed to promoting and encouraging voluntary compliance with the HIPAA rules through education, cooperation, and technical assistance.

Many educational and technical assistance materials on HIPAA, including the HIPAA rules, are already available on HHS's Web sites. See *http://www.hhs.gov/ocr/hipaa* for the Privacy Rule and *http://www.cms.gov/hipaa/hipaa2* for the other HIPAA rules. We continue to work on educational and technical assistance materials, including additional guidance on compliance and enforcement and targeted technical assistance materials focused on particular segments of the health care industry. We anticipate developing additional materials relevant to new HIPAA rules as the need arises.

The authority for administering and enforcing compliance with the Privacy Rule has been delegated to the HHS Office for Civil Rights (OCR). 65 FR 82381 (December 28, 2000). The authority for administering and enforcing compliance with the non-privacy HIPAA rules has been delegated to the Centers for Medicare & Medicaid Services (CMS). 68 FR 60694 (October 23, 2003).

At present, our compliance and enforcement activities are primarily complaint-based. Although our enforcement efforts are focused on investigating complaints, they may also include conducting compliance reviews to determine if a covered entity is in compliance. When potential violations come to our attention through a complaint or a compliance review, OCR or CMS's Office of HIPAA Standards (OHS), as appropriate, attempts to resolve the matter informally. Many such matters are resolved at the initial stage of contact. However, even where a

matter is not resolved at this initial stage and the investigation continues, the matter can still be resolved through voluntary compliance (for example, by means of a corrective action plan); and OCR or CMS may provide technical assistance to help the covered entity achieve compliance. Resolving issues through such informal means is often the quickest and most effective means of ensuring that the benefits of the HIPAA rules are realized. However, if we are unable to obtain compliance effectively on matters within our jurisdiction through voluntary means, we may seek to impose civil money penalties. Moreover, matters subject to criminal penalties are referred to the Department of Justice.

B. HHS's Approach to the Enforcement Rule

The Enforcement Rule would bring together and adopt rules governing the implementation of the civil money penalty authority of section 1176 of the Act for all of the HIPAA rules. As previously noted, parts of the Enforcement Rule are already in place: subpart C of part 160 establishes certain investigative procedures for the Privacy Rule, and subpart E establishes interim procedures for investigations and for the imposition of, and challenges to the imposition of, civil money penalties for all of the HIPAA rules. This proposed rule would complete the Enforcement Rule by addressing, among other issues, our policies for determining violations and calculating civil money penalties, how we will address the statutory limitations on the imposition of civil money penalties, and various procedural issues, such as provisions for appellate review within HHS of a hearing decision, burden of proof, and notification of other agencies of the imposition of a civil money penalty.

In developing these regulations, several principles guided our choice of policies from among the available options. The Enforcement Rule should promote voluntary compliance with the HIPAA rules, be clear and easy to understand, provide consistent results in the interest of fairness, provide the Secretary with reasonable discretion, particularly in areas where the exercise of judgment is called for by the statute or rules, and avoid being overly prescriptive in areas where it would be helpful to gain experience with the practical impact of the HIPAA rules, to avoid unintended adverse effects.

With respect to many of the Enforcement Rule's provisions, we were also mindful that section 1176(a) requires the Secretary to apply the incorporated provisions of section 1128A to the imposition of a civil money penalty under section 1176 "in the same manner as" they apply to the imposition of civil money penalties under section 1128A itself. As we explained in the preamble to the April 17, 2003 interim final rule, the imposition of civil money penalties under section 1128A is administered by the HHS Office of the Inspector General (OIG). Accordingly, the rules proposed below, like those in the current Subpart E, generally look to the regulations of the OIG that implement section 1128A, which are codified at 42 CFR parts 1003, 1005, and 1006 (OIG regulations).

The Enforcement Rule does not adopt standards, as that term is defined and interpreted under HIPAA. Thus, the requirement for industry consultations in section 1172(c) of the Act does not apply. For the same reason, HIPAA's time frames for compliance, set forth in section 1175 of the Act, will not apply to the Enforcement Rule, when adopted in final form.

IV. Provisions of the Proposed Rule

The proposed rule would revise 45 CFR part 160 as follows: it would revise the existing subpart C, adopt a new subpart D, and revise the existing subpart E; a minor amendment of subpart A is also proposed. Subpart A, which contains general provisions, would be amended to include a definition of "person." Subpart C includes all provisions that relate to activities for determining compliance, including investigations and cooperation by covered entities. The proposed revisions of subpart C are largely technical, incorporating several provisions currently found in subpart E. We also propose to make subpart C applicable to the non-privacy HIPAA rules. The new subpart D would establish rules relating to the imposition of civil money penalties, including those which apply whether or not there is a hearing. Subpart D would also incorporate several provisions currently found in subpart E. Proposed subpart E would address the pre-hearing and hearing phases of the enforcement process. Many of the provisions of proposed subpart E were adopted by the April 17, 2003 interim final rule and would not be substantively changed, although they would, in general, be renumbered.

Finally, a conforming change to the privacy standards in subpart E of part 164 is proposed. This conforming change is discussed in connection with proposed § 160.316 at section IV.B.5 below.

A. Subpart A

We propose to amend § 160.103 to add a definition of the term "person." This would replace the definition of that term adopted by the April 17, 2003 interim final rule. We propose to place this definition in § 160.103 so that it applies to all of the HIPAA rules. The term "person" appears throughout the HIPAA rules, and the definition of the term we propose is a universal one that should work in each of the contexts in which the term "person" occurs. If the proposed placement would create problems, commenters should bring that to our attention.

In § 160.502 of the April 17, 2003 interim final rule, we defined a "person" as "a natural or legal person" to clarify, in the context of administrative subpoenas, the distinction between an entity (defined as a "legal person") and natural persons who would testify on the entity's behalf. The proposed rule would revise and expand this definition.

The statutory definition of a "person" that would otherwise apply to the HIPAA provisions is found in section 1101(3) of the Act. That section, which has been in the Act since it was originally enacted in 1935, defines a person as "an individual, a trust or estate, a partnership, or a corporation." However, Part C of title XI specifies that the class of "persons" to whom the HIPAA standards apply—health plans, certain health care providers, and health care clearinghouses—includes certain State and federal programs, which are not included in the definition of "person" in section 1101(3). For example, section 1171(2) defines a health care clearinghouse as a "public or private" entity. Under section 1171(3), a "health care provider" is defined to include a provider of services as defined in section 1861(u), for purposes of the Medicare program. The definition includes hospitals, which in turn include State or local government-owned hospitals. Finally, the definition of "health plan" in section 1171(5) includes State and federal health plans: section 1171(5)(A) includes a group health plan "as defined in section 2791(a) of the Public Health Service Act," and this definition includes State and local governmental group health plans; section 1171(5)(E) includes "the medicaid program under title XIX," which is a State program; and other provisions of section 1171(5) explicitly include as health plans various federal health plans, such as Medicare, the Federal Employee Benefit Health Plan, CHAMPUS, and the program of benefits for veterans. Section 1176, by its terms,

applies to "any person who violates a provision of this part." Nothing in this language suggests that Congress intended to exempt any class of covered entities from liability for a civil money penalty under this section.

Thus, to effectuate Congress's purpose in enacting the HIPAA provisions, it is necessary to define "person" sufficiently broadly to encompass the entities to which the HIPAA rules apply. The Supreme Court has recognized that this is a valid approach in appropriate instances. *See, e.g., Lawson* v. *Suwanee S.S. Co.*, 336 U.S. 198 (1949). This proposed approach is also consistent with that taken by the OIG regulations, the preamble to which explained that it was necessary to expand the definition of "person" in the context of section 1128A of the Act to include States because of clear Congressional intent to include them in the class of entities subject to civil money penalties. 48 FR 38837, 38828 (August 26, 1983).

Accordingly, the proposed rule generally tracks the definition of "person" in the OIG regulations. In particular, by defining the term as "a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private," the proposed rule clarifies, consistent with the HIPAA provisions, that the term includes States and other public entities. However, we propose to adapt the language used in the OIG regulations by substituting the term "natural person" for the term "individual" in the definition of "person" in the OIG regulations. The term "individual" is defined in § 160.103 as "the person who is the subject of protected health information." Since the term "individual" has a defined, and narrower, meaning in the HIPAA rules than it does in the OIG regulations, the proposed rule uses the term "natural person" to make the definition of "person" have the same scope as in the OIG regulations.

B. Subpart C—Compliance and Investigations

We propose to amend subpart C to make the compliance and investigation provisions of the subpart—which at present apply only to the Privacy Rule—applicable to all of the HIPAA rules. In addition, we propose to include in subpart C the definitions that apply to subparts C, D, and E. In accordance with the organizational scheme described above, we also propose to move to subpart C from subpart E the provision relating to investigational subpoenas, which is currently codified at § 160.504. The title of this subpart has also been changed (from "Compliance and Enforcement") to reflect the focus of this subpart within the larger Enforcement Rule. Finally, we propose to add to subpart C provisions prohibiting intimidation or retaliation that are currently found in the Privacy Rule but not in the other HIPAA rules. Aside from making conforming changes to § 160.312, discussed at section IV.B.3 below, we propose to leave the substance of the existing provisions of subpart C unchanged. We solicit comment as to whether these provisions should be revised and, if so, in what manner.

1. Application of Subpart C to the Non-Privacy HIPAA Rules

Subpart C is intended to provide a cooperative approach to obtaining compliance, including use of technical assistance and informal means to resolve disputes, and currently provides as follows. Section 160.304 provides that the Secretary will, to the extent practicable, seek the cooperation of covered entities in obtaining compliance and may provide technical assistance to this end. Section 160.306 provides for the investigation of complaints by the Secretary and provides requirements relating to the filing of such complaints. Section 160.308 provides for the conduct of compliance reviews by the Secretary. Section 160.310 requires covered entities to keep and submit such records as the Secretary determines are necessary to determine compliance and cooperate with the Secretary in an investigation or compliance review. A covered entity must provide access during normal business hours to their books and records pertinent to ascertaining compliance; while we think such circumstances are very unlikely ever to arise, a covered entity is also required, where exigent circumstances exist, to permit such access at any time and without notice. This section also provides that the Secretary may disclose protected health information obtained in the course of an investigation or compliance review only if necessary for ascertaining or enforcing compliance with the applicable requirements of the Privacy Rule or if otherwise required by law. Section 160.312 addresses Secretarial action regarding complaints and compliance reviews. It provides that where noncompliance is indicated, the Secretary will attempt to resolve the matter by informal means wherever possible and provides for certain notifications to the covered entity (and the complainant, if the matter arose from a complaint).

At present, subpart C applies only to the Privacy Rule. However, to simplify, clarify, and reduce the burden of the compliance process for covered entities, the proposed rule would make this subpart applicable to the other HIPAA rules as well. A uniform regulatory scheme would simplify the compliance and enforcement process in the event that a covered entity violates provisions of more than one HIPAA rule (for example, where violations of both the Privacy Rule and the Security Rule are at issue) and is also consistent with the Secretary's "One HHS" policy.

Accordingly, we propose to amend the following sections of subpart C to make them applicable to all of the HIPAA rules: § 160.300—Applicability; § 160.304—Principles for achieving compliance; § 160.306—Complaints to the Secretary; § 160.308—Compliance reviews; and § 160.310—Responsibilities of covered entities. This would be accomplished by changing the present references in these sections from "subpart E of part 164" to the more inclusive, defined term, "administrative simplification provision" or "administrative simplification provisions," as appropriate.

2. Section 160.302—Definitions

Section 160.302 presently states that the terms used in subpart C that are defined in § 164.501 have the same meaning as defined in that section. The terms that were initially defined in § 164.501 that would continue to be used in this subpart ("individual," "disclose," "protected health information," "use") have subsequently been moved to § 160.103. The term "payment" is used in this subpart, but not as defined in § 164.501. Thus, we propose to delete this text, as it is no longer appropriate.

We propose to move to § 160.302 three definitions that were adopted in the April 17, 2003 interim final rule at § 160.502: "ALJ", "civil money penalty or penalty", and "respondent." These terms are placed at the outset of the provisions that address compliance and enforcement for clarity, since they are used in more than one of the subparts that address compliance and enforcement. We do not discuss these terms, as we do not propose to change them. We discuss below two new terms which we propose to add to § 160.302 and which are likewise used throughout subparts C, D, and E: "administrative simplification provision" and "violation or violate."

a. "Administrative Simplification Provision"

Section 1176(a)(1) provides that, except as provided in section 1176(b), the Secretary shall impose "on any person who violates a *provision of this part* a penalty of not more than $100 for each such violation, except that the total amount imposed on the person for all violations of an *identical requirement or prohibition* during a calendar year may not exceed $25,000." (Emphasis added.) Based on this statutory language, and also taking into account the structures of each of the HIPAA rules, HHS considered a number of different options for defining the term "provision of this part" in section 1176(a)(1) as it applies to the HIPAA rules.

The HIPAA rules generally are comprised of standards, implementation specifications, and requirements and prohibitions. However, the structure and composition of the HIPAA rules with respect to these elements vary. The Privacy Rule is generally comprised of standards that contain implementation specifications and other requirements or prohibitions. The identifier rules (the EIN Rule and the NPI Rule) contain standards and implementation specifications, and all requirements that apply to covered entities are in a standard or an implementation specification. In the Security Rule, most requirements are in standards or their related implementation specifications, but some requirements are freestanding. The Transactions Rule contains requirements and prohibitions, not all of which are contained in standards and implementation specifications, and adopts standards that are also implementation specifications. The provisions of subpart C of part 160 that apply to covered entities are framed as requirements. The HIPAA rules are silent as to which of these elements is a "provision of this part" that may be violated and for which civil money penalties may be assessed.

We propose to define a new term—"administrative simplification provision"—to express the scope and application of the compliance and investigation provisions, as well as the enforcement and penalty provisions. This proposed provision interprets "provision of this part" in section 1176 to refer to any requirement or prohibition established by the statute or any of the HIPAA rules that are adopted under the statute.

In determining how to define a "provision of this part" that could be violated, we considered options in light of our goal of implementing a unified approach with respect to all of the HIPAA rules. Given the variation in structure of the HIPAA rules, we sought an approach which would be flexible enough to apply to all the rules but which would not be too complex. Accordingly, we decided against an approach that would define the "provision of this part" that could be violated as either any "standard," or any "implementation specification," or both. These approaches would not have captured stand-alone requirements or prohibitions—*i.e.*, those requirements and prohibitions in the HIPAA rules that fall outside of the structure of a standard or implementation specification. For example, in the Transactions Rule, the prohibition on a health plan delaying or rejecting a transaction that is a standard transaction (§ 162.925(a)(2)), which implements the statutory prohibition at section 1175(a)(1)(B), is a stand-alone requirement. It would be anomalous to create an enforcement scheme that, in effect, insulated this provision from enforcement. These options would also have resulted in complexity and inconsistency in the application of the Enforcement Rule to each of the HIPAA rules, given their varied structures with respect to standards and implementation specifications.

Instead, we propose to define a "provision of this part" that can be violated as any "requirement or prohibition" found within the rules, regardless of whether the requirement or prohibition falls within a standard, implementation specification, or elsewhere in the rules. This definition flows directly from the statutory language in section 1176(a)(1) of the Act, which refers to "violations of an identical requirement or prohibition." It is also a definition that can be applied consistently across the HIPAA rules, regardless of how they are structured or titled. Accordingly, we propose to define the term "administrative simplification provision" in § 160.302 to mean any requirement or prohibition established by the HIPAA provisions or HIPAA rules: "* * * any requirement or prohibition established by: (1) 42 U.S.C. 1320d–1320d4, 1320d–7, and 1320d–8; (2) Section 264 of Pub. L. 104–191; or (3) This subchapter." This definition would include those provisions in subpart C which apply to covered entities.

b. "Violation" or "Violate"

Building on this proposed definition of "administrative simplification provision," we propose to define a "violation" (or "to violate") to mean a "failure to comply with an administrative simplification provision." Like the proposed definition of "administrative simplification provision," the proposed definition of "violation" flows directly from the statutory language: subsections (b)(3) and (b)(4) of section 1176 equate a "violation" with a "failure to comply." The proposed definition is likewise one that can be applied consistently across the HIPAA rules. This proposed definition would make no distinction between commissions and omissions—that is, a violation occurs when a covered entity fails to take an action required by a HIPAA rule, as well as when a covered entity takes an action prohibited by a HIPAA rule.

3. Section 160.312—Secretarial Action Regarding Complaints and Compliance Reviews

Section 160.312(a) currently provides that the Secretary will inform the covered entity and the complainant, if applicable, if an investigation or compliance review indicates a failure to comply and attempt to resolve the matter by informal means whenever possible. If the Secretary determines that the matter cannot be resolved by informal means, the Secretary may issue findings to the covered entity and, if applicable, the complainant.

Like the current § 160.312(a), proposed § 160.312(a)(1) provides that, where noncompliance is indicated, the Secretary would seek to reach a resolution of the matter satisfactory to the Secretary by informal means. Informal means would include demonstrated compliance, or a completed corrective action plan or other agreement. Under this provision, entering into a corrective action plan or other agreement would not, in and of itself, resolve the noncompliance; rather, the full performance by the covered entity of its obligations under the corrective action plan or other agreement would be necessary to resolve the noncompliance.

Proposed §§ 160.312(a)(2) and (3) address what notifications will be provided by the Secretary where noncompliance is indicated, based on an investigation or compliance review. Notification under this paragraph would not be required where the only contacts made were with the complainant, to determine whether the complaint warrants investigation. Paragraph (a)(2) provides for written notice to the covered entity and, if the matter arose from a complaint, the complainant, where the matter is resolved by informal means. If the matter is not resolved by informal means, paragraph (a)(3)(i) requires the Secretary to so inform the covered entity and provide the covered

entity an opportunity to submit written evidence of any mitigating factors or affirmative defenses for consideration under §§ 160.408 and 160.410; the covered entity must submit any such evidence to the Secretary within 30 days of receipt of such notification. Paragraph (a)(3)(ii) would revise the current § 160.312(a)(2) to avoid confusion with the notice of proposed determination process provided for at proposed § 160.420. Where a matter is not resolved by informal means and the Secretary finds that imposition of a civil money penalty is warranted, the formal finding would be contained in the notice of proposed determination issued under proposed § 160.420. See also the discussion at section V.J below.

Paragraph (b) of the current § 160.312 provides that if the Secretary finds after an investigation or compliance review that no further action is warranted, the Secretary will so inform the covered entity and, if the matter arose from a complaint, the complainant. This section does not apply where no investigation or compliance review has been initiated, such as where a complaint has been dismissed due to lack of jurisdiction. Paragraph (b) would remain largely unchanged.

4. Section 160.314—Investigational Subpoenas and Inquiries

The text of § 160.314 was adopted by the April 17, 2003 interim final rule as § 160.504. We propose to move this section to subpart C, consistent with our overall approach of organizing subparts C, D, and E to reflect the stages of the enforcement process. Since the investigational subpoenas and inquiries occur prior to the imposition of a civil money penalty, we propose to move the rules relating to them to subpart C, where other rules related to this stage of the process are located. This organizational arrangement should facilitate use of the Rule by covered entities and others.

One substantive change is proposed to paragraph (a). We would add to the introductory language of this paragraph a sentence which states that, for the purposes of paragraph (a), a person other than a natural person is termed an "entity." This permits us to avoid creating a definition of the term "entity" that would have a broader application and might be incorrect in other contexts, but preserves the utility of the definition in this specific context. The term "entity" would no longer be a defined term for the rest of the Rule, unlike the approach taken in § 160.502 of the April 17, 2003 interim final rule.

Proposed paragraphs (b)(1), (2) and (8) are unchanged from the current paragraphs (b)(1)—(3) of § 160.504. We propose to add new paragraphs (3) through (7) and (9) to § 160.314(b) and also to add a new paragraph (c). Together, these additions would clarify the manner in which investigational inquiries will be conducted, and how testimony given, and evidence obtained, during such an investigation may be used.

The new paragraphs are based upon similar provisions in 42 CFR 1006.4. Proposed §§ 160.314(b)(3)—(7) describe the rights of the Secretary and the witness in the inquiry process: representatives of the Secretary are entitled to attend and ask questions, a witness may clarify his or her answers on the record following questioning by the Secretary, the witness must place any claim of privilege on the record, what requirements apply to the assertion of objections, and under what circumstances and how the Secretary may seek enforcement of the subpoena. Proposed § 160.314(b)(8) (currently § 160.504(b)(3) and which, as noted above, has not changed) recognizes that investigational inquiries are non-public proceedings. Accordingly, a witness's right to retain a copy of the transcript of his or her testimony may be limited for good cause (5 U.S.C. 555(c)). Proposed § 160.314(b)(9) explains what would happen in such a case: The witness would nonetheless be entitled to inspect the transcript and to propose any corrections. If the witness is provided a copy of the transcript, paragraph (b)(9)(i) would provide for the opportunity to review the transcript and offer proposed corrections. This provision is consistent with the practice under Rule 30(e) of the Federal Rules of Civil Procedure (F.R.C.P.). Paragraph (b)(9)(ii) would allow the Secretary to attach corrections to the transcript of a witness's testimonial interview if the record transcribing the interview is incorrect. Consistent with the practice under the OIG regulations, this provision would not permit the Secretary to propose substantive changes to the witness's testimony.

Proposed § 160.314(c) provides that, consistent with § 160.310, testimony and other evidence obtained in an investigational inquiry may be used by HHS in any of its activities and may be used or offered into evidence in any administrative or judicial proceeding. This provision follows § 1006.4(h) of the OIG regulations, but is tailored to be consistent with the existing § 160.310(c)(3). Under this provision, evidence obtained in an investigational inquiry could be used in any of HHS's activities and could be used or offered into evidence in any administrative or judicial proceeding, except to the extent it consists of protected health information. Evidence that is protected health information may be disclosed only "if necessary for ascertaining or enforcing compliance with the applicable administrative simplification provisions, or if otherwise required by law," as provided at § 160.310(c).

5. Section 160.316—Refraining From Intimidation or Retaliation

Proposed § 160.316 would prohibit covered entities from threatening, intimidating, coercing, discriminating against, or taking any other retaliatory action against individuals or other persons (including other covered entities) who complain to HHS or otherwise assist or cooperate in the enforcement processes created by this rule. This provision is taken from § 164.530(g)(2) of the Privacy Rule, with only minor changes designed to adapt the provision to the new subparts which this rule would add. The intent of this addition to subpart C is to make these non-retaliation provisions applicable to all of the HIPAA rules, not just the Privacy Rule. The placement of these provisions in subpart C accomplishes this.

Section 164.530(g) would retain existing provisions which provide that a covered entity may not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against an individual for exercising his or her rights or for participating in any process established by the Privacy Rule, including filing a complaint with a covered entity. A conforming change to § 164.530(g) of the Privacy Rule is proposed, to cross-reference proposed § 160.316.

As with other provisions of subpart C that impose requirements or prohibitions on covered entities, the provisions of § 160.316 are "administrative simplification provisions." Thus, a violation of a requirement or prohibition of this section would be a basis for imposition of a civil money penalty.

C. Subpart D—Imposition of Civil Money Penalties

Proposed subpart D addresses the issuance of a notice of proposed determination to impose a civil money penalty and other events that would be relevant thereafter, whether or not a hearing follows the issuance of the notice of proposed determination. This subpart also would contain provisions on identifying violations, determining the number of violations, calculating civil money penalties for such violations, and establishing affirmative

defenses to the imposition of civil money penalties. It would, thus, implement the provisions of section 1176, as well as related provisions of section 1128A. As noted above, many provisions of the Rule are based in large part upon the OIG regulations, but, as with subpart E, we propose to adapt the OIG language to reflect issues presented by, or the authority underlying, the HIPAA rules.

1. Section 160.402—Basis for a Civil Money Penalty

Proposed § 160.402(a) would require the Secretary to impose a civil money penalty on any covered entity which the Secretary determines has violated an administrative simplification provision, unless the covered entity establishes that an affirmative defense, as provided for by § 160.410, exists. See the discussion at section IV.C.3 below. This provision is based on the language in section 1176(a) that "* * * the Secretary shall impose on any person who violates a provision of this part a penalty * * *". This proposed provision interprets "provision of this part" in section 1176(a)(1) to refer to any requirement or prohibition established by the statute or any of the HIPAA rules that are adopted under the statute. See the discussion of the definitions of "administrative simplification provision" and "violation" in section IV.B.2 above.

The use of the term "shall impose" in section 1176(a) is more than a mere conveyance of authority to the Secretary to impose a penalty for a violation of an administrative simplification provision. If the Secretary finds in a notice of proposed determination that a covered entity has violated an administrative simplification provision, he is required to impose a penalty unless a basis for not imposing the penalty under section 1176 exists. Section 1176(a) does not limit the Secretary's discretion to encourage a covered entity to come into compliance voluntarily, to close a case without issuing a notice of proposed determination if voluntary compliance is obtained, or to set the amount of the penalty below the statutory caps. Nor does section 1176(a) limit the Secretary's discretion to settle any matter, including cases in which a civil money penalty has been proposed or which are in hearing. The first sentence of section 1128A(f) of the Act, which is incorporated by reference in section 1176, states, in part, "Civil money penalties * * * imposed under this section may be compromised by the Secretary * * *". Therefore, the Secretary may settle a case even after a civil money penalty has been proposed.

a. Section 160.402(b)—Violations by More than One Covered Entity

The proposed rule includes a provision, at § 160.402(b), that addresses what would happen if multiple covered entities were responsible for violating a HIPAA provision. Proposed § 160.402(b)(1) provides that, except with respect to covered entities that are members of an affiliated covered entity, if the Secretary determines that more than one covered entity was responsible for violating an administrative simplification provision, the Secretary will impose a civil money penalty against each such covered entity. Proposed § 160.402(b)(2) provides that each covered entity that is a member of an affiliated covered entity would be jointly and severally liable for a civil money penalty for a violation by the affiliated covered entity.

Proposed § 160.402(b)(1) is based on a similar provision in the OIG regulations at 42 CFR 1003.102(d). It differs from the OIG provision in that this proposed provision requires the imposition of a penalty on each covered entity that the Secretary determines has violated an administrative simplification provision, rather than giving the Secretary discretion to determine whether to impose a civil money penalty on one or all. This is based on the statutory language in section 1176(a) which states that the Secretary "* * * shall impose a penalty * * *" when there is a determination that an entity has violated a HIPAA provision. As discussed above, the language in the statute mandates the imposition of a penalty in appropriate situations where there has been a finding of a violation. However, nothing in this section would limit the Secretary's ability to exercise enforcement discretion to investigate only one covered entity, to encourage one or more covered entities to come into compliance, to close a case against one or more covered entities without issuing a notice of proposed determination if voluntary compliance is obtained, or to set the amount of the penalty differently for each covered entity when multiple covered entities are responsible for violating an administrative simplification provision, to the extent section 1176 and this Rule would allow.

With the exception of affiliated covered entity arrangements, this provision may apply to any two covered entities, including, but not limited to, those that are part of a joint arrangement, such as an organized health care arrangement. The determination of whether or not an entity is responsible for the violation would be based on the facts. Simply being part of a joint arrangement would not, in and of itself, make a covered entity responsible for a violation by another entity in the joint arrangement, although it may be a factor considered in the analysis.

Proposed § 160.402(b)(2) provides that each covered entity that is a member of an affiliated covered entity would be jointly and severally liable for a civil money penalty for a violation by the affiliated covered entity. An affiliated covered entity is a group of covered entities under common ownership or control, which have elected to be treated as if they were one covered entity for purposes of compliance with the Security and Privacy Rules. See 45 CFR 164.105(b). Electing to become an affiliated covered entity may reduce the administrative burden and create certain efficiencies with respect to compliance. There is no requirement to form an affiliated covered entity; the entities that choose to form an affiliated covered entity must designate themselves as such and must document the designation in writing.

The December 2000 Privacy Rule stated as follows with respect to the liability of the component covered entities of an affiliated covered entity: "The covered entities that together make up the affiliated covered entity are separately subject to liability under this rule." 65 FR 82503. We clarify this language in the proposed rule. Under proposed § 160.402(b)(2), each covered entity that is a member of an affiliated covered entity would be jointly and severally liable for a civil money penalty for a violation by the affiliated covered entity. This means that we could enforce a violation of the Security Rule or Privacy Rule by an affiliated covered entity against any covered entity member of the affiliated covered entity separately or against all of the covered entity members of the affiliated covered entity jointly. The reason for joint and several liability is that the affiliated covered entity is treated, under the Security and Privacy Rules, as one entity. Thus, it may be impossible to know or prove which covered entity within an affiliated covered entity is responsible for a violation, particularly in the case of a failure to act. For example, if an affiliated covered entity fails to appoint a privacy official as required by § 164.530(a)(1)(i), it may be impossible to identify one entity as responsible for the omission.

Proposed § 160.402(b)(2) differs from proposed § 160.402(b)(1) in two ways. First, no covered entity in an affiliated covered entity could avoid a civil money penalty by demonstrating that it

was not responsible for the act or omission constituting the violation or that another covered entity member of the affiliated covered entity was the culpable entity. Second, the maximum penalty that could be imposed on all members of the affiliated covered entity for identical violations in a calendar year would be the maximum allowed for one covered entity—$25,000. By contrast, under § 160.402(b)(1), if more than one covered entity were responsible for a violation of an administrative simplification provision, each covered entity would be treated as separately violating the provision, and each could be assessed the maximum penalty of $25,000 in a calendar year for sufficient identical violations.

b. Section 160.402(c)—Violations Attributed to a Covered Entity

Under section 1176(a)(2), "the provisions of section 1128A * * * shall apply to the imposition of a civil money penalty under [HIPAA] in the same manner as such provisions apply to the imposition of a penalty under such section 1128A." Section 1128A(l) of the Act addresses the liability of a covered entity for violations committed by an agent. It states that "a principal is liable for penalties * * * under this section for the actions of the principal's agents acting within the scope of the agency." This is similar to the traditional rule of agency in which principals are vicariously liable for the acts of their agents acting within the scope of their authority. See *Meyer* v. *Holley*, 537 U.S. 280 (2003). The preamble to the December 2000 Privacy Rule discussed the applicability of section 1128A(*l*) as follows:

> we note that section 1128A(l) of the Social Security Act, which applies to the imposition of civil monetary penalties under HIPAA, provides that a principal is liable for penalties for the actions of its agent acting within the scope of the agency. Therefore, a covered entity will generally be responsible for the actions of its employees such as where the employee discloses protected health information in violation of the regulation.

65 FR 82603.

We clarify in proposed § 160.402(c) that, in the context of the HIPAA rules, this means that a covered entity generally can be held liable for a civil money penalty based on the actions of any agent, including an employee or other workforce member, acting within the scope of the agency or employment. A business associate will often be an agent of a covered entity, but, as discussed below, a covered entity that complies with the HIPAA rules governing business associates will not be held liable for a business associate's actions that violate the rules.

i. Federal Common Law of Agency

A principal's liability for the actions of its agents is generally governed by State law. However, the Supreme Court has provided that the federal common law of agency may be applied where there is a strong governmental interest in nationwide uniformity and a predictable standard and when the federal rule in question is interpreting a federal statute. *Burlington Indus.* v. *Ellerth*, 524 U.S. 742 (1998). Here, there is a strong interest in nationwide uniformity. The fundamental goal of the HIPAA provisions is to achieve standardization of certain health care transactions, to standardize certain security practices, and to set a federal floor of privacy practices, in order to increase the efficiency and effectiveness of the health care system. Therefore, it is essential for HHS to apply one consistent body of law regardless of where an action is brought. The same considerations support a strong federal interest in the predictable operation of the standards, to ensure that the various covered entities operating thereunder can do so consistently so as to facilitate the legitimate exchange of information. Finally, the HIPAA rules interpret a federal statute, the HIPAA provisions. Thus, the tests for application of the federal common law of agency are met here. Accordingly, proposed § 160.402(c) contains specific language to make clear that the federal law of agency applies.

Where the federal common law of agency applies, the courts often look to the *Restatement (Second) of Agency* (1958) (Restatement) as a basis for explaining the common law's application. While the determination of whether an agent is acting within the scope of its authority must be decided on a case-by-case basis, the Restatement provides guidelines for this determination. Section 229 of the Restatement provides:

> (1) To be within the scope of the employment, conduct must be of the same general nature as that authorized, or incidental to the conduct authorized.
>
> (2) In determining whether or not the conduct, although not authorized, is nevertheless so similar to or incidental to the conduct authorized as to be within the scope of employment, the following matters of fact are to be considered;
>
> (a) Whether or not the act is one commonly done by such servants;
>
> (b) The time, place and purpose of the act;
>
> (c) The previous relations between the master and the servant;
>
> (d) The extent to which the business of the master is apportioned between different servants;
>
> (e) Whether or not the act is outside the enterprise of the master or, if within the enterprise, has not been entrusted to any servant;
>
> (f) Whether or not the master has reason to expect that such an act will be done;
>
> (g) The similarity in quality of the act done to the act authorized;
>
> (h) Whether or not the instrumentality by which the harm is done has been furnished by the master to the servant;
>
> (i) The extent of departure from the normal method of accomplishing an authorized result; and
>
> (j) Whether or not the act is seriously criminal.

In some cases, under federal agency law, a principal may be liable for an agent's acts even if the agent acts outside the scope of its authority. Rest. 2nd Agency § 219(2). However, proposed § 160.402(c) would follow section 1128A(l), which limits liability for the actions of an agent to those actions that are within the scope of the agency.

ii. Agents

Various categories of persons may be agents of a covered entity. These are workforce members, business associates, and others. "Workforce" is defined as "employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity." 45 CFR 160.103. Because of the "direct control" language of the rule, we believe that all workforce members, including those who are not employees, are agents of a covered entity. This conclusion is consistent with the requirements at §§ 164.308(a)(5) and 164.530(b) for a covered entity to train all workforce members and with the requirement at § 164.514(d)(2) for a covered entity to adopt minimum necessary policies and procedures for use of protected health information by all workforce members. The workforce may include an independent contractor; as explained in the preamble to the Privacy Rule, independent contractors "may or may not be workforce members." 65 FR 82480. Under the proposed rule, a covered entity could be liable for a civil money penalty for a violation by any workforce member, whether an employee, contractor, volunteer, trainee, etc., acting within the scope of his or her employment or agency. We specifically request comment on whether there are categories of workforce members whom it would be

inappropriate to treat as agents under § 160.402(c).

The definition of the term "business associate," set forth at § 160.103, includes any agents of a covered entity, other than members of its workforce, that perform on its behalf any function or activity regulated by the HIPAA rules or perform certain specified services for the covered entity that involve the use or disclosure of protected health information. Under the Security and Privacy Rules, the covered entity may disclose protected health information to the business associate, and allow the business associate to create or receive protected health information on its behalf, if the covered entity complies with relevant requirements to obtain satisfactory assurances that the business associate will appropriately safeguard the information. In particular, §§ 164.308(b) and 164.502(e) of the HIPAA rules require covered entities using the services of business associates to obtain satisfactory assurances, by a written contract or other arrangement, that the business associate will safeguard the protected health information. If the covered entity complies with these requirements, then it can protect itself from what could otherwise be liability for actions of its agent business associates that violate the HIPAA rules. As specified in §§ 164.314(a)(1)(ii) and 164.504(e)(1)(ii), even if a covered entity knows of a pattern of activity or practice by the business associate that constitutes a material breach or violation of the business associate's obligations under the contract, the covered entity will not be considered to be in violation of the regulations if it takes certain actions. If the covered entity fails to take these steps, however, it is outside the safe harbor provided by the Security and Privacy Rules and may be subject to penalty.

Some business associates are also covered entities. Health care clearinghouses are one example of this situation, but a covered health care provider or a health plan may also act as a business associate of another covered entity. The business associate provisions of the Security and Privacy Rules provide that where one covered entity acts as the business associate of another covered entity and violates the satisfactory assurances it provided as a business associate, it is separately liable for violation of the business associate provisions of the Security and Privacy Rules. See §§ 164.308(b)(3) and 164.502(e)(1)(iii). If the act or omission that resulted in a breach of the business associate contract by the covered entity business associate would also constitute a violation of an underlying provision of the Security or Privacy Rule by that covered entity business associate, it would be in violation of the underlying provision as well.

To make this proposed rule consistent with the business associate provisions of the HIPAA rules, the proposed rule would carve out from the provision for vicarious liability those actions by a business associate that would be shielded by the business associate provisions of the Security and Privacy Rules. Thus, a covered entity that is in compliance with the business associate provisions of the Security and Privacy Rules would not be liable for a violation of those rules by the business associate, even though the business associate is the covered entity's agent and was acting within the scope of its agency when it violated the rule. We recognize that in many cases, a business associate contract may establish an agency relationship. However, there may also be situations in which the business associate may not be an agent. For example, the Privacy Rule permits a covered entity to rely, if such reliance is reasonable, on the request of a professional who is a business associate as the minimum necessary. This suggests that a business associate may not always be sufficiently under the direct control of the covered entity to qualify as an agent.

HHS has issued guidance stating that a covered entity is not required to monitor the activities of its business associate:

> The HIPAA Privacy Rule requires covered entities to enter into written contracts or other arrangements with business associates which protect the privacy of protected health information; but covered entities are not required to monitor or oversee the means by which their business associate carry out privacy safeguards or the extent to which the business associate abides by the privacy requirements of the contract. Nor is the covered entity responsible or liable for the actions of its business associates. However, if a covered entity finds out about a material breach or violation of the contract by the business associate, it must take reasonable steps to cure the breach or end the violation, and, if unsuccessful, terminate the contract with the business associate. If termination is not feasible (*e.g.*, where there are no other viable business alternatives for the covered entity), the covered entity must report the problem to the Department of Health and Human Services Office for Civil Rights.

FAQ Answer ID # 236 at *www.hhs.gov/ocr/hipaa*, entitled "Is a covered entity liable for, or required to monitor, the actions of its business associates?" (Click on the link for Answers to Your Frequently Asked Questions, and then select and search on the subcategory for Business Associates.) Proposed § 160.402(c) is consistent with this guidance. If the covered entity complies with the applicable business associate provisions, the covered entity will not be held liable for the actions of its business associate. Concomitantly, if the covered entity fails to comply with those provisions, such as by not entering into the requisite arrangements or contracts, or by not taking reasonable steps to cure the breach or end the violation, it could be held liable under proposed § 160.402(c) for the actions of its business associate agent.

2. Sections 160.404, 160.406, 160.408—Calculation of Penalties

a. Section 160.404—Amount of a Civil Money Penalty

Section 1176(a)(1) establishes maximum penalty amounts for violations. The statute provides a maximum penalty of "not more than $100" for each violation (*see* section IV.B.2 above for the discussion of "violation"), and the penalty imposed on a covered entity "for all violations of an identical requirement or prohibition during a calendar year may not exceed $25,000."

The statute establishes only maximum penalty amounts, so the Secretary has the discretion to impose penalties that are less than the statutory maximum. This proposed regulation would not establish minimum penalties. Under proposed § 160.404(a), the penalty amount would be determined through the method provided for in proposed § 160.406, using the factors set forth in proposed § 160.408, and subject to the statutory caps reflected in proposed § 160.404(b) and any reduction under proposed § 160.412.

Proposed § 160.404 would follow the language of the statute and establish the maximum penalties for a violation and for identical violations during a calendar year, as set forth in the statute—up to $100 per violation and up to $25,000 for identical violations in a calendar year. Proposed § 160.404(b) makes clear that the term "calendar year" means the period from January 1 through the following December 31.

An identical violation is a violation of the same requirement or prohibition in one of the HIPAA rules or in the statute. It is based on the provision of the regulation or statute that has been violated and not on whether the violations relate to the same individual's protected health information, the same transaction, or are with the same trading partner. For example, assume that a health plan includes in its trading partner

agreements a provision that requires the submission of a data element that is not included in the implementation guides for transactions covered by the agreement and requires 7,500 different trading partners to sign such agreements in a calendar year. Inclusion of the provision violates § 162.915(b), which prohibits covered entities from entering into a trading partner agreement which adds any data element or segments to the maximum defined data set. If the penalty is assessed at $100/violation, the total penalty for all such violations would amount to $750,000 ($100 x 7500). However, the maximum penalty that may be assessed for the calendar year for those violations is $25,000, because they all relate to the same prohibition. This is the case even though the violations involve 7,500 different trading partners.

b. Section 160.404(b)(2)—Violations of Repeated or Overlapping Provisions in a HIPAA Rule

Some requirements or prohibitions in the provisions of a HIPAA rule may be repeated in, or may overlap, other provisions in the same rule. We propose § 160.404(b)(2) to make clear that a violation of a more specific requirement or prohibition, such as one contained within an implementation specification, is not also counted, for purposes of determining civil money penalties, as an automatic violation of a broader requirement or prohibition that entirely encompasses the more specific one, in that such duplicative requirements generally reflect considerations of drafting and not of substance. Under this proposal, the Secretary could impose a civil money penalty for violation of either the general or the specific requirement, but not both.

For example, if, after the applicable compliance date for the Security Rule, a covered entity violates the requirement to implement policies and procedures for facility access controls at § 164.310(a)(1), the covered entity will also have violated the Security Rule's provision at § 164.316(a), which is the general standard requiring the implementation of policies and procedures. Similarly, if a covered entity fails to implement minimum necessary policies and procedures for uses of protected health information as required by the implementation specification at § 164.514(d)(2) of the Privacy Rule, the covered entity also has violated the minimum necessary standard at § 164.514(d)(1), which requires compliance with the implementation specification. In these two examples, the proposed provision would treat the act or omission as a violation of only one of the identified administrative simplification provisions, not both, for purposes of imposing civil money penalties.

Proposed § 160.404(b)(2) would not apply where a covered entity's action results in violations of multiple, differing requirements or prohibitions within the same HIPAA rule, however. The following is an example: due to inadequate safeguards, a covered entity uses protected health information in a manner prohibited by the Privacy Rule. Civil money penalties may be imposed on the covered entity for its violation of the use provision in § 164.502(a), as well as for its violation of the safeguards requirement in § 164.530(c).

Proposed § 160.404(b)(2) would also not apply where a covered entity's action may result in a violation of more than one HIPAA rule: for example, failure to adopt administrative safeguards may violate both the Privacy Rule (§ 164.530(c)) and the Security Rule (§ 164.308). In such a case, more than one regulatory standard has been violated, and the Secretary may assess a penalty under both HIPAA rules. The proposed provision is limited to duplicate provisions in the same subpart, or HIPAA rule, and would not apply to limit civil money penalties for violations of more than one HIPAA rule.

Proposed § 160.404(b)(2) would also not preclude assessing civil money penalties for multiple violations of an identical requirement or prohibition.

c. Section 160.406—Number of Violations

As stated above, section 1176(a) provides a maximum penalty for identical violations by a covered entity in a calendar year. However, in many cases, it may not be clear exactly how to quantify the number of violations. Furthermore, the types of requirements and prohibitions vary among and within the HIPAA rules—for example, requirements to adopt policies and procedures versus requirements to conduct transactions in standard format.

There are various possible measures, or variables, that can be used to count violations, and different laws use one or multiple approaches. See, *e.g.*, 42 CFR part 488, subpart F. In the context of the HIPAA rules, there are three basic variables that seem reasonable to use in calculating the number of violations that have occurred—(1) the number of impermissible *actions* or failures to take required actions, (2) the number of *persons* involved, and (3) the amount of *time* during which the violation occurred.

i. Variables

Actions—The number of violations could be based on the number of times a covered entity takes a prohibited action (commission) or the number of times a covered entity fails to take a required action (omission). The "action" variable seems likely to be a workable variable for determining the number of violations where the acts in question are discrete and/or repetitive, such as could be the case with the Transactions Rule. However, the "action" variable may have a very different result in other circumstances. For example, if a covered entity fails to implement a required policy, there is only one failure to act, and, therefore, using this variable, the number of violations of the requirement would be one, even though such a failure to act might have extended over a long period of time, be intentional, and have serious consequences for other entities or individuals. Thus, the "action" variable might not be appropriate in many circumstances.

Persons—The number of violations could be measured in terms of the number of persons involved or affected. Persons may be natural persons or entities, and violations could be counted in terms of one of four categories of persons.

- Individuals who are the subject of protected health information—for example, the number of individuals who did not receive access to their records.
- Employees for whom the covered entity has an obligation—for example, the number of employees who improperly took one or more impermissible actions, such as improperly using protected health information.
- Persons who receive information in violation of the rules—for example, the number of employees who have access to protected health information but who should not have such access, either in violation of the covered entity's minimum necessary policies or in violation of its access control security procedures.
- Other persons affected by the violation—for example, the number of providers affected by an impermissible health plan requirement that providers use codes not permitted under subpart J of the Transactions Rule.

Using the "person" variable to determine the number of violations of a HIPAA rule may or may not be an appropriate approach, depending on the purpose of the regulatory provision. For example, counting by the "person" variable may not be appropriate for

purposes of counting violations of most of the Transactions Rule requirements.

Time—When violations are continuous, they could be calculated in terms of a unit of time, such as calendar days. For example, inclusion of a term in a trading partner agreement that is not permitted by § 162.915 would be one action, if counted as an action, but, if counted by time, the number of violations would depend on how long the impermissible agreement was in effect and what unit of time was applied to count the number of violations. However, using a time variable makes less sense for violations that are distinct and repetitive, such as many Transactions Rule violations would be. For example, if a covered entity conducted 3000 transactions that were not in standard form over a two-day period and another covered entity conducted two transactions that were not in standard form over a two-day period, each set of facts would result in two violations under a "per day" approach.

ii. Determining the Number of Violations

Proposed § 160.406 would establish the general rule that the Secretary will determine the number of violations of an identical requirement or prohibition by a covered entity by applying any of the variables of action, person, or time, as follows: (1) The number of times the covered entity failed to engage in required conduct or engaged in a prohibited act; (2) the number of persons involved in, or affected by, the violation; or (3) the duration of the violation, counted in days (because many of the HIPAA requirements are in terms of days, this seems to be the most appropriate unit of time to use). Paragraph (a) of this section would require the Secretary to determine the appropriate variable or variables for counting the number of violations based on the specific facts and circumstances related to the violation, and take into consideration the underlying purpose of the particular HIPAA rule that is violated. More than one variable could be used to determine the number of violations (for example, the number of people affected times the time (number of days) over which the violation occurred). Because of the range of circumstances that can be presented in determining the number of violations and the very different nature of the HIPAA rules that may be implicated by those violations, the Secretary would have discretion in determining which variable or variables were appropriate for determining the number of violations rather than being required to use a rigid formula, which could produce arbitrary results. Under this proposal, the policy for determining which variable(s) to use for which type of violation would be developed in the context of specific cases rather than established by regulation. Subsequent cases would be decided consistently with prior similar cases. This option would defer more specific decisions regarding the appropriate variable(s) for counting penalties to such time as a case raising the HIPAA provision occurs.

Several approaches were considered in deciding how to determine the number of violations:

- Use one variable for all of the HIPAA rules. While this approach has greater consistency, the variation among the rules in terms of their types of requirements and prohibitions makes it difficult to identify one variable that would work equally well in each rule.
- Use one variable or approach for each individual HIPAA rule. This approach would also have greater consistency and certainty. However, it would not address the variations within HIPAA rules and could be confusing when a covered entity violated more than one rule.
- Categorize requirements and prohibitions and assign variables to each. This approach would increase certainty and consistency across all of the HIPAA rules but would likely result in a complex scheme that might operate unfairly.

After weighing the advantages and disadvantages of each approach, it was determined that it would be preferable to determine the appropriate variable(s) for particular types of violations based on the context of a specific case. We welcome comments on this approach, the options that were considered, and other potential options for determining the number of violations.

d. Section 160.408—Factors Considered in Determining the Amount of a Civil Money Penalty

Section 1176(a)(2) states that, with some exceptions, the provisions of section 1128A of the Act shall apply to the imposition of a civil money penalty under section 1176 "in the same manner as" such provisions apply to the imposition of a civil money penalty under section 1128A. Section 1128A(d) requires that—

> in determining the amount of * * * any penalty, * * * the Secretary shall take into account—
>
> (1) The nature of the claims and the circumstances under which they were presented,
>
> (2) The degree of culpability, history of prior offenses and financial condition of the person presenting the claims, and
>
> (3) Such other matters as justice may require.

This language establishes factors to be considered in determining the ultimate amount of a civil money penalty. Because section 1176 requires that civil money penalties be imposed in the same manner as civil money penalties are imposed under section 1128A, such factors should be applied to determining the amount of a civil money penalty for HIPAA violations. This approach is consistent with the approach taken in other regulations that cross-reference section 1128A, which rely on these factors for purposes of determining civil money penalty amounts. See, *e.g.*, 42 CFR 488.438.

The factors listed in section 1128A(d) were drafted to apply to violations involving claims for payment under federally funded health programs. Because HIPAA violations will usually not be about specific claims, HHS proposes to tailor the section 1128A(d) factors to the HIPAA rules and break them into their component elements for ease of understanding and application, as follows: (1) The nature of the violation; (2) the circumstances under which the violation occurred; (3) degree of culpability; (4) history of prior offenses; (5) financial condition of the covered entity; and (6) such other matters as justice may require.

Many regulations that implement section 1128A, such as the OIG regulations, further particularize the statutory factors by providing discrete criteria. Consistent with these other regulations, and in order to provide more guidance to covered entities as to the factors that would be used in calculating civil money penalties for violations of the HIPAA rules, we propose a more specific list of circumstances that would be considered in calculating penalty amounts. Therefore, proposed § 160.408 provides detailed factors, within the categories stated above, to consider in determining the amount of a civil money penalty, as follows:

(1) The nature of the violation, when considered in light of the purposes of the rule violated.

(2) The circumstances under which the violation occurred and the consequences, including the time period during which the violation(s) occurred, whether the violation caused physical harm, whether the violation hindered or facilitated an individual's ability to obtain health care, and whether the violation resulted in financial harm.

(3) The degree of culpability of the covered entity, including whether the violation was intentional, and whether the violation was beyond the direct control of the covered entity.

(4) Any history of prior offenses of the covered entity, including whether the current violation is the same or similar to prior violation(s), whether and to what extent the covered entity has attempted to correct previous violations, how the covered entity has responded to technical assistance from the Secretary provided in the context of a compliance effort, and how the covered entity has responded to prior complaints. This could include any violations that have been brought to the covered entity's attention, including complaints raised by individuals directly to the covered entity, violations of which the covered entity became aware on its own, and violations that have been raised in the context of a complaint to the Secretary.

(5) The financial condition of the covered entity, including whether the covered entity had financial difficulties that affected its ability to comply, whether the imposition of a civil money penalty would jeopardize the ability of the covered entity to continue to provide, or to pay for, health care, and the size of the covered entity.

(6) Such other matters as justice may require.

In many regulations that implement section 1128A, including the OIG regulations, the statutory factors and/or the discrete criteria are designated as either aggravating or mitigating. See, *e.g.*, 42 CFR 1003.106(b)-(d). For example, in some of these regulations, history of prior offenses is listed as an aggravating factor. See, *e.g.*, 42 CFR 1003.106(b)(3). However, because the Enforcement Rule will apply to a number of rules and an enormous number of entities and circumstances, factors may be aggravating or mitigating, depending on the context. For example, the factor "time period during which the violation(s) occurred" could be an aggravating circumstance where the covered entity decided not to comply at all with a HIPAA provision, but be a mitigating circumstance where a covered entity quickly found and corrected repetitive noncompliance. Thus, we do not propose to label any of these factors as aggravating or mitigating. Rather, proposed § 160.408 lists factors that may be considered by the Secretary as aggravating or mitigating in determining the amount of the civil money penalty to impose. The proposed approach would allow the Secretary to choose whether to consider a particular factor and how to consider each factor as appropriate in each situation to avoid unfair or inappropriate results. It also would keep the rule simple and makes possible a list of factors to consider in determining penalties that can work in all cases.

We propose to leave to the Secretary's discretion the decision regarding when aggravating and mitigating factors will be taken into account in determining the amount of the civil money penalty. This approach is consistent with other regulations implementing section 1128A, which do not explain how or at what point in the process these factors apply. See, *e.g.*, 42 CFR 488.438.

3. Section 160.410—Affirmative Defenses to the Imposition of a Civil Money Penalty

Proposed § 160.410 implements section 1176(b)(1)—(3) of the Act, which specify certain limitations with respect to when civil money penalties may be imposed. Paragraphs (1), (2), and (3) of section 1176(b) each state that, if the conditions described in those paragraphs are met, "a penalty may not be imposed under subsection (a)" of section 1176. Under section 1176(b)(1), a civil money penalty may not be imposed with respect to an act that would be punishable by a criminal penalty under section 1177 of the Act. Under section 1176(b)(2), a civil money penalty may not be imposed if it is established to the satisfaction of the Secretary that the person who would be liable for the civil money penalty "did not know, and by exercising reasonable diligence would not have known" that the person violated the provision. Under section 1176(b)(3), a civil money penalty may not be imposed if the failure to comply "was due to reasonable cause and not to willful neglect" and is corrected within a certain period.

Where it is shown that one or more of these grounds exists with respect to a violation for which a civil money penalty is sought, such a showing bars the imposition of a civil money penalty for the violation. The provisions at section 1176(b)(1), (2), and (3), thus, constitute complete defenses to the imposition of a civil money penalty. As such, they meet the definition of an affirmative defense: "A defendant's assertion raising new facts and arguments that, if true, will defeat the plaintiff's or prosecution's claim, even if all allegations in the complaint are true." Black's Law Dictionary (West, 7th ed. 1999).

Accordingly, proposed § 160.410 would characterize the limitations under section 1176(b)(1), (2), and (3) as "affirmative defenses," to make clear that they must be raised in the first instance by the respondent. See the discussion at section IV.D.10 below regarding proposed § 160.534, with respect to the burden of proof. However, characterizing these grounds as affirmative defenses would not prevent the Secretary from concluding, based on information already in his possession, that one of these limitations applied. If the Secretary were to conclude, based on his investigation or on information provided by the covered entity under proposed § 160.312(a)(3)(i), that one or more of these limitations applied with respect to a violation, the Secretary would not pursue the civil money penalty action with respect to the violation. However, proposed § 160.410 assumes the situation where the Secretary, through OCR or CMS, has concluded that none of the statutory limitations at section 1176(b)(1), (2), or (3) applies to a particular case and has, accordingly, issued a notice of proposed determination to impose a civil money penalty. The purpose of § 160.410, therefore, is to describe what the respondent must show in order to establish such a defense in the proceeding that could then follow.

The grounds stated in sections 1176(b)(2) and (b)(3) are grounds about which the covered entity would be knowledgeable and could produce evidence. Treating them as affirmative defenses is consistent with how similar language in other statutes has been implemented. For example, similar language in section 102 of HIPAA has been treated as an affirmative defense: Under the implementing regulations at 45 CFR 150.341(b), the burden of persuasion is on the entity to establish that no responsible entity knew, or, exercising reasonable diligence, would have known of the violation. Examples of a similar assignment of burden in connection with similar statutory language are found elsewhere. See, *e.g.*, 26 CFR 301.6651–1(c), implementing 26 U.S.C. 6651 (a failure to timely file a tax return "is due to reasonable cause and not due to willful neglect * * *"), requires "an affirmative showing of all facts alleged as a reasonable cause * * *" by the taxpayer; 8 CFR 280.5, 280.51, implementing 8 U.S.C. 1323 (remission of penalty for bringing in illegal aliens if the person "could not have ascertained, by the exercise of reasonable diligence, that * * *"), place the burden on the party seeking remission; 11 U.S.C. 110 (penalties for persons who fraudulently prepare bankruptcy petitions except where failure is "due to reasonable cause") has been treated as an affirmative defense, *U.S. Trustee* v. *Womack*, 201 B.R. 511, 518 (E.D. Ark. 1996).

Under section 1176(b)(1), a civil money penalty may not be imposed if the act in question "constitutes an offense punishable under section 1177." While it might appear unlikely that a

covered entity would raise this as an affirmative defense, section 1176(b)(1) parallels sections 1176(b)(2) and (b)(3) in both structure and function. This construction suggests that Congress intended that it be treated in a parallel manner. Proposed § 160.410, accordingly, would do so.

Finally, we recognize that other affirmative defenses might be available in a particular case. In order not to preclude the raising of affirmative defenses that could legitimately be raised, the introductory text of proposed § 160.410 is drafted to permit a respondent to offer affirmative defenses other than those provided in section 1176(b).

a. Section 160.410(b)(1)—Affirmative Defense Based on Violation Being a Criminal Offense

Section 1176(b)(1) provides that the Secretary may not impose a civil money penalty "with respect to an act if the act constitutes an offense punishable under section 1177." Section 1177(a) provides as follows:

> A person who knowingly and in violation of this part—
> (1) Uses or causes to be used a unique health identifier;
> (2) Obtains individually identifiable health information relating to an individual; or
> (3) Discloses individually identifiable health information relating to another person, shall be punished as provided in subsection (b).

Subsection (b) of section 1177, in turn, sets out three levels of penalties. The level of penalty varies depending on the circumstances under which the offense was committed.

The proposed rule simply refers to the statutory provision. As the criminal penalty provision that provides the basis for this defense is administered by the U.S. Department of Justice, we do not propose to elaborate upon it in this regulation.

b. Section 160.410(b)(2)—Affirmative Defense Based on Lack of Knowledge

> Section 1176(b)(2) provides as follows:
> A penalty may not be imposed under subsection (a) with respect to a provision of this part if it is established to the satisfaction of the Secretary that the person liable for the penalty did not know, and by exercising reasonable diligence would not have known, that such person violated the provision.

For a covered entity to establish an affirmative defense under section 1176(b)(2), it must show that it did not have actual or constructive knowledge of the violation. What is required for such a showing raises several issues: (1) What "knowledge" will make the "lack of knowledge" defense no longer available; (2) when is the "knowledge" of an agent imputed to the covered entity; and (3) what constitutes "reasonable diligence."

i. "Knowledge"

The first question is what must the covered entity "know" in order for the defense of section 1176(b)(2) to be no longer available. Specifically, if the covered entity knows of the facts that constitute the violation, but does not know that they constitute a violation, is the defense under section 1176(b)(2) no longer available?

A civil money penalty may not be imposed for a violation "if it is established to the satisfaction of the Secretary that the person liable for the penalty did not know * * * that such person violated the provision." This language on its face suggests that the knowledge involved must be knowledge that a "violation" has occurred, not just knowledge of the facts constituting the violation. Section 1176(b)(3) supports this reading. Under section 1176(b)(3)(A)(i), the cure period—i.e., the period in which the violation must be corrected if the covered entity is to avail itself of the defense under section 1176(b)(3)—begins to run "on the first date the person liable for the penalty knew, or by exercising reasonable diligence would have known, that the failure to comply occurred." The duty to take corrective action under section 1176(b)(3), thus, flows from knowledge that "the failure to comply occurred." We, thus, interpret this knowledge requirement to mean that the covered entity must have knowledge that a violation has occurred, not just knowledge of the facts underlying the violation. We use the statutory language in framing this requirement.

This reading of the statute would not reward ignorance that is careless or deliberate. The requirement of section 1176(b)(2) that the covered entity exercise "reasonable diligence," discussed below, would make a lack of knowledge defense unavailable where a covered entity's ignorance arises from its failure to inform itself about its compliance obligations or to investigate complaints or other information it receives indicating likely noncompliance.

ii. Imputed Knowledge

In order to avail itself of the lack of knowledge defense, a corporate entity must show that (1) its responsible officers or managers did not know about the violation, and (2) even if an employee or other agent had actual knowledge of the violation, why that knowledge should not be imputed to the managers and, thus, to the corporate entity itself. Whether knowledge can be imputed to a covered entity's responsible officers or managers will be determined by principles of agency. We clarify this by providing in proposed § 160.410(b)(2) that such knowledge will be "determined by the federal common law of agency." As noted in the discussion in section IV.C.1.b.i above, we would expect, as a general matter, to follow the principles set forth in the Restatement (Second) of Agency with respect to this issue. Under the general rule at section 272 of the Restatement, an agent's actual or constructive knowledge is imputed to the principal, subject to certain exceptions. *Rest. 2nd of Agency* (1958), comments a and b. Whether any of these exceptions are applicable would depend on the circumstances of each case. We solicit comment on this approach and, in particular, illustrations and explanations of cases where more or less specificity might be helpful.

iii. Reasonable Diligence

The defense under section 1176(b)(2) is available only if the covered entity "by exercising reasonable diligence would not have known ... that the [covered entity] violated the provision." The question this language raises is what action is required in order for a covered entity to be able to show that it has exercised reasonable diligence and that its ignorance of the violation is, hence, excused.

The phrase "reasonable diligence" has applications in many areas of the law. "Reasonable diligence" is typically defined as "1. A fair degree of diligence expected from someone of ordinary prudence under circumstances like those at issue. 2. See *due diligence* (1)." Black's Law Dictionary (West, 7th edition, 1999). "Due diligence" is, in turn, defined as "1. The diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation.—Also termed *reasonable diligence*." *Id.* In the context of section 1176(b)(2), these concepts equate, we believe, to the concept of "constructive knowledge." As usually defined, "constructive knowledge" is the "knowledge that one using reasonable care or diligence should have, and therefore that is attributed by law to a given person." *Id.*

The determination of whether a person acted with reasonable diligence is generally a factual one, since what is reasonable depends on the circumstances. *Martin* v. *OSHRC (Milliken & Co.)*, 947 F.2d 1483 (11th Cir. 1991); *Bell Telephone Laboratories,*

Inc. v. *Hughes Aircraft Co.*, 564 F.2d 654 (3rd Cir. 1977). The courts use a variety of formulations to articulate when a person will be deemed to have known—i.e., to have constructive knowledge—that a particular incident occurred. However, the various formulations have common elements. They identify a "prudent" or "reasonable" person and consider whether that person would, under similar circumstances, have become aware of the information in question. They consider how "available" the information is; for example, was the information in the covered entity's possession (such as in its electronic information system) or not. They consider whether there was "some reason to awaken inquiry and suggest investigation;" for example, had prior experience suggested that there could be problems, which a reasonable person would have investigated.

We considered three options for implementing the provisions at section 1176(b)(2). One approach would be simply to repeat the statutory language; a second approach would be to provide a more detailed statement of criteria for establishing reasonable diligence; and the third approach would be to provide examples of situations that would (or would not) constitute reasonable diligence. We selected the second in order to provide some guidance, but not unduly circumscribe future decisions. Adapting the Black's definition of due diligence to the present context, proposed § 160.410(a) would define "reasonable diligence" to mean "the business care and prudence expected from a person seeking to satisfy a legal requirement under similar circumstances." Factors to be considered in evaluating the applicability of this affirmative defense would include whether the covered entity took reasonable steps to learn of such violations and whether there were indications of possible violations, such as a complaint or other information made known to the entity, that a person seeking to satisfy a legal requirement would have investigated under similar circumstances.

c. Section 160.410(b)(3)—Affirmative Defense Based on Reasonable Cause

Section 1176(b)(3) provides as follows:

(A) *In general.* Except as provided in subparagraph (B), a penalty may not be imposed under subsection (a) if—

(i) The failure to comply was due to reasonable cause and not to willful neglect; and

(ii) The failure to comply is corrected during the 30-day period beginning on the first date the person liable for the penalty knew, or by exercising reasonable diligence would have known, that the failure to comply occurred.

(B) *Extension of period.*

(i) *No penalty.* The period referred to in subparagraph (a)(ii) may be extended as determined appropriate by the Secretary based on the nature and extent of the failure to comply.

These provisions raise several issues: (1) What is reasonable cause; (2) what is willful neglect; and (3) how should the cure period be determined.

i. Reasonable Cause

For the defense under section 1176 (b)(3) to be available, the failure to comply at issue must be "due to reasonable cause and not to willful neglect" (as well as corrected within the cure period). This language has a close analog in the Internal Revenue Code (IRC), which provides for an exemption from penalties for late filing where the late filing "is due to reasonable cause and not due to willful neglect." 26 U.S.C. 6651(a). This IRC language was construed by the United States Supreme Court in *United States* v. *Boyle*, 469 U.S. 241, 245 (1985). The Internal Revenue Service (IRS) had articulated specific factors that would constitute reasonable cause for late filing; in discussing these factors, the Court noted that the underlying principle was whether the circumstances were beyond the taxpayer's control.

HHS has already adopted criteria interpreting paragraph (b)(3) that are not unlike those adopted by the IRS in connection with its late filing penalty statute. In the guidance published on July 24, 2003 (CMS Guidance), the criteria developed to address the October 16, 2003 compliance deadline problems for the Transactions Rule are similar in nature to those developed by the IRS. Like the IRS criteria, they premise the existence of reasonable cause on the existence of circumstances outside of the covered entity's control which make compliance with the Transactions Rule unreasonable.

We considered three options for implementing the reasonable cause language of section 1176(b)(3): repeating the statutory language; providing a more detailed statement of the criteria for establishing reasonable cause; or providing examples of situations that would (or would not) constitute reasonable cause. As with our decision about reasonable diligence, we took the second approach. Proposed § 160.410(a) would define "reasonable cause" as "circumstances that make it unreasonable for the covered entity, despite the exercise of ordinary business care and prudence, to comply with the administrative simplification provision violated." This definition is generally based on the view of the Supreme Court in *Boyle*, but it is tailored to the HIPAA context in which the judgment in question would be made. It describes with more specificity the test for determining whether reasonable cause exists, but does not limit this test by specific examples. Thus, establishing reasonable cause under section 1176(b)(3) would require demonstrating circumstances that would make it unreasonable to expect an entity exercising ordinary business care and prudence to comply with the particular requirement that has been violated. The determination of whether reasonable cause exists is generally, and under this definition would be, a factual one, since what is "reasonable" depends on the circumstances.

ii. Willful Neglect

For the defense under section 1176(b)(3) to be available, the failure of compliance must not be due to "willful neglect." In *Boyle*, discussed above, the Supreme Court defined "willful neglect" as "conscious, intentional failure or reckless indifference" and indicated that this concept includes carelessness or other types of fault. 469 U.S. at 245. Since the definition of the term "willful neglect" is well settled, we propose to adapt this definition of the term in proposed § 160.410(a): "conscious, intentional failure or reckless indifference to the obligation to comply with the administrative simplification provision violated." This definition reflects the concern that underlies the statutory language: where willful neglect caused the "failure to comply" in question, the penalty should not be excused.

The proposed definition is also consistent with the approach already taken by HHS in the CMS Guidance. In the CMS Guidance, HHS stated that, in determining whether noncompliance with the Transactions Rule would be penalized, it would consider the "good faith efforts" of the covered entities deploying contingency measures after October 16, 2003 as they work to come into compliance with the Transactions Rule. The presence of such "good faith" or diligent efforts to comply evidences the absence of willful neglect, because it demonstrates the absence of a "reckless indifference to the obligation to comply with the administrative simplification provision violated."

The issue of whether there was willful neglect would be a factual inquiry separate from the question of whether reasonable cause existed, because section 1176(b)(3) requires both the presence of reasonable cause and the

absence of willful neglect. In the IRC cases discussed above, for example, proving the lack of willful neglect does not establish the existence of reasonable cause. However, a finding concerning one element may obviate the necessity of determining the other element, by ruling out the existence of a condition precedent for the affirmative defense. Thus, where it is found that reasonable cause does not exist, the presence or absence of willful neglect need not be determined; similarly, if it is found that willful neglect exists, the presence or absence of reasonable cause need not be determined.

iii. Determination of the Cure Period

The presence of reasonable cause and absence of willful neglect are not sufficient, in themselves, to establish an affirmative defense under section 1176(b)(3). The covered entity must also correct the violation during the 30-day period beginning when the person knew or should have known that the violation existed. The statute gives the Secretary the right to extend this period to the extent he determines appropriate based on the nature and the extent of the failure to comply. This language presents two issues with respect to the cure period: (1) When does the cure period begin; and (2) what limitations, if any, should be placed on the Secretary's ability to extend the cure period.

Beginning of the Cure Period. Section 1176(b)(3)(A) provides that the cure period begins "on the first date the person liable for the penalty knew, or by exercising reasonable diligence would have known, that the failure to comply occurred." This language is the converse of section 1176(b)(2). These two provisions, accordingly, dictate a sequential analysis. The first question is whether the covered entity knew, or with reasonable diligence would have known, about the violation. If the covered entity was ignorant of the violation (*i.e.*, it did not have actual or constructive knowledge of the violation), then no civil money penalty may be imposed for the period in which such ignorance existed. In such a situation, the covered entity's ignorance of the violation is a complete defense to imposition of the civil money penalty, so it is not necessary to reach the question of whether the grounds for a defense under section 1176(b)(3) are also met. However, as soon as the covered entity knows (or should have known) of the violation, then the cure period under section 1176(b)(3)(A)(ii) begins; simultaneously, the defense of ignorance stops being available to the covered entity. At that point, the question is whether the grounds for the "reasonable cause" defense (the presence of reasonable cause, the absence of willful neglect, and cure) exist.

We do not propose to elaborate on the statutory language with regard to when the cure period begins. The text of proposed § 160.410(b)(3), like the statute, uses the defined term "reasonable diligence" and, thus, builds on the analysis conducted under proposed § 160.410(b)(2).

Extension of the Cure Period. Section 1176(b)(3)(A)(i) provides that the cure period may be extended "as determined appropriate by the Secretary based on the nature and extent of the failure to comply." This statutory language is a broad grant of discretion to the Secretary to determine what is "appropriate," requiring only that the Secretary base his decision on the "nature and extent of the failure to comply." The statutory language requires an analysis based on the specific circumstances of the particular failure to comply at issue. Given the enormous number of covered entities, the almost infinite possible combinations of violations and circumstances, the extensive and varying experiences of covered entities in coming into compliance, the newness of both their and our experience with respect to compliance with the HIPAA rules, and the brevity of the 30-day period during which changes are required, the Secretary should be afforded significant discretion to decide when it is appropriate to extend the cure period. Proposed § 160.410(b)(3)(ii)(B) accordingly follows the statutory language and would permit the Secretary to use the full discretion provided by the statute.

4. Section 160.412—Waiver

Section 1176(b)(4) of the Act provides for waiver of a civil money penalty in certain circumstances. Section 1176(b)(4) provides that, if the failure to comply is "due to reasonable cause and not to willful neglect," a penalty that has not already been waived under section 1176(b)(3) "may be waived to the extent that the payment of such penalty would be excessive relative to the compliance failure involved." If there is reasonable cause and no willful neglect and violation has been timely cured, the imposition of the civil money penalty would be precluded under section 1176(b)(3). Therefore, waiver under this section would be available only where there *is* reasonable cause for the violation and no willful neglect, but the violation was not timely cured.

Section 1176(b)(4) affords a covered entity a statutory right to request a waiver. However, the Secretary is not required to grant such a request: the words "may be waived" indicate that the decision to grant the waiver is discretionary. Moreover, the language "to the extent that" and "excessive relative to" indicate that the Secretary must consider the facts of the case to determine whether, and by what amount, a penalty may be reduced.

While section 1176(b)(4) might appear to be subsumed by certain of the statutory factors that could be seen as mitigating factors, this provision duplicates neither those factors nor the affirmative defenses. In contrast to the statutory factors, which apply to *determining* the amount of a civil money penalty, section 1176(b)(4) comes formally into play once the penalty amount *has been determined*, because only after there is a specific proposed penalty amount can it be determined whether the penalty "would be excessive relative to the compliance failure involved." Section 1176(b)(4) differs from the affirmative defenses in that it is not an absolute preclusion of civil money penalties; rather, waiver or reduction under section 1176(b)(4) is discretionary. Finally, in contrast to the mitigating factors and affirmative defenses, section 1176(b)(4) provides a ground on which a covered entity may request waiver or reduction of a penalty, once the penalty amount has been determined.

Proposed § 160.412 does not elaborate on the statute in any material way. This provision would provide the Secretary with the flexibility to utilize the discretion provided by the statutory language as necessary. We deem the statutory criterion itself reasonably capable of application, and, therefore, are not stating further criteria at this time.

5. Section 160.414—Limitations

Proposed § 160.414 was adopted by the April 17, 2003 interim final rule as § 160.522. We propose to move this section, which sets forth the 6-year limitation period provided for in section 1128A(c)(1), from subpart E to subpart D. We propose to do so because this provision applies generally to the imposition of civil money penalties and is not dependent on whether a hearing is requested. We also propose to change the language of this provision so that the date of the occurrence of the violation is the date from which the limitation is determined. We propose this change because the term "violation" is defined in this proposed rule, whereas it was not defined in the April 17, 2003

interim final rule. Thus, the date of the violation can now be accurately used to calculate when "the occurrence took place," as referenced in the statute. See also the discussion at section V.G below.

6. Section 160.416—Authority To Settle

Proposed § 160.416 was adopted by the April 17, 2003 interim final rule as § 160.510. We propose to move this section, which addresses the authority of the Secretary to settle any issue or case or to compromise any penalty imposed on a covered entity, from subpart E to subpart D. We propose to do so because this provision applies generally to the imposition of civil money penalties, and is not dependent on whether a hearing is requested. No change is made to the text of the provision.

7. Section 160.418—Penalty Not Exclusive

Proposed § 160.418 is new. It is based upon § 1003.109 of the OIG regulations. We propose to add this section to make clear that penalties imposed under this part are not intended to be exclusive where a violation under this part may also be a violation of, and subject the respondent to penalties under, another federal or a State law. Proposed § 160.418 would, however, recognize that, under section 1176(b)(1) of the Act, a penalty may not be imposed under section 1176(a) if the act constitutes an offense punishable under section 1177.

8. Section 160.420—Notice of Proposed Determination

The text of proposed § 160.420 was adopted by the April 17, 2003 interim final rule as § 160.514. We propose to move this section from subpart E, which sets out the procedures and rights of the parties to a hearing, to subpart D. We propose to do so because the notice provided for in this section must be given whenever a civil money penalty is proposed, regardless of whether a hearing is requested. No changes are proposed to paragraphs (a)(1) and (a)(3), (4), or to paragraph (b), except conforming changes. Paragraph (a)(2) would be revised by adding that, in the event the Secretary employs statistical sampling techniques under § 160.536, the sample relied upon and the methodology employed must be generally described in the notice of proposed determination. A new paragraph (a)(5) would require the notice to describe any circumstances described in § 160.408 that were considered in determining the amount of the proposed penalty; this provision corresponds to § 1003.109(a)(5) of the OIG regulations. The present paragraph (a)(5) would be renumbered as (a)(6). See also the discussion at sections V.H–V.J below.

9. Section 160.422—Failure To Request a Hearing

The text of proposed § 160.422 was adopted by the April 17, 2003 interim final rule as § 160.516. We would add language ("and the matter is not settled pursuant to § 160.416") to recognize that the Secretary and the respondent may agree to a settlement after the Secretary has issued a notice of proposed determination. We also provide that the penalty is final upon receipt of the penalty notice, to make clear when subsequent actions, such as collection, may commence.

10. Section 160.424—Collection of Penalty

The text of § 160.424 was adopted by the April 17, 2003 interim final rule as § 160.518. We propose to move this section, which addresses how a final penalty is collected, from subpart E to subpart D. We propose to do so because this provision applies generally to the imposition of civil money penalties and is not dependent upon whether a hearing is requested.

11. Section 160.426—Notification of the Public and Other Agencies

Proposed § 160.426 would implement section 1128A(h) of the Act. When a penalty proposed by the Secretary becomes final, section 1128A(h) directs the Secretary to notify certain specified appropriate State or local agencies, organizations, and associations and to provide the reasons for the penalty. We propose to add the public generally, in order to make the information available to anyone who must make decisions with respect to covered entities. For instance, knowledge of the imposition of a civil money penalty for violation of the Privacy Rule could be important to health care consumers, as well as to covered entities throughout the industry, while information about the imposition of a civil money penalty for violation of the Transactions Rule or other HIPAA rules could be of interest to a covered entity's trading partners.

The regulatory language would provide for notification in such manner as the Secretary deems appropriate. Posting to an HHS Web site and/or the periodic publication of a notice in the **Federal Register** are among the methods which the Secretary is considering using for the efficient dissemination of such information. These methods would avoid the need for the Secretary to determine which entities, among a potentially large universe, should be notified and would also permit the general public served by covered entities upon whom civil money penalties have been imposed to be apprised of this fact, where that information is of interest to them. While the Secretary could provide notice to individual agencies where desired, the Secretary could, at his option, use a single public method of notice, such as posting to an HHS Web site, to satisfy the obligation to notify the specified agencies and the public. See also the discussion at V.B below.

D. Subpart E—Procedures for Hearings

As previously explained, the provisions of section 1128A of the Act apply to the imposition of a civil money penalty under section 1176 "in the same manner as" they apply to the imposition of civil money penalties under section 1128A itself. The provisions of subpart E are, as a consequence, based in large part upon, and are in many respects the same as, the OIG regulations. We propose to adapt, re-order, or combine the language of the OIG regulations in a number of places for clarity of presentation or to reflect concepts unique to the HIPAA provisions or rules. To avoid confusion, we have also employed certain language usages in order to make the usage in the rules consistent with that in the other HIPAA rules (for example, for mandatory duties, "must" or "will" instead of "shall" is used; for discretionary duties, "may" instead of "has the authority to" is used). We do not discuss those nonsubstantive changes below. Where we propose to materially change the language of the OIG regulations, however, we discuss our reasons for doing so.

As noted above, we have reorganized subparts C, D, and E so that there is a logical organization to the three subparts. Subpart E, as we propose to revise it, will address the pre-hearing and hearing phases of the enforcement process. We have discussed the sections that we have moved to subparts C and D in the discussion of those subparts. The proposed movement of sections out of subpart E and the introduction of new sections into subpart E, described below, necessitates the reordering and renumbering of other sections of the existing subpart E, so that the subpart is organized logically. We do not discuss such proposed reordering and renumbering, unless we propose to change substantially the text of the section in question.

In the April 17, 2003 interim final rule, we deferred consideration of certain provisions so that they could be

addressed through notice-and-comment rule making. Claims of privilege and other objections to the taking of testimony at investigational hearings are addressed in proposed § 160.314. The proposed rules relating to what constitutes "a violation of a provision of this part" and how the amount of civil money penalties will be determined are found in § 160.302 of the proposed subpart C and in §§ 160.402—160.408, respectively, of the proposed subpart D. We include in proposed subpart E the proposed rules that relate to the conduct of a hearing.

1. Section 160.500—Applicability

This section has been revised to reflect the more limited scope proposed for subpart E, resulting from the movement of many of the provisions in the April 17, 2003 interim final rule to proposed subparts C and D.

2. Section 160.502—Definitions

Most of the definitions in this section of the April 17, 2003 interim final rule have been moved either to § 160.103 or to § 160.302, and are discussed in connection with those sections. In addition, we propose to delete the term "entity" from this section. The term is used in various contexts throughout the HIPAA rules, and we believe that the definition in the April 17, 2003 interim final rule may prove confusing with respect to the other HIPAA rules.

A new definition is added to this section—a definition of the term "Board," which stands for the HHS Departmental Appeals Board. The term "Board" is used instead of the term "DAB", which is used in the OIG regulations, to make clear that the reviewing body is the panel of three judges that conducts appellate review of ALJ decisions for HHS. This term is defined because it appears in proposed § 160.548, discussed below.

3. Section 160.504—Hearing before an ALJ

This section, which is § 160.526 of the April 17, 2003 interim final rule, would be largely unchanged. We note that, for a hearing request dismissed under this section as failing to raise any issue that may be properly addressed in a hearing (such as a hearing request that only raises constitutional claims), this subpart provides the administrative review channel leading to judicial review of such claims. Thus, such a dismissal would have to be appealed to the Board, under proposed § 160.548, as a predicate to appeal to the federal courts.

The current § 160.526(a)(2) states that the Departmental party in a hearing is "the Secretary." The term "Secretary" is defined at § 160.103 of the HIPAA rules as "the Secretary of Health and Human Services or any other officer or employee of HHS to whom the authority involved has been delegated." The Secretary's authority to interpret and enforce the HIPAA rules has been delegated to OCR, in the case of the Privacy Rule, and to CMS, in the case of the non-privacy HIPAA rules. Thus, the Secretary's investigative authority and authority to make a proposed determination of liability for a civil money penalty are exercised by OCR and/or CMS, depending on the HIPAA rule or rules at issue. However, in proposed subpart E, the Secretary is performing diverse functions: the adjudicative function is being performed for the Secretary by the ALJ and the Board, and the decision reached through this adjudicative process becomes the decision of the Secretary; at the same time, OCR and/or CMS are acting for the Secretary in defending the proposed determination in the adjudication. The reference to "the Secretary" may, thus, be confusing, as what part of HHS is being referred to depends on the context.

Proposed § 160.504(a)(2) would clarify which part of HHS acts as the "party" in the hearing. Because which component of HHS will be the "party" in a particular case will depend on which rule is alleged to have been violated, and because a particular case could involve more than one HIPAA rule, we define the Secretarial party generically, by reference to the component with the delegated enforcement authority. We adapt the regulatory definition of "Secretary" to make it clear that the Secretarial party could consist of more than one officer or employee, so that it is possible for both CMS and OCR to be the Secretarial party in a particular case.

The last sentence of proposed § 160.504(b) (current § 160.526(b)) provides that the date of receipt of the notice of proposed determination is presumed to be 5 days after the date of the notice unless the respondent makes a reasonable showing to the contrary. This showing may be made even where the notice is sent by mail and is not precluded by the computation of time rule of proposed § 160.526(c) (current § 160.548(c)) establishing a 5-day allowance for mailing. See section V.K below for further discussion of this provision.

4. Section 160.506—Rights of the Parties

The text of paragraphs (a) and (b) of proposed § 160.506 was adopted at § 160.528 of the April 17, 2003 interim final rule, and no change, other than a conforming change, is proposed to those paragraphs. We propose to add a new paragraph (c) to address the issue of legal fees. Proposed subsection (c) adopts the same position taken in § 1005.3(b) of the OIG regulations, by recognizing that a party who is accompanied, represented or advised by an attorney is free to enter into a fee arrangement of that party's choosing. This provision is included to make clear that the Secretary is not limiting how much the respondent's attorney may charge in attorneys fees.

5. Section 160.508—Authority of the ALJ

The text of proposed § 160.508 was adopted by the April 17, 2003 interim final rule as § 160.530. No changes to paragraphs (a) and (b) are proposed. We propose to revise paragraph (c) by adding paragraphs (c)(1) and (5) to the list of limitations on the authority of the ALJ. Proposed paragraph (c)(1) would require the ALJ to follow federal statutes, regulations, and Secretarial delegations of authority, and to give deference to published guidance to the extent not inconsistent with statute or regulation. By "published guidance" we mean guidance that has been publicly disseminated, including posting on the CMS or OCR Web site. Although we recognize that such guidance is not controlling upon the courts, we believe that the ALJ and the Board (see the discussion below in connection with proposed § 160.548), as components of HHS, must afford deference to such guidance to ensure that, to the extent possible, consistent decisions and compliance guidance are provided by the Secretary to covered entities.

Proposed paragraph (c)(5) clarifies that ALJs may not review the Secretary's exercise of discretion whether to grant an extension or to provide technical assistance under section 1176(b)(3)(B) of the Act or the Secretary's exercise of discretion in the choice of variable(s) under proposed § 160.406. Proposed paragraphs (c)(1) and (5) together make clear that the purpose of the hearing, and the authority of the ALJ in conducting the hearing, would only be to review the proposed civil money penalty. Thus, the ALJ would not have authority to refuse to follow, or to find invalid, the authorities cited as the basis for the proposed civil money penalty. The ALJ also would not have authority to review the Secretary's exercise of discretion under section 1176(b)(3)(B) of the Act to grant an extension or to provide technical assistance, nor would the ALJ have authority to review the Secretary's choice of variable(s) in

determining the number of violations of an identical administrative simplification provision, as that choice is likewise committed to the Secretary's discretion. The ALJ could, however, review whether the variable(s), once chosen, were properly applied.

6. Section 160.512—Prehearing Conferences

Proposed § 160.512 would revise paragraph (a) to establish a minimum amount of notice (not less than 14 business days) that must be provided to the parties in the scheduling of prehearing conferences. We propose this limitation to address problems that have been experienced in the context of administrative hearings in other programs. Proposed § 160.512 would also revise paragraph (b)(11) to include the issue of the protection of individually identifiable health information as a matter that may be discussed at the prehearing conference, if appropriate. See also the discussion at section V.AA below, with regard to this provision.

7. Section 160.518—Exchange of Witness Lists, Witness Statements, and Exhibits

Proposed § 160.518 carries forward § 160.540 of the existing subpart E with one substantive change. It would revise paragraph (a) to provide time limits within which the exchange of witness lists, statements, and exhibits must occur prior to a hearing. Under proposed § 160.518(a), these items must be exchanged not more than 60, but not less than 15, days prior to the scheduled hearing. We are concerned that the information not be exchanged too early, lest the evidence become stale, and we are also concerned that the time period not be too short, depriving the parties of adequate time to prepare. Experience with administrative hearings in other programs suggests the need for this provision. See also the discussion at section V.R below.

8. Section 160.520—Subpoenas for Attendance at Hearing

Proposed § 160.520 would carry forward § 160.542 of the existing subpart E mainly unchanged. The current § 160.542(c) would be revised to clarify that when a subpoena is served on HHS, the Secretary may comply with the subpoena by designating any knowledgeable representative to testify. See also the discussion at sections V.W and V.X below.

9. Section 160.532—Collateral Estoppel

Proposed § 160.532 would adopt the doctrine of collateral estoppel applied in federal cases that once a court decides an issue of fact or law necessary to its judgment, the court's decision precludes the same parties from relitigating the same issue in another suit on a different cause of action. *Allen* v. *McCurry*, 449 U.S. 90 (1980). The doctrine also applies to a final decision of an administrative agency, acting in a judicial capacity, that resolves disputed issues before it, which the parties have had a fair opportunity to fully litigate. *Astoria Federal Savings & Loan Ass'n v. Solimino*, 501 U.S. 104, 107–108 (1991). The proposed rule is modeled on § 1003.114(a) of the OIG regulations. Section 1003.114(b), relating to the issue preclusion arising out of a conviction or plea in a federal criminal case based upon fraud or false statements, appears inapplicable to enforcement of the HIPAA rules, and, hence, no comparable provision is proposed for inclusion in this Rule.

10. Section 160.534—The Hearing

The text of proposed § 160.534 was adopted by the April 17, 2003 interim final rule as § 160.554. No changes to paragraphs (a) and (c) are proposed. However, HHS proposes to add a new paragraph (b) allocating the burden of proof at the hearing.

Under the Administrative Procedure Act (APA), 5 U.S.C. 556(d), the burden of proof in ALJ hearings has two components—the burden of going forward and the burden of persuasion. The burden of going forward relates to the obligation to go forward initially with evidence that supports a prima facie case. The burden of going forward then shifts to the other party. The burden of persuasion relates to the obligation ultimately to convince the trier of fact that it is more likely than not that the advocated position is true. The party with the burden of persuasion loses in the situation where the evidence is in perfect balance.

Proposed § 160.534 would adopt the allocation of the burden of proof found in the OIG regulations and in administrative hearings generally, which is consistent with the APA. The respondent would bear the burden of proof with respect to (1) any affirmative defense, including those set out in section 1176(b) of the Act, as implemented by proposed § 160.410, (2) any challenge to the amount or scope of a proposed penalty under section 1128A(d), as implemented by proposed §§ 160.404—160.408, including mitigating factors, or (3) any contention that a proposed penalty should be reduced or waived under section 1176(b)(4), as implemented by § 160.412. The Secretary would have the burden of proof with respect to all other issues, including issues of liability and the factors considered as aggravating factors under proposed § 160.408 in determining the amount of penalties to be imposed. The burden of persuasion would be judged by a preponderance of the evidence (*i.e.*, it is more likely than not that the position advocated is true).

It is also proposed to revise the current § 160.554(c) by adding a new paragraph (1) at proposed § 160.534(d). Proposed § 160.534(d)(1) would provide that, at a hearing under this part, any party may present items or information, during its case in chief, that were discovered after the date of the notice of proposed determination or request for a hearing, as applicable. The admissibility of such proffered evidence would be governed generally by the provisions of proposed § 160.540, and be subject to the 15-day rule for the exchange of trial exhibits, witness lists and statements set out at proposed § 160.518(a). Any such evidence would not be admissible, if offered by the Secretary, unless it is relevant and material to the findings of fact set forth in the notice of proposed determination, including circumstances that may increase such penalty. If any such evidence is offered by the respondent, it would not be admissible unless it is relevant and material to a specific admission, denial or explanation of a finding of fact, or to a specific circumstance or argument expressly stated in the respondent's request for hearing that are alleged to constitute grounds for any defense or the factual and legal basis for opposing or reducing the penalty. Proposed § 160.534(d) would allow the parties the opportunity to present items and information that are relevant and material exclusively to the issues actually in dispute as expressly set forth in the notice of proposed determination and request for hearing. Items and information that would be relevant and material evidence of other violations, and support the imposition of other or additional penalties would be inadmissible. Likewise, items or information that support defenses, arguments, legal theories, or contentions other than those expressly set forth in the notice of hearing, or which are not relevant and material to the admissions, denials or explanations therein made, would not be admissible. Proposed § 160.534(d)(2) would republish paragraph (c) of the present § 160.554.

11. Section 160.536—Statistical Sampling

Proposed § 160.536, on statistical sampling, is new. A similar provision appears at § 1003.133 of the OIG

regulations, and the use of sampling and statistical methods is recognized under Rule 702 of the Federal Rules of Evidence. Proposed § 160.536 would permit the Secretary to introduce the results of a statistical sampling study as evidence of any variable under § 160.406(b) used to determine the number of violations of a particular administrative simplification provision, or, where appropriate, any factor considered in determining the amount of the civil money penalty under proposed § 160.408. If the estimation is based upon an appropriate sampling and employs valid statistical methods, it would constitute prima facie evidence of the number of violations or amount of the penalty sought that is a part of the Secretary's burden of proof. Such a showing would cause the burden of going forward to shift to the respondent, although the burden of persuasion would remain with the Secretary.

12. Section 160.542—The Record

This section is § 160.560 of the April 17, 2003 interim final rule. Since the section provides that the record of the proceedings be transcribed, we propose to add to paragraph (a) of this section a requirement that the cost of transcription of the record be borne equally by the parties, in the interest of fairness.

13. Section 160.546—ALJ Decision

Since we are proposing a process for administrative review of ALJ decisions (*see* section IV.D.14 below), the ALJ decision would be the initial decision of the Secretary, rather than the final decision of the Secretary as set forth in § 160.564(d) of the April 17, 2003 interim final rule. Thus, we propose to revise paragraph (d) to provide that the decision of the ALJ will be final and binding on the parties 60 days from the date of service of the ALJ decision, unless it is timely appealed by either party. See also the discussion at section V.U below, with respect to proposed § 160.546(b).

14. Section 160.548—Appeal of the ALJ Decision

The April 17, 2003 interim final rule, at § 160.564, makes the decision of the ALJ the final decision of the Secretary, thus permitting a respondent to file a petition for judicial review. In the preamble to the interim final rule, we noted that a second level of administrative review is generally available in Departmental hearings and that, while we had not provided for a second level of administrative review in the interim final rule, we intended to address the issue of further administrative review in this proposed rule. We do so now.

Proposed § 160.548 is modeled on the provisions that apply to appellate review under the OIG regulations. It provides that any party may appeal the initial decision of the ALJ to the HHS Departmental Appeals Board (Board) within 30 days of the date of service of the ALJ initial decision, unless extended for good cause. The appealing party must file a written brief specifying its exceptions to the initial decision. The opposing party may file an opposition brief, which is limited to the exceptions raised in the brief accompanying notice of appeal and any relevant issues not addressed in said exceptions and must be filed within 30 days of receiving the appealing party's notice of appeal and brief. The appealing party may, if permitted by the Board, file a reply brief. These briefs may be the only means that the parties will have to present their case to the Board, since there is no right to appear personally before the Board. The proposed rule provides that if a party demonstrates that additional evidence is material and relevant and there are reasonable grounds why such evidence was not introduced at the ALJ hearing, the Board may remand the case to the ALJ for consideration of the additional evidence.

In an appeal to the Board, the standard of review on a disputed issue of fact is whether the ALJ's initial decision is supported by substantial evidence on the record as a whole; on a disputed issue of law, the standard of review is whether the ALJ's initial decision is erroneous. The Board may decline to review the case; may affirm, increase (subject to the statutory caps), reduce, or reverse any penalty; or may remand a penalty determination to the ALJ.

We propose this process for administrative review of initial ALJ decisions to achieve consistency in civil money penalty decisions. Because hearings could be conducted by different ALJs, it is conceivable that different ALJs might decide the same or similar issues differently. Should this occur, it would be problematic for both covered entities and HHS. Provision for an internal, centralized review process should reduce the likelihood of inconsistent results. Indeed, provision for administrative review of ALJ decisions is common in other federal administrative hearing processes. Because the HIPAA rules affect such a large part of the health industry and the requirements of the various HIPAA regulatory schemes are new and interrelated, HHS considers it crucial that the decisions reached in the adjudicative process be consistent with other adjudicated decisions as well as with the policy decisions of the Secretary in the rules and in departmental guidance. Since only aggrieved respondents can appeal to the U.S. Court of Appeals under section 1128A(e), administrative review of ALJ decisions will help to ensure that the final decisions subject to judicial review represent a consistent interpretation of the HIPAA rules by the Secretary. While a process for administrative review of ALJ decisions will add cost and time to the process of imposing a civil money penalty for both HHS and covered entities, we believe that these disadvantages are outweighed by the compelling need to ensure consistency in the decisions of HHS with respect to such civil money penalties. Consistency will benefit both HHS and covered entities.

Paragraphs (i) and (j) of proposed § 160.548 address the issuance of the Board's decision on appeal. Under paragraph (i), the Board must serve its decision on the parties within 60 days after final briefs are filed. Under paragraph (j), the decision of the Board constitutes the final decision of the Secretary from which a petition for judicial review may be filed by a respondent aggrieved by the Board's decision. This option is the traditional process for administrative review of ALJ initial decisions regarding civil money penalties within HHS and is based on the process set forth in the OIG regulations. The decision of the Board becomes the final decision of the Secretary 60 days after service of the decision, except where the decision is to remand to the ALJ or a party requests reconsideration before the decision becomes final. Paragraph (j) provides that a party may request reconsideration of the Board's decision, provides a reconsideration process, and provides that the Board's reconsideration decision becomes final on service.

Proposed § 160.548(k) provides for a petition for judicial review of a final decision of the Secretary. Thus, we propose to remove § 160.568 of the April 17, 2003 interim final rule as duplicative. The right to petition for judicial review is not altered under this proposal, although an ALJ decision must be reviewed by the Board before a petition for judicial review can be filed by a respondent.

15. Section 160.552—Harmless Error

Proposed § 160.552 is new. It would adopt the "harmless error" rule that applies generally to civil litigation in federal courts. The provision provides,

in general, that the ALJ and the Board at every stage of the proceeding will disregard any error or defect in the proceeding that does not affect the substantial rights of the parties. It is modeled on Rule 61, F.R.C.P., and on § 1005.23 of the OIG regulations. In its application, it would further promote the efficient resolution of cases where the proposed imposition of a civil money penalty is challenged.

V. Response to Public Comments

HHS requested comment on the April 17, 2003 interim final rule and received timely and substantive comments from 19 persons or organizations. We summarize those comments, and our responses to the comments, below.

A. *Comment:* Two comments disagreed with HHS's approach of encouraging voluntary compliance. One argued that such an approach is tantamount to no enforcement; the other argued that since the Secretary already has the authority to conduct compliance reviews, a complaint-driven approach fails to reflect the agency's statutory obligation to enforce the law and the mandate under section 1176 to impose civil money penalties for violations. It was also stated that while HHS's intention to resolve potential violations by informal means might be appropriate for minor violations, it is inappropriate for more serious violations or for covered entities that demonstrate repeated resistance to compliance.

Most persons who commented on the voluntary compliance approach supported it, however. Several of these comments urged HHS to focus on resolving issues quickly and informally, particularly with respect to alleged violations of the Transactions Rule. One comment asked for assurance that covered entities will face only one set of enforcement rules and procedures, given that two different components of HHS have enforcement responsibilities. Several organizations asked HHS to provide more guidance with respect to how covered entities can comply, and can demonstrate compliance, with the HIPAA rules.

Response: We do not agree that emphasizing voluntary compliance amounts to a policy of nonenforcement. To the contrary, our experience to date has been that covered entities are generally responsive to our investigative inquiries and act promptly to remedy deficiencies that are brought to their attention. The overarching goal of our enforcement program is to bring covered entities into compliance, so that the benefits of the HIPAA rules are fully realized. Securing voluntary compliance achieves this goal much more quickly and efficiently than would a process that was formal and adversarial from the start. This approach is consistent with the statute. As discussed above, one of the statutory defenses to a civil money penalty is the covered entity's taking corrective action on a timely basis, where reasonable cause for the noncompliance exists. See section 1176(b)(3)(A). As stated above, however, should informal, cooperative efforts fail, HHS would move forward with the civil money penalty remedy the statute provides.

The Enforcement Rule addresses the concern that covered entities not face multiple sets of enforcement rules and procedures, as it provides for uniform procedures that will apply to all of the HIPAA rules. With respect to the concerns about guidance, HHS agrees that the provision of guidance on an ongoing basis is vitally important. As noted above, HHS is continuing to develop guidance on the various HIPAA rules, and will be publishing such guidance on an ongoing basis on the following HHS Web sites: *http://www.hhs.gov/ocr/hipaa/* for the Privacy Rule and *http://www.cms.gov/hipaa/hipaa2/* for the other HIPAA rules.

B. *Comment:* Several comments suggested that information about complaints and other noncompliance issues should be made public to assist other covered entities in coming into compliance. One organization stated that the Enforcement Rule should include a requirement that the Secretary should annually report to Congress and the public on the number of complaints filed and their disposition.

Response: The statute provides for formal notification of a number of entities when a penalty is final. Proposed § 160.426 reflects this requirement and would provide for notification of the public in such circumstances. As previously noted, however, we expect most complaints to be resolved informally, and informal resolutions would not come within the process provided for by proposed § 160.426. OCR and CMS will consider whether compilation and release of analyses of complaint dispositions would be an appropriate use of limited resources; however, we do not propose to mandate such action by this rule.

C. *Comment:* One comment asked whether HHS anticipated developing a separate complaint mechanism for security complaints.

Response: CMS has developed complaint procedures for the complaints regarding the Transactions Rule and a complaint tool for making such complaints is on the Web at *http://www.cms.hhs.gov/hipaa/hipaa2.* As the compliance dates of the HIPAA rules other than the Privacy and the Transactions Rules arrive, it is expected that the complaint tool will be modified to permit the filing of complaints relating to compliance with those other rules.

D. *Comment:* One comment stated that additional protections are needed for investigational inquiries. The comment suggested that the rule should include the procedural protections of the OIG regulations, such as permission for witnesses to object to answering questions on the basis of privilege and to clarify their answers for the record.

Response: Proposed § 160.314(b) would revise § 160.504(b) to include such procedural protections.

E. *Comment:* One comment suggested that the rule contain a provision establishing the bases under which a complaint will be dismissed prior to a request for a hearing. Bases suggested were that the complaint has been litigated in another forum, the opportunity to contest the matter was available but not used in another forum, and another statutory remedy exists.

Response: Consistent with the practice under the OIG regulations, the rules provide for general settlement authority, rather than specific grounds for dismissal. See proposed § 160.416. In addition, the bases suggested in the comment would not be grounds, per se, for dismissal.

F. *Comment:* One comment asked HHS to clarify the circumstances under which it would investigate a covered entity that was not the subject of a complaint.

Response: We cannot project the variety of circumstances under which compliance reviews might be undertaken. Therefore, we do not propose to limit the situations in which this authority could be exercised.

G. *Comment:* Several comments objected to § 160.522. One argued that running the 6-year limitations period from the "latest act or omission" is a problem with respect to the 6-year record retention period provided for by the Privacy Rule, as covered entities might believe that they could destroy records that they would later need for defense purposes. It was also argued that the rule should clarify that actions may only be taken for violations which occur on or after the compliance date of the rule in question and that the date of the civil money penalty action is the date of the notice of proposed determination.

Response: We agree. Proposed § 160.414 would revise § 160.522 to provide that the period of limitations runs "from the date of the occurrence of

the violation" and that the Secretary commences the action "in accordance with § 160.420, "meaning that the action is considered to be commenced by (and, therefore, on) the date of the notice of proposed determination. The definition of the term "violation" at proposed § 160.302 builds in the concept of a duty to comply, since it defines that term as a "failure to comply with an administrative simplification provision;" the definition of the term "administrative simplification provision" in turn references the underlying HIPAA rules, which each explicitly state when the duty to comply begins.

With respect to the 6-year document retention requirement of § 164.530(j)(2), insofar as compliance issues arise out of complaints, it is unlikely that a covered entity would be required to defend itself against a stale complaint, in view of the requirement at proposed § 160.306(b)(3) that complaints be filed within 180 days of when the complainant knew or should have known of the occurrence of the violation. In any event, nothing in the Privacy Rule precludes covered entities from retaining documents for a longer period than § 164.530(j)(2) requires, if they wish to do so.

H. *Comment:* Nine comments expressed concern that § 160.514 does not specify to whom the notice of proposed determination must be addressed. The concern was that, because receipt is presumed 5 days after mailing, a notice of proposed determination which was sent to a large organization might not get to the proper official on a timely basis, thereby wasting some of the covered entity's time for response. Several comments suggested that the rule require delivery to the chief executive officer and, as appropriate, to the company's privacy officer, security officer, or chief information officer. A couple of comments suggested that the rule incorporate the service standards of Rule 4, F.R.C.P., and require service upon "an officer, a managing or general agent, or to any other agent authorized by statute to receive service." Several comments expressed support for the use of certified mail.

Response: Like § 160.514, proposed § 160.420 does not identify the person(s) to whom the notice of proposed determination should be addressed, nor do we think it is necessary or feasible to do so. Rule 4, which applies under section 1128A(c), establishes who may be served and applies without need for further regulatory action. Because the size and other organizational circumstances of covered entities vary greatly, a rule that further limited or defined who must be served would most likely be inappropriate for some covered entities. Further, it is likely that a notice of proposed determination would be issued after significant prior contact with the covered entity, and we anticipate that our investigators would in any case be able to ascertain which officer would be the appropriate recipient of the notice.

I. *Comment:* Several comments also argued that § 160.514 should, like the analogous OIG regulations, require the notice of proposed determination to state the basis for the penalty calculation. Such information would help the covered entity understand the charges against it and prepare its defense. These comments recommended that the language in § 1003.109(a)(5) of the OIG regulations be used.

Response: We agree. A provision comparable to that in § 1003.109(a)(5) was omitted from § 160.514 because the interim final rule did not provide for the aggravating and mitigating factors referenced in this provision of the OIG regulations. The proposed rule, however, contains the factors that may be considered in determining the amount of the penalty. Accordingly, proposed § 160.420 follows the OIG regulations in this respect.

J. *Comment:* One comment stated that it was not clear how the notice of proposed determination would interface with § 160.312 and whether the written findings there end the informal resolution phase. The comment advocated that notice be provided before the notice of proposed determination.

Response: We agree that it is not clear how § 160.514 interfaces with the notice process described at § 160.312. At present, § 160.312(a)(2) provides that the Secretary may issue written findings documenting noncompliance, if noncompliance is found and not informally resolved. Thus, we propose to revise § 160.312 to make the interface between that section and proposed § 160.420 (currently § 160.514) seamless. Specifically, proposed § 160.312(a)(3)(ii) would provide that if the Secretary finds that a covered entity is not in compliance, the matter is not settled by informal means, and imposition of a civil money penalty is warranted, the Secretary will so inform the covered entity in a notice of proposed determination in accordance with § 160.420. The notice of proposed determination would constitute the formal notice that the matter had not been informally resolved and that HHS had decided to seek civil money penalties. Further, with respect to notice prior to the notice of proposed determination, proposed § 160.312(a)(3)(i) would provide that where noncompliance is indicated and the matter is not resolved by informal means, HHS would so inform the covered entity and give the covered entity an opportunity to submit written evidence of any affirmative defenses or mitigating factors, prior to issuing a notice of proposed determination.

K. *Comment:* Several comments objected to the presumption in § 160.526(b) that the date of receipt of the notice of proposed determination is 5 days after the date of the notice. They argued that this presumption could work a hardship, in combination with the 60-day time limit for requesting a hearing, if the notice went to the wrong person in the organization or otherwise went astray.

Response: Proposed § 160.504(b) retains the language of the interim final rule. We believe the concerns about hardship are misplaced. The requirement permits the ALJ to grant an extension of the 5-day time period if the respondent demonstrates that the presumption should not apply: "For purposes of this section, the respondent's date of receipt of the notice of proposed determination is presumed to be 5 days after the date of the notice unless the respondent makes a reasonable showing to the contrary to the ALJ." This language tracks the comparable provision at § 1005.2(c) of the OIG regulations and has worked well.

L. *Comment:* A number of comments objected to the 60-day time limit in § 160.526(b) for a respondent to file its request for hearing, in combination with the specific detail required by that section. They objected to the time limit and the related requirement for specific response on several grounds: the level of specificity demanded requires the respondent to devise its entire defense, and, because the notice of proposed determination is the first notice the respondent has of the charges, 60 days is too short a time period in which to do this; the requirement requires more specificity of the respondent than of the Secretary, which is unfair; and the requirements, together with the 5-day presumption of receipt and the failure to specify who receives the notice of proposed determination, are unfair and a violation of a respondent's right to due process. It was generally recommended that the request for hearing requirement parallel § 1005.2 of the OIG regulations, which requires the request to be made within 60 days of receipt of the notice, but requires that the request for hearing state which findings of fact and

conclusions of law are disputed and the basis for the dispute.

Response: The comments on this issue assume that a notice of proposed determination will be served on a respondent with no warning. This assumption is not reasonable under the procedures the proposed rule would establish, however. Proposed § 160.304 would require the Secretary to seek the cooperation of the covered entity in obtaining compliance to the extent practicable, which will necessitate communication about the noncompliance at issue. The investigation or compliance review process itself will necessarily disclose much about the noncompliance at issue to the facility, since the covered entity will typically be the primary source of information relevant to the investigation. If an investigation or compliance review indicates noncompliance, proposed § 160.312(a)(1) provides that the Secretary will attempt to reach a resolution of the matter satisfactory to the Secretary by informal means. Further, where noncompliance is indicated and the matter is not resolved by informal means, HHS will so inform the covered entity and give it the opportunity to submit written evidence of any affirmative defenses or mitigating factors, prior to issuing a notice of proposed determination. See proposed § 160.312(a)(3)(i). Thus, the covered entity necessarily will be made aware of, and have the opportunity to address, HHS's compliance concerns throughout the investigative period preceding the notice of proposed determination and should not be surprised by the matters described in the notice. For these reasons, we do not believe that the 60-day response time is inadequate.

M. *Comment:* One comment stated that settlements should be approved by the ALJ. Another asked whether settlements will be a viable path to resolution of disputes.

Response: Consistent with our commitment to obtaining voluntary compliance and the regulatory policies discussed in the preceding response, we expect that settlement of compliance issues will be frequent. We do not propose to have the ALJ approve such settlements, to preserve our ability to resolve compliance issues and achieve voluntary compliance through informal means. See proposed § 160.514.

N. *Comment:* Several comments queried whether covered entities would be held liable under the Enforcement Rule for violations by their business associates. Of particular concern were violations committed by health care clearinghouses.

Response: Under § 160.402 of the proposed rule, a covered entity would not be liable for the actions of its business associates where the covered entity has complied with the appropriate business associate provisions. See section IV.C.1.b. above for further discussion.

O. *Comment:* Several comments stated that the rule needs to state what a violation is, what the aggravating and mitigating circumstances are, how the total fine for violations is calculated, and what would constitute an acceptable defense and indicate an appropriate level of "due diligence." One comment suggested that evidence of willingness to enter into a corrective action plan should be a mitigating factor. One comment noted that the full Enforcement Rule was needed before the April 17, 2003 interim final rule expires.

Response: We generally agree. The proposed rule addresses the violation and affirmative defense issues at §§ 160.402–160.410. Also, the April 17, 2003 interim final rule has been extended by separate regulatory action to permit ongoing enforcement while this rulemaking proceeds. Proposed § 160.408(d)(3) provides that the Secretary may consider, as an aggravating or mitigating factor, how the covered entity has responded to technical assistance from the Secretary provided in the context of a compliance effort, with respect to prior offenses.

P. *Comment:* One comment asked that the Enforcement Rule describe the procedures for referral to the Department of Justice of suspected criminal violations. Another comment asked that HHS attempt to ensure that the application of the criminal provisions by the Department of Justice was the same as the application of the civil provisions by HHS.

Response: The procedures for referral of criminal matters to the Department of Justice lie outside the scope of the Enforcement Rule, which implements only HHS's authority under section 1176 of the Act.

Q. *Comment:* One comment requested clarification of the statutory basis for imposing penalties for violations of the Privacy Rule, since section 264 is a footnote in the U.S. Code.

Response: Section 264 of the Act is codified as a note to 42 U.S.C. 1320d–2. We have always read section 264 as functionally a part of Part C. Section 264 and Part C cross-reference each other, and the terminology of section 264 is also the terminology of Part C ("standard", "individually identifiable health information", "implementation specification"). Further, the criminal penalty provisions of section 1177 would not make sense if they did not apply to the privacy standards, and section 1176 is, as discussed at IV.C.3 above, closely related to section 1177. The legislative history confirms this common-sense reading. See H. Rep. No. 496, 104th Cong., 2d Sess., 1996 U.S. Code Cong. & Admin. News, p. 1865.

This reading of the statute accords with that of Congress. Section 1860D–31(h)(6)(A) of the Act, adopted by MMA, states that an endorsed discount drug card sponsor—

> is a covered entity for purposes of applying part C of title XI and all regulatory provisions promulgated thereunder, including regulations (relating to privacy) adopted pursuant to the authority of the Secretary under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

R. *Comment:* With respect to prehearing proceedings, two comments stated that permitting the ALJ to require exchange of witness lists more than 15 days prior to the hearing could seriously infringe on the amount of time the covered entity has to prepare its case. It was also argued that 60 days is too short a period to prepare for the hearing. One comment stated that interrogatories should be allowed, because records may be incomplete or contain mistakes. One comment supported the requirement of § 160.540(b)(3) (proposed § 160.518(b)(3)), requiring the ALJ to recess the hearing for a reasonable time for an objecting party to prepare a response to witnesses or exhibits that were not exchanged prior to the hearing.

Response: The scheduling of a hearing will depend on the schedule of the ALJ to whom the case is assigned, among other factors. There is nothing in the Enforcement Rule that requires the scheduling of the hearing within a certain period of time following the request for hearing. Thus, we do not think that the provision for exchange of information earlier than 15 days prior to hearing should work a hardship on either side, and the ALJ should be able to establish a schedule that takes into consideration the needs of the parties. Indeed, we believe that this requirement will assist each party in presenting a well-prepared case that will result in an efficient and effective hearing. As the prehearing procedures permit both documentary and testimonial discovery, we do not permit interrogatories, which we believe would add extra time and burden to the preparation process without commensurate benefit.

S. *Comment:* Several comments urged that the rule should contain a procedure to permit the parties to waive the prehearing conference and the formal

hearing and request that the case be submitted on documentary evidence and written argument, to make the process more efficient and less expensive.

Response: Proposed §§ 160.508(b)(13) and 160.512(b)(4), (5) would permit this.

T. *Comment:* One comment stated that the covered entity should have the burdens of going forward and persuasion on affirmative defenses and mitigating circumstances, while HHS should have the burdens of going forward and persuasion on allegations of violation.

Response: We agree. Proposed § 160.534(b) so provides.

U. *Comment:* Several comments stated that the "affirm, increase, or reduce the penalties imposed by the Secretary" language of § 160.564(b) would not permit the ALJ to decide that no violation occurred.

Response: The language of § 160.564 of the April 17, 2003 interim final rule, which is now found at proposed § 160.546, will permit the ALJ to decide that no violation occurred. Proposed § 160.546(a) requires the ALJ to make findings of fact and conclusions of law. If these findings and conclusions support a determination that the respondent did not violate an administrative simplification provision, then no penalty may be imposed. The language in proposed § 160.546(b) permits an ALJ who determines that a respondent has violated an administrative simplification provision to act in regard to the penalty amount set forth in the notice of proposed determination, that is, to affirm, increase, or reduce the amount of the proposed penalty in accordance with the other applicable provisions of the regulations.

V. *Comment:* Several comments argued that statistical sampling would be inappropriate to establish the number of violations. It was argued that statistical sampling, as used in the OIG hearings, had been used improperly, in studies that had basic weaknesses, such as a too small sample size.

Response: Proposed § 160.536 provides for the use of statistical sampling, as a well-established evidentiary tool. Proposed § 160.536(b), which affords the opposing side the opportunity to rebut the statistical proof offered, provides a procedural safeguard to permit a respondent to challenge the reliability of any statistical proof offered.

W. *Comment:* Two comments suggested that respondents should be able to subpoena HHS witnesses with direct knowledge of the investigation or other matters at issue.

Response: Proposed § 160.520(c) provides that the Secretary must designate a representative who is "knowledgeable" to testify. It would disrupt the agency's operations if a respondent could subpoena any HHS official by name. The requirement that the HHS representative be knowledgeable should permit the presentation of informed testimony, while permitting the orderly conduct of government business to continue.

X. *Comment:* One comment stated that the rule should permit acceptance of testimony or a written statement from individuals whose privacy was violated, permit such individuals to testify, and require that such individuals be given 30 days notice of the hearing.

Response: The proposed rule would not preclude us from offering the testimony of such individuals, but the decision to do so is a litigation decision that must be reserved to the agency. We do not require that notice of the hearing be provided to the individuals whose privacy was violated, but such information is publicly available.

Y. *Comment:* A number of comments stated that agency review of the ALJ decision was needed or questioned why it was not provided. A few comments supported having the ALJ decision be the final agency action as resulting in a more efficient and expeditious process.

Response: We have proposed a second level of agency review, for the reasons set out at section IV.D.14 above.

Z. *Comment:* Two comments questioned the provision for set-off at § 160.518(c). One asked whether set-off would occur without state-level due process. The other was concerned about provision of notice. Both were concerned that set-off could have a devastating impact on those to whom it was applied.

Response: The right of set-off is provided for by section 1128A(f). Proposed § 160.424(c) accordingly retains it. We intend to follow applicable procedures in pursuing set-off.

AA. *Comment:* A couple of comments objected to § 160.560. It was stated that the rule should incorporate additional procedures to ensure that protected health information introduced into evidence is protected from review by outside parties, redactions should be made available to the parties for review, and OCR should be required to pay for the court reporter.

Response: The protection of protected health information, including by redaction of the record, is a matter than can be addressed in the prehearing conference. See proposed § 160.512(b)(11). We believe that the ALJ will be in the best position to determine what specific steps should be taken in a particular case to protect the privacy of any protected health information introduced into evidence. In the interest of fairness, proposed § 160.542(a) would apportion the cost of transcription of the record equally between the parties.

BB. *Comment:* One comment stated that § 160.558(g) should be revised to require the Secretary to include notice to the respondent where HHS intends to present in its case in chief evidence of past crimes or similar evidence to show motive, opportunity, intent, etc.

Response: Proposed § 160.540(g) would retain this provision. This provision tracks § 1005.17(g) of the OIG regulations, and we see no basis to depart from our practice in this regard.

VI. Impact Statement and Other Required Analyses

A. Paperwork Reduction Act

We reviewed this proposed rule to determine whether it raises issues that would subject it to the Paperwork Reduction Act (PRA). While the PRA applies to agencies and collections of information conducted or sponsored by those agencies, 5 CFR 1320.4(a) exempts collections of information that occur "during the conduct of * * * an administrative action, investigation, or audit involving an agency against specific individuals or entities," except for investigations or audits "undertaken with reference to a category of individual or entities such as a class of licensees or an entire industry," The proposed rule comes within this exemption, as it deals entirely with administrative investigations and actions against specific individuals or entities. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the PRA.

B. Executive Order 12866; Regulatory Flexibility Act; Section 1102, Social Security Act; Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act of 1996; Executive Order 13132

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Small Business Regulatory Enforcement and Fairness Act, 5 U.S.C. 801 *et seq.*, and Executive Order 13132.

1. Executive Order 12866

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 12866 defines, at section 3(f), several categories of "significant regulatory actions." One category is "economically significant" rules, which are defined in section 3(f)(1) of the Order as rules that may "have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities." Another category, under section 3(f)(4) of the Order, consists of rules that are "significant regulatory actions" because they "raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order." Executive Order 12866 requires a full economic impact analysis only for "economically significant" rules under section 3(f)(1).

We have concluded that this rule should be treated as a "significant regulatory action" within the meaning of section 3(f)(4) of Executive Order 12866, because the HIPAA provisions to be enforced have extremely broad implications for the Nation's health care system, and because of the novel issues presented by, and the uncertainties surrounding, compliance among covered entities. However, we have determined that the impact of this rule is not such that it reaches the economically significant threshold under section 3(f)(1) of the Order.

Estimating the impacts of this rule presents unique challenges. On its face, the rule simply describes how HHS plans to enforce the HIPAA provisions, and can be considered a procedural rule without any intrinsic impact. However, health care providers, insurers, and health care clearinghouses that are covered by the HIPAA provisions represent a large proportion of their respective economic sectors. Further, all are within the jurisdiction of the Enforcement Rule (which is a "significant regulatory action," as noted above).

The actual economic impacts of implementing the HIPAA provisions are subsumed in each of the applicable substantive regulations (Privacy Rule, Security Rule, Transactions Rule, et cetera). The economic impacts properly attributable to this rule, however, are those stemming from changes to current practice as a result of the Enforcement Rule and the cost of new and additional responsibilities that are required to conform to the Rule. In general, these costs are limited to costs related to conducting and responding to the investigation of complaints concerning the alleged HIPAA violations over which HHS has jurisdiction and compliance reviews, conducting hearings, and levying and collecting civil money penalties. The cost of conducting and responding to investigations of privacy complaints and compliance reviews with respect to the Privacy Rule has already been covered by the impact analysis of the Privacy Rule. Here we extend these processes to the other HIPAA rules. For reasons outlined in the following narrative, we anticipate the impacts of the additional activities covered by this rule to fall below the $100 million annual threshold that would raise this rule to the definition of "economically significant," but acknowledge there is much that is unknown underlying the assumptions that have led us to this conclusion. We discuss these assumptions below.

Affected Entities and Projected Costs. Because of its scope, purview, and potential application, the Enforcement Rule is a significant regulatory action within the meaning of section 3(f)(4) of Executive Order 12866. We believe that over 2.5 million health care providers, health plans, and health care clearinghouses will meet the definition of a covered entity.

It is difficult for us to determine or estimate the impact of the Enforcement Rule on covered entities. All covered entities are expected to comply with the HIPAA rules. Enhancing the likelihood of compliance is the fact that each substantive HIPAA rule (*e.g.*, the Privacy Rule, the Security Rule, the Transactions Rule) has at least a twenty-six month period between publication of the final rule and the compliance date (60 days for APA Congressional review, plus 24 months for covered entities or 36 months for small health plans). Thus, covered entities have at least 26 months to prepare for implementation, and HHS has provided, and will continue to provide, ample educational opportunities for covered entities during these periods. We also note that, as evidenced by the CMS Guidance, discussed above, where HHS became aware of potential noncompliance problems with the Transactions Rule, it acted proactively to outline an approach to enforcement that would permit flexibility under certain circumstances and which would not penalize good faith efforts to come into compliance. Accordingly, noncompliance that would be pursued under the provisions of the proposed Enforcement Rule should be considered to be the exception, rather than the norm.

Further minimizing the impact of the Enforcement Rule is the fact that most compliance efforts undertaken under the provisions of the rule are expected to result from complaints, rather than compliance reviews. To date, complaints have involved only an infinitesimal percentage of the universe of covered entities. As of the end of July 2004, OCR has received over 7,500 complaints related to the Privacy Rule since the compliance date of April 14, 2003, and CMS has received 145 complaints related to the Transactions Rule since the compliance date of October 16, 2003.

The most expensive impacts of this rule will derive from those cases in which the covered entities exercise their rights of appeal under subpart E of part 160. Based on our experience with other civil money penalty cases, the costs of such cases can be expected to dwarf the costs of cases that are resolved prior to the hearing stage. However, again based on our experience in other civil money penalty cases, very few of the cases opened will proceed through that stage. That other Departmental experience is borne out by our experience with respect to the HIPAA complaints received to date. Of the privacy complaints received and processed by the end of July 2004, approximately 57% were resolved immediately due to lack of jurisdiction (*e.g.*, the complaint pertained to events that occurred before the implementation date of the relevant HIPAA regulation, the complaint did not relate to a covered entity, et cetera) or because of action taken by the covered entity to resolve the complaint voluntarily; similarly, of the 145 transactions complaints received from October 2003 through July 2004, 60% were closed in that period. Thus, it seems reasonable to assume that the costs attributable to the provisions of this rule will, in most cases that are opened, be low.

We recognize that our experience to date reflects slightly over one year of experience under the Privacy Rule, and less than one year under the Transactions Rule. Data generated on cases that might lead to the imposition of a civil money penalty during this time frame may not be typical of what we will see over time. For example, the

number of complaints that may be dismissed because they involve situations that occurred before the relevant compliance date should decrease with the passage of time. Similarly, we would expect the instances of noncompliance to decrease as covered entities gain experience in complying with the HIPAA rules; on the other hand, the number of complaints could increase as individuals and entities become more aware of the rules' requirements. As we acquire experience under the rules, we will have a more extensive database for evaluating the impacts of enforcement activities.

Benefits of the Enforcement Rule. We believe that the value of the benefits brought by the HIPAA provisions are sufficient to warrant appropriate enforcement efforts. The benefits of the underlying HIPAA rules have been previously estimated in connection with the Privacy and the Transactions Rules, and are significant. The Enforcement Rule will encourage voluntary compliance, and provide a means for enforcing compliance where it is not forthcoming voluntarily, thereby facilitating the achievement of the benefits of the other HIPAA rules. *See,* 65 FR 50350–50351; 65 FR 82760, 82776–82779; 68 FR 8370–8371. The benefits of these protections far outweigh the costs of this enforcement regulation.

Summary. In most cases, if covered entities comply with the various HIPAA rules, they should not incur any significant additional costs as a result of the Enforcement Rule. This is based on the fact the costs intrinsic to most of the HIPAA rules and operating directions against which compliance is evaluated have been scored independently of this rule and the requirements have not changed. We recognize that the specific requirements against which compliance is evaluated are not yet well known and may evolve with experience under HIPAA, but we expect that covered entities have both the ability and expectation to maintain compliance, especially given our commitment to encouraging and facilitating voluntary compliance. While not straightforward to project, it seems likely that the number of times in which the full civil money penalty enforcement process will be invoked will be extremely small, based on the evidence to date.

2. Other Analyses

We also examined the impact of the proposed Rule as required by the Regulatory Flexibility Act (RFA). The RFA requires agencies to determine whether a rule will have a significant economic impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government jurisdictions; for health care entities, the size standard for a "small" entity ranges from $6 million to $29 million in revenues in any one year. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues less than the applicable size standard in any one year. As discussed above, the incidence of noncompliance is expected to be low, and, as also discussed above, it is expected that most issues of noncompliance will be resolved with minimal enforcement action. Even though the burden of regulatory compliance often falls disproportionately on small entities, there is no evidence to suggest that small entities have a higher rate of noncompliance than large entities. The Secretary therefore certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Section 1102(b) of the Act requires agencies to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 (proposed documents)/ 604 (final documents) of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This proposed rule would not have a significant impact on small rural hospitals. The rule would implement procedures necessary for the Secretary to enforce subtitle F of Title II of HIPAA. As noted earlier, we do not expect that covered entities will willfully be out of compliance in such a way that would result in an enforcement action proceeding through the hearing stage.

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 *et seq.*, also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 801 *et seq.*, requires that rules that will have an impact on the economy of $100 million or more per annum be submitted for Congressional review. For the reasons discussed above, this proposed rule would not impose a burden large enough to require a section 202 statement under the Unfunded Mandates Reform Act of 1995 or Congressional review under SBREFA.

Executive Order 13132 establishes certain requirements that an agency must meet when it adopts a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule does not have "Federalism implications." The rule would not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." As the Enforcement Rule is procedural in nature, its economic effects would not be substantial, as explained previously. Any preemption of State law that could occur would be a function of the underlying HIPAA rules, not the Enforcement Rule, which principally establishes the means by which the statutory civil money penalty provisions will be implemented. Therefore, the Enforcement Rule is not subject to Executive Order 13132 (Federalism).

Dated: April 8, 2005.

Michael O. Leavitt,

Secretary.

List of Subjects

45 CFR Part 160

Administrative practice and procedure, Computer technology, Electronic transactions, Employer benefit plan, Health, Health care, Health facilities, Health insurance, Health records, Hospitals, Investigations, Medicaid, Medical research, Medicare, Penalties, Privacy, Reporting and record keeping requirements, Security.

45 CFR Part 164

Administrative practice and procedure, Electronic information system, Electronic transactions, Employer benefit plan, Health, Health care, Health facilities, Health Insurance, Health records, Hospitals, Medicaid, Medical research, Medicare, Privacy, Reporting and record keeping requirements, Security.

For the reasons set forth in the preamble, the Department of Health and Human Services proposes to amend 45 CFR subtitle A, subchapter C, parts 160 and 164, as set forth below.

PART 160—GENERAL ADMINISTRATIVE REQUIREMENTS

1. The authority citation for part 160 is revised to read as follows:

Authority: 42 U.S.C. 1302(a), 42 U.S.C. 1320d–1320d–8, and sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2 (note)).

2. Section § 160.103 is amended by adding the definition "Person" in alphabetical order to read as follows:

§ 160.103 Definitions.

* * * * *

Person means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.

* * * * *

3. Revise subpart C of this part to read as follows:

Subpart C—Compliance and Investigations

Sec.

Subpart C—Compliance and Investigations

§ 160.300 Applicability.

This subpart applies to actions by the Secretary, covered entities, and others with respect to ascertaining the compliance by covered entities with, and the enforcement of, the applicable requirements of this part 160 and the applicable standards, requirements, and implementation specifications of parts 162 and 164 of this subchapter.

§ 160.302 Definitions.

As used in this subpart and subparts D and E of this part, the following terms have the following meanings:

Administrative simplification provision means any requirement or prohibition established by:

(1) 42 U.S.C. 1320d–1320d–4, 1320d–7, and 1320d–8;

(2) Section 264 of Pub. L. 104–191; or

(3) This subchapter.

ALJ means Administrative Law Judge.

Civil money penalty or *penalty* means the amount determined under § 160.404 of this part and includes the plural of these terms.

Respondent means a covered entity upon which the Secretary has imposed, or proposes to impose, a civil money penalty.

Violation or *violate* means, as the context may require, failure to comply with an administrative simplification provision.

§ 160.304 Principles for achieving compliance.

(a) *Cooperation.* The Secretary will, to the extent practicable, seek the cooperation of covered entities in obtaining compliance with the applicable administrative simplification provisions.

(b) *Assistance.* The Secretary may provide technical assistance to covered entities to help them comply voluntarily with the applicable administrative simplification provisions.

§ 160.306 Complaints to the Secretary.

(a) *Right to file a complaint.* A person who believes a covered entity is not complying with the administrative simplification provisions may file a complaint with the Secretary.

(b) *Requirements for filing complaints.* Complaints under this section must meet the following requirements:

(1) A complaint must be filed in writing, either on paper or electronically.

(2) A complaint must name the person that is the subject of the complaint and describe the acts or omissions believed to be in violation of the applicable administrative simplification provision(s).

(3) A complaint must be filed within 180 days of when the complainant knew or should have known that the act or omission complained of occurred, unless this time limit is waived by the Secretary for good cause shown.

(4) The Secretary may prescribe additional procedures for the filing of complaints, as well as the place and manner of filing, by notice in the **Federal Register**.

(c) *Investigation.* The Secretary may investigate complaints filed under this section. Such investigation may include a review of the pertinent policies, procedures, or practices of the covered entity and of the circumstances regarding any alleged violation.

§ 160.308 Compliance reviews.

The Secretary may conduct compliance reviews to determine whether covered entities are complying with the applicable administrative simplification provisions.

§ 160.310 Responsibilities of covered entities.

(a) *Provide records and compliance reports.* A covered entity must keep such records and submit such compliance reports, in such time and manner and containing such information, as the Secretary may determine to be necessary to enable the Secretary to ascertain whether the covered entity has complied or is complying with the applicable administrative simplification provisions.

(b) *Cooperate with complaint investigations and compliance reviews.* A covered entity must cooperate with the Secretary, if the Secretary undertakes an investigation or compliance review of the policies, procedures, or practices of the covered entity to determine whether it is complying with the applicable administrative simplification provisions.

(c) *Permit access to information.* (1) A covered entity must permit access by the Secretary during normal business hours to its facilities, books, records, accounts, and other sources of information, including protected health information, that are pertinent to ascertaining compliance with the applicable administrative simplification provisions. If the Secretary determines that exigent circumstances exist, such as when documents may be hidden or destroyed, a covered entity must permit access by the Secretary at any time and without notice.

(2) If any information required of a covered entity under this section is in the exclusive possession of any other agency, institution, or person and the other agency, institution, or person fails or refuses to furnish the information, the covered entity must so certify and set forth what efforts it has made to obtain the information.

(3) Protected health information obtained by the Secretary in connection with an investigation or compliance review under this subpart will not be disclosed by the Secretary, except if necessary for ascertaining or enforcing compliance with the applicable administrative simplification provisions, or if otherwise required by law.

§ 160.312 Secretarial action regarding complaints and compliance reviews.

(a) *Resolution when noncompliance is indicated.* (1) If an investigation of a complaint pursuant to § 160.306 or a compliance review pursuant to § 160.308 indicates noncompliance, the Secretary will attempt to reach a resolution of the matter satisfactory to the Secretary by informal means. Informal means may include demonstrated compliance or a completed corrective action plan or other agreement.

(2) If the matter is resolved by informal means, the Secretary will so inform the covered entity and, if the

matter arose from a complaint, the complainant, in writing.

(3) If the matter is not resolved by informal means, the Secretary will—

(i) So inform the covered entity and provide the covered entity an opportunity to submit written evidence of any mitigating factors or affirmative defenses for consideration under §§ 160.408 and 160.410. The covered entity must submit any such evidence to the Secretary within 30 days (computed in the same manner as prescribed under § 160.526) of receipt of such notification; and

(ii) If, following action pursuant to paragraph (a)(3)(i) of this section, the Secretary finds that a civil money penalty should be imposed, inform the covered entity of such finding in a notice of proposed determination in accordance with § 160.420.

(b) *Resolution when no violation is found.* If, after an investigation pursuant to § 160.306 or a compliance review pursuant to § 160.308, the Secretary determines that further action is not warranted, the Secretary will so inform the covered entity and, if the matter arose from a complaint, the complainant, in writing.

§ 160.314 Investigational subpoenas and inquiries.

(a) The Secretary may issue subpoenas in accordance with 42 U.S.C. 405(d) and (e), 1320a–7a(j), and 1320d–5 to require the attendance and testimony of witnesses and the production of any other evidence during an investigation pursuant to this part. For purposes of this paragraph, a person other than a natural person is termed an "entity."

(1) A subpoena issued under this paragraph must—

(i) State the name of the person (including the entity, if applicable) to whom the subpoena is addressed;

(ii) State the statutory authority for the subpoena;

(iii) Indicate the date, time, and place that the testimony will take place;

(iv) Include a reasonably specific description of any documents or items required to be produced; and

(v) If the subpoena is addressed to an entity, describe with reasonable particularity the subject matter on which testimony is required. In that event, the entity must designate one or more natural persons who will testify on its behalf, and must state as to each such person that person's name and address and the matters on which he or she will testify. The designated person must testify as to matters known or reasonably available to the entity.

(2) A subpoena under this section must be served by—

(i) Delivering a copy to the natural person named in the subpoena or to the entity named in the subpoena at its last principal place of business; or

(ii) Registered or certified mail addressed to the natural person at his or her last known dwelling place or to the entity at its last known principal place of business.

(3) A verified return by the natural person serving the subpoena setting forth the manner of service or, in the case of service by registered or certified mail, the signed return post office receipt, constitutes proof of service.

(4) Witnesses are entitled to the same fees and mileage as witnesses in the district courts of the United States (28 U.S.C. 1821 and 1825). Fees need not be paid at the time the subpoena is served.

(5) A subpoena under this section is enforceable through the district court of the United States for the district where the subpoenaed natural person resides or is found or where the entity transacts business.

(b) Investigational inquiries are non-public investigational proceedings conducted by the Secretary.

(1) Testimony at investigational inquiries will be taken under oath or affirmation.

(2) Attendance of non-witnesses is discretionary with the Secretary, except that a witness is entitled to be accompanied, represented, and advised by an attorney.

(3) Representatives of the Secretary are entitled to attend and ask questions.

(4) A witness will have the opportunity to clarify his or her answers on the record following questioning by the Secretary.

(5) Any claim of privilege must be asserted by the witness on the record.

(6) Objections must be asserted on the record. Errors of any kind that might be corrected if promptly presented will be deemed to be waived unless reasonable objection is made at the investigational inquiry. Except where the objection is on the grounds of privilege, the question will be answered on the record, subject to objection.

(7) If a witness refuses to answer any question not privileged or to produce requested documents or items, or engages in conduct likely to delay or obstruct the investigational inquiry, the Secretary may seek enforcement of the subpoena under paragraph (a)(5) of this section.

(8) The proceedings will be recorded and transcribed. The witness is entitled to a copy of the transcript, upon payment of prescribed costs, except that, for good cause, the witness may be limited to inspection of the official transcript of his or her testimony.

(9)(i) The transcript will be submitted to the witness for signature.

(A) Where the witness will be provided a copy of the transcript, the transcript will be submitted to the witness for signature. The witness may submit to the Secretary written proposed corrections to the transcript, with such corrections attached to the transcript. If the witness does not return a signed copy of the transcript or proposed corrections within 30 days (computed in the same manner as prescribed under § 160.526) of its being submitted to him or her for signature, the witness will be deemed to have agreed that the transcript is true and accurate.

(B) Where, as provided in paragraph (b)(8) of this section, the witness is limited to inspecting the transcript, the witness will have the opportunity at the time of inspection to propose corrections to the transcript, with corrections attached to the transcript. The witness will also have the opportunity to sign the transcript. If the witness does not sign the transcript or offer corrections within 30 days (computed in the same manner as prescribed under § 160.526 of this part) of receipt of notice of the opportunity to inspect the transcript, the witness will be deemed to have agreed that the transcript is true and accurate.

(ii) The Secretary's proposed corrections to the record of transcript will be attached to the transcript.

(c) Consistent with § 160.310(c)(3), testimony and other evidence obtained in an investigational inquiry may be used by HHS in any of its activities and may be used or offered into evidence in any administrative or judicial proceeding.

§ 160.316 Refraining from intimidation or retaliation.

A covered entity may not threaten, intimidate, coerce, discriminate against, or take any other retaliatory action against any individual or other person for—

(a) Filing of a complaint under § 160.306;

(b) Testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing under this part; or

(c) Opposing any act or practice made unlawful by this subchapter, provided the individual or person has a good faith belief that the practice opposed is unlawful, and the manner of opposition is reasonable and does not involve a disclosure of protected health information in violation of subpart E of part 164 of this subchapter.

4. Amend 45 CFR part 160 by adding a new subpart D to read as follows:

Subpart D—Imposition of Civil Money Penalties

Sec.
160.400 Applicability.
160.402 Basis for a civil money penalty.
160.404 Amount of a civil money penalty.
160.406 Number of violations.
160.408 Factors considered in determining the amount of a civil money penalty.
160.410 Affirmative defenses.
160.412 Waiver.
160.414 Limitations.
160.416 Authority to settle.
160.418 Penalty not exclusive.
160.420 Notice of proposed determination.
160.422 Failure to request a hearing.
160.424 Collection of penalty.
160.426 Notification of the public and other agencies.

Subpart D—Imposition of Civil Money Penalties

§ 160.400 Applicability.

This subpart applies to the imposition of a civil money penalty by the Secretary under 42 U.S.C. 1320d–5.

§ 160.402 Basis for a civil money penalty.

(a) *General rule.* Subject to § 160.410, the Secretary will impose a civil money penalty upon a covered entity if the Secretary determines that the covered entity has violated an administrative simplification provision.

(b) *Violation by more than one covered entity.* (1) Except as provided in paragraph (b)(2) of this section, if the Secretary determines that more than one covered entity was responsible for a violation, the Secretary will impose a civil money penalty against each such covered entity.

(2) Each covered entity that is a member of an affiliated covered entity, in accordance with § 164.105(b) of this subchapter, is jointly and severally liable for a civil money penalty for a violation of part 164 of this subchapter based on an act or omission of the affiliated covered entity.

(c) *Violation attributed to a covered entity.* A covered entity is liable, in accordance with the federal common law of agency, for a civil money penalty for a violation based on the act or omission of any agent of the covered entity, including a workforce member, acting within the scope of the agency, unless—

(1) The agent is a business associate of the covered entity;

(2) The covered entity has complied, with respect to such business associate, with the applicable requirements of §§ 164.308(b) and 164.502(e) of this subchapter; and

(3) The covered entity did not—

(i) Know of a pattern of activity or practice of the business associate, and

(ii) Fail to act as required by §§ 164.314(a)(1)(ii) and 164.504(e)(1)(ii) of this subchapter, as applicable.

§ 160.404 Amount of a civil money penalty.

(a) The amount of a civil money penalty will be determined in accordance with paragraph (b) of this section and §§ 160.406, 160.408, and 160.412.

(b) The amount of a civil money penalty that may be imposed is subject to the following limitations:

(1) The Secretary may not impose a civil money penalty—

(i) In the amount of more than $100 for each violation; or

(ii) In excess of $25,000 for identical violations during a calendar year (January 1 through the following December 31).

(2) If a requirement or prohibition in one administrative simplification provision is repeated in a more general form in another administrative simplification provision in the same subpart, a civil money penalty may be imposed for a violation of only one of these administrative simplification provisions.

§ 160.406 Number of violations.

(a) *General rule.* To determine the number of violations of an identical administrative simplification provision by a covered entity, the Secretary will apply, as he deems appropriate, any variables identified at paragraph (b) of this section, based upon:

(1) The facts and circumstances of the violation; and

(2) The underlying purpose of the subpart of this subchapter that is violated.

(b) *Variables.* (1) The number of times the covered entity failed to engage in required conduct or engaged in a prohibited act;

(2) The number of persons involved in, or affected by, the violation; or

(3) The duration of the violation counted in days.

§ 160.408 Factors considered in determining the amount of a civil money penalty.

In determining the amount of any civil money penalty, the Secretary may consider as aggravating or mitigating factors, as appropriate, any of the following:

(a) The nature of the violation, in light of the purpose of the rule violated.

(b) The circumstances, including the consequences, of the violation, including but not limited to:

(1) The time period during which the violation(s) occurred;

(2) Whether the violation caused physical harm;

(3) Whether the violation hindered or facilitated an individual's ability to obtain health care; and

(4) Whether the violation resulted in financial harm.

(c) The degree of culpability of the covered entity, including but not limited to:

(1) Whether the violation was intentional; and

(2) Whether the violation was beyond the direct control of the covered entity.

(d) Any history of prior offenses of the covered entity, including but not limited to:

(1) Whether the current violation is the same or similar to prior violation(s);

(2) Whether and to what extent the covered entity has attempted to correct previous violations;

(3) How the covered entity has responded to technical assistance from the Secretary provided in the context of a compliance effort; and

(4) How the covered entity has responded to prior complaints.

(e) The financial condition of the covered entity, including but not limited to:

(1) Whether the covered entity had financial difficulties that affected its ability to comply;

(2) Whether the imposition of a civil money penalty would jeopardize the ability of the covered entity to continue to provide, or to pay for, health care; and

(3) The size of the covered entity.

(f) Such other matters as justice may require.

§ 160.410 Affirmative defenses.

(a) As used in this section, the following terms have the following meanings:

Reasonable cause means circumstances that would make it unreasonable for the covered entity, despite the exercise of ordinary business care and prudence, to comply with the administrative simplification provision violated.

Reasonable diligence means the business care and prudence expected from a person seeking to satisfy a legal requirement under similar circumstances.

Willful neglect means conscious, intentional failure or reckless indifference to the obligation to comply with the administrative simplification provision violated.

(b) The Secretary may not impose a civil money penalty on a covered entity for a violation if the covered entity establishes that an affirmative defense exists with respect to the violation, including the following:

(1) The violation is an act punishable under 42 U.S.C. 1320d–6;

(2) The covered entity establishes, to the satisfaction of the Secretary, that it did not have knowledge of the violation, determined in accordance with the federal common law of agency, and, by exercising reasonable diligence, would not have known that the violation occurred; or

(3) The violation is—

(i) Due to reasonable cause and not willful neglect; and

(ii) Corrected during either:

(A) The 30-day period beginning on the date the covered entity liable for the penalty knew, or by exercising reasonable diligence would have known, that the violation occurred; or

(B) Such additional period as the Secretary determines to be appropriate based on the nature and extent of the failure to comply.

§ 160.412 Waiver.

For violations described in § 160.410(b)(3)(i) that are not corrected within the period described in § 160.410(b)(3)(ii), the Secretary may waive the civil money penalty, in whole or in part, to the extent that payment of the penalty would be excessive relative to the violation.

§ 160.414 Limitations.

No action under this subpart may be entertained unless commenced by the Secretary, in accordance with § 160.420, within 6 years from the date of the occurrence of the violation.

§ 160.416 Authority to settle.

Nothing in this subpart limits the authority of the Secretary to settle any issue or case or to compromise any penalty.

§ 160.418 Penalty not exclusive.

Except as otherwise provided by 42 U.S.C. 1320d–5(b)(1), a penalty imposed under this part is in addition to any other penalty prescribed by law.

§ 160.420 Notice of proposed determination.

(a) If a penalty is proposed in accordance with this part, the Secretary must deliver, or send by certified mail with return receipt requested, to the respondent, written notice of the Secretary's intent to impose a penalty. This notice of proposed determination must include—

(1) Reference to the statutory basis for the penalty;

(2) A description of the findings of fact regarding the violations with respect to which the penalty is proposed (except in cases where the Secretary is relying upon a statistical sampling study in accordance with § 160.536, in which case the notice must describe the study relied upon and briefly describe the statistical sampling technique used by the Secretary);

(3) The reason(s) why the violation(s) subject(s) the respondent to a penalty;

(4) The amount of the proposed penalty;

(5) Any circumstances described in § 160.408 that were considered in determining the amount of the proposed penalty; and

(6) Instructions for responding to the notice, including a statement of the respondent's right to a hearing, a statement that failure to request a hearing within 60 days permits the imposition of the proposed penalty without the right to a hearing under § 160.504 or a right of appeal under § 160.548, and the address to which the hearing request must be sent.

(b) The respondent may request a hearing before an ALJ on the proposed penalty by filing a request in accordance with § 160.504.

§ 160.422 Failure to request a hearing.

If the respondent does not request a hearing within the time prescribed by § 160.504 and the matter is not settled pursuant to § 160.416, the Secretary will impose the proposed penalty or any lesser penalty permitted by 42 U.S.C. 1320d–5. The Secretary will notify the respondent by certified mail, return receipt requested, of any penalty that has been imposed and of the means by which the respondent may satisfy the penalty, and the penalty is final on receipt of the notice. The respondent has no right to appeal a penalty under § 160.548 with respect to which the respondent has not timely requested a hearing.

§ 160.424 Collection of penalty.

(a) Once a determination of the Secretary to impose a penalty has become final, the penalty will be collected by the Secretary, subject to the first sentence of 42 U.S.C. 1320a–7a(f).

(b) The penalty may be recovered in a civil action brought in the United States district court for the district where the respondent resides, is found, or is located.

(c) The amount of a penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sum then or later owing by the United States, or by a State agency, to the respondent.

(d) Matters that were raised or that could have been raised in a hearing before an ALJ, or in an appeal under 42 U.S.C. 1320a–7a(e), may not be raised as a defense in a civil action by the United States to collect a penalty under this part.

§ 160.426 Notification of the public and other agencies.

Whenever a proposed penalty becomes final, the Secretary will notify, in such manner as the Secretary deems appropriate, the public and the following organizations and entities thereof and the reason it was imposed: The appropriate State or local medical or professional organization, the appropriate State agency or agencies administering or supervising the administration of State health care programs (as defined in 42 U.S.C. 1320a–7(h)), the appropriate utilization and quality control peer review organization, and the appropriate State or local licensing agency or organization (including the agency specified in 42 U.S.C. 1395aa(a), 1396a(a)(33)).

5. Revise subpart E to read as follows:

Subpart E—Procedures for Hearings

Sec.

Subpart E—Procedures for Hearings

§ 160.500 Applicability.

This subpart applies to hearings conducted relating to the imposition of a civil money penalty by the Secretary under 42 U.S.C. 1320d–5.

§ 160.502 Definitions.

As used in this subpart, the following term has the following meaning:

Board means the members of the HHS Departmental Appeals Board, in the Office of the Secretary, who issue decisions in panels of three.

§ 160.504 Hearing before an ALJ.

(a) A respondent may request a hearing before an ALJ. The parties to the hearing proceeding consist of—

(1) The respondent; and

(2) The officer(s) or employee(s) of HHS to whom the enforcement authority involved has been delegated.

(b) The request for a hearing must be made in writing signed by the respondent or by the respondent's attorney and sent by certified mail, return receipt requested, to the address specified in the notice of proposed determination. The request for a hearing must be mailed within 60 days after notice of the proposed determination is received by the respondent. For purposes of this section, the respondent's date of receipt of the notice of proposed determination is presumed to be 5 days after the date of the notice unless the respondent makes a reasonable showing to the contrary to the ALJ.

(c) The request for a hearing must clearly and directly admit, deny, or explain each of the findings of fact contained in the notice of proposed determination with regard to which the respondent has any knowledge. If the respondent has no knowledge of a particular finding of fact and so states, the finding shall be deemed denied. The request for a hearing must also state the circumstances or arguments that the respondent alleges constitute the grounds for any defense and the factual and legal basis for opposing the penalty.

(d) The ALJ must dismiss a hearing request where—

(1) The respondent's hearing request is not filed as required by paragraphs (b) and (c) of this section;

(2) The respondent withdraws the request for a hearing;

(3) The respondent abandons the request for a hearing; or

(4) The respondent's hearing request fails to raise any issue that may properly be addressed in a hearing.

§ 160.506 Rights of the parties.

(a) Except as otherwise limited by this subpart, each party may—

(1) Be accompanied, represented, and advised by an attorney;

(2) Participate in any conference held by the ALJ;

3) Conduct discovery of documents as permitted by this subpart;

(4) Agree to stipulations of fact or law that will be made part of the record;

(5) Present evidence relevant to the issues at the hearing;

(6) Present and cross-examine witnesses;

(7) Present oral arguments at the hearing as permitted by the ALJ; and

(8) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

(b) A party may appear in person or by a representative. Natural persons who appear as an attorney or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

(c) Fees for any services performed on behalf of a party by an attorney are not subject to the provisions of 42 U.S.C. 406, which authorizes the Secretary to specify or limit their fees.

§ 160.508 Authority of the ALJ.

(a) The ALJ must conduct a fair and impartial hearing, avoid delay, maintain order, and ensure that a record of the proceeding is made.

(b) The ALJ may—

(1) Set and change the date, time and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses at hearings and the production of documents at or in relation to hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of documentary discovery as permitted by this subpart;

(8) Regulate the course of the hearing and the conduct of representatives, parties, and witnesses;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Conduct any conference, argument or hearing in person or, upon agreement of the parties, by telephone; and

(13) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact. A summary judgment decision constitutes a hearing on the record for the purposes of this subpart.

(c) The ALJ—

(1) May not find invalid or refuse to follow Federal statutes, regulations, or Secretarial delegations of authority and must give deference to published guidance to the extent not inconsistent with statute or regulation;

(2) May not enter an order in the nature of a directed verdict;

(3) May not compel settlement negotiations;

(4) May not enjoin any act of the Secretary; or

(5) May not review the exercise of discretion by the Secretary with respect to—

(i) Whether to grant an extension under § 160.410(b)(3)(ii)(B) or to provide technical assistance under 42 U.S.C. 1320d–5(b)(3)(B); and

(ii) Selection of variable(s) under § 160.406.

§ 160.510 Ex parte contacts.

No party or person (except employees of the ALJ's office) may communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for both parties to participate. This provision does not prohibit a party or person from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 160.512 Prehearing conferences.

(a) The ALJ must schedule at least one prehearing conference, and may schedule additional prehearing conferences as appropriate, upon reasonable notice, which may not be less than 14 business days, to the parties.

(b) The ALJ may use prehearing conferences to discuss the following—

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of the other party) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery of documents as permitted by this subpart;

(9) The time and place for the hearing;

(10) The potential for the settlement of the case by the parties; and

(11) Other matters as may tend to encourage the fair, just and expeditious disposition of the proceedings, including the protection of privacy of individually identifiable health information that may be submitted into evidence or otherwise used in the proceeding, if appropriate.

(c) The ALJ must issue an order containing the matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 160.514 Authority to settle.

The Secretary has exclusive authority to settle any issue or case without the consent of the ALJ.

§ 160.516 Discovery.

(a) A party may make a request to another party for production of documents for inspection and copying that are relevant and material to the issues before the ALJ.

(b) For the purpose of this section, the term "documents" includes information, reports, answers, records, accounts, papers and other data and documentary evidence. Nothing contained in this section may be interpreted to require the creation of a document, except that requested data stored in an electronic data storage system must be produced in a form accessible to the requesting party.

(c) Requests for documents, requests for admissions, written interrogatories, depositions and any forms of discovery, other than those permitted under paragraph (a) of this section, are not authorized.

(d) This section may not be construed to require the disclosure of interview reports or statements obtained by any party, or on behalf of any party, of persons who will not be called as witnesses by that party, or analyses and summaries prepared in conjunction with the investigation or litigation of the case, or any otherwise privileged documents.

(e)(1) When a request for production of documents has been received, within 30 days the party receiving that request must either fully respond to the request, or state that the request is being objected to and the reasons for that objection. If objection is made to part of an item or category, the part must be specified. Upon receiving any objections, the party seeking production may then, within 30 days or any other time frame set by the ALJ, file a motion for an order compelling discovery. The party receiving a request for production may also file a motion for protective order any time before the date the production is due.

(2) The ALJ may grant a motion for protective order or deny a motion for an order compelling discovery if the ALJ finds that the discovery sought—

(i) Is irrelevant;

(ii) Is unduly costly or burdensome;

(iii) Will unduly delay the proceeding; or

(iv) Seeks privileged information.

(3) The ALJ may extend any of the time frames set forth in paragraph (e)(1) of this section.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

§ 160.518 Exchange of witness lists, witness statements, and exhibits.

(a) The parties must exchange witness lists, copies of prior written statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 160.538, not more than 60, and not less than 15, days before the scheduled hearing.

(b)(1) If, at any time, a party objects to the proposed admission of evidence not exchanged in accordance with paragraph (a) of this section, the ALJ must determine whether the failure to comply with paragraph (a) of this section should result in the exclusion of that evidence.

(2) Unless the ALJ finds that extraordinary circumstances justified the failure timely to exchange the information listed under paragraph (a) of this section, the ALJ must exclude from the party's case-in-chief—

(i) The testimony of any witness whose name does not appear on the witness list; and

(ii) Any exhibit not provided to the opposing party as specified in paragraph (a) of this section.

(3) If the ALJ finds that extraordinary circumstances existed, the ALJ must then determine whether the admission of that evidence would cause substantial prejudice to the objecting party.

(i) If the ALJ finds that there is no substantial prejudice, the evidence may be admitted.

(ii) If the ALJ finds that there is substantial prejudice, the ALJ may exclude the evidence, or, if he or she does not exclude the evidence, must postpone the hearing for such time as is necessary for the objecting party to prepare and respond to the evidence, unless the objecting party waives postponement.

(c) Unless the other party objects within a reasonable period of time before the hearing, documents exchanged in accordance with paragraph (a) of this section will be deemed to be authentic for the purpose of admissibility at the hearing.

§ 160.520 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any person at the hearing may make a motion requesting the ALJ to issue a subpoena if the appearance and testimony are reasonably necessary for the presentation of a party's case.

(b) A subpoena requiring the attendance of a person in accordance with paragraph (a) of this section may also require the person (whether or not the person is a party) to produce relevant and material evidence at or before the hearing.

(c) When a subpoena is served by a respondent on a particular employee or official or particular office of HHS, the Secretary may comply by designating any knowledgeable HHS representative to appear and testify.

(d) A party seeking a subpoena must file a written motion not less than 30 days before the date fixed for the hearing, unless otherwise allowed by the ALJ for good cause shown. That motion must—

(1) Specify any evidence to be produced;

(2) Designate the witnesses; and

(3) Describe the address and location with sufficient particularity to permit those witnesses to be found.

(e) The subpoena must specify the time and place at which the witness is to appear and any evidence the witness is to produce.

(f) Within 15 days after the written motion requesting issuance of a subpoena is served, any party may file an opposition or other response.

(g) If the motion requesting issuance of a subpoena is granted, the party seeking the subpoena must serve it by delivery to the person named, or by certified mail addressed to that person at the person's last dwelling place or principal place of business.

(h) The person to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within 10 days after service.

(i) The exclusive remedy for contumacy by, or refusal to obey a subpoena duly served upon, any person is specified in 42 U.S.C. 405(e).

§ 160.522 Fees.

The party requesting a subpoena must pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage must accompany the subpoena when served, except that, when a subpoena is issued on behalf of the Secretary, a check for witness fees and mileage need not accompany the subpoena.

§ 160.524 Form, filing, and service of papers.

(a) *Forms.* (1) Unless the ALJ directs the parties to do otherwise, documents

filed with the ALJ must include an original and two copies.

(2) Every pleading and paper filed in the proceeding must contain a caption setting forth the title of the action, the case number, and a designation of the paper, such as motion to quash subpoena.

(3) Every pleading and paper must be signed by and must contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed.

(b) *Service.* A party filing a document with the ALJ or the Board must, at the time of filing, serve a copy of the document on the other party. Service upon any party of any document must be made by delivering a copy, or placing a copy of the document in the United States mail, postage prepaid and addressed, or with a private delivery service, to the party's last known address. When a party is represented by an attorney, service must be made upon the attorney in lieu of the party.

(c) *Proof of service.* A certificate of the natural person serving the document by personal delivery or by mail, setting forth the manner of service, constitutes proof of service.

§ 160.526 Computation of time.

(a) In computing any period of time under this subpart or in an order issued thereunder, the time begins with the day following the act, event or default, and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government must be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional 5 days must be added to the time permitted for any response. This paragraph does not apply to requests for hearing under § 160.504.

§ 160.528 Motions.

(a) An application to the ALJ for an order or ruling must be by motion. Motions must state the relief sought, the authority relied upon and the facts alleged, and must be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions must be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 10 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to the motion.

(d) The ALJ may not grant a written motion before the time for filing responses has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny the motion without awaiting a response.

(e) The ALJ must make a reasonable effort to dispose of all outstanding motions before the beginning of the hearing.

§ 160.530 Sanctions.

The ALJ may sanction a person, including any party or attorney, for failing to comply with an order or procedure, for failing to defend an action or for other misconduct that interferes with the speedy, orderly or fair conduct of the hearing. The sanctions must reasonably relate to the severity and nature of the failure or misconduct. The sanctions may include—

(a) In the case of refusal to provide or permit discovery under the terms of this part, drawing negative factual inferences or treating the refusal as an admission by deeming the matter, or certain facts, to be established;

(b) Prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense;

(c) Striking pleadings, in whole or in part;

(d) Staying the proceedings;

(e) Dismissal of the action;

(f) Entering a decision by default;

(g) Ordering the party or attorney to pay the attorney's fees and other costs caused by the failure or misconduct; and

(h) Refusing to consider any motion or other action that is not filed in a timely manner.

§ 160.532 Collateral estoppel.

When a final determination that the respondent violated an administrative simplification provision has been rendered in any proceeding in which the respondent was a party and had an opportunity to be heard, the respondent is bound by that determination in any proceeding under this part.

§ 160.534 The hearing.

(a) The ALJ must conduct a hearing on the record in order to determine whether the respondent should be found liable under this part.

(b)(1) The respondent has the burden of going forward and the burden of persuasion with respect to any:

(i) Affirmative defense pursuant to § 160.410;

(ii) Challenge to the amount of a proposed penalty pursuant to §§ 160.404–160.408, including any factors raised as mitigating factors; or

(iii) Claim that a proposed penalty should be reduced or waived pursuant to § 160.412.

(2) The Secretary has the burden of going forward and the burden of persuasion with respect to all other issues, including issues of liability and the existence of any factors considered as aggravating factors in determining the amount of the proposed penalty.

(3) The burden of persuasion will be judged by a preponderance of the evidence.

(c) The hearing must be open to the public unless otherwise ordered by the ALJ for good cause shown.

(d)(1) Subject to the 15-day rule under § 160.518(a) and the admissibility of evidence under § 160.540, either party may introduce, during its case in chief, items or information that arose or became known after the date of the issuance of the notice of proposed determination or the request for hearing, as applicable. Such items and information may not be admitted into evidence, if introduced—

(i) By the Secretary, unless they are material and relevant to the acts or omissions with respect to which the penalty is proposed in the notice of proposed determination pursuant to § 160.420, including circumstances that may increase penalties; or

(ii) By the respondent, unless they are material and relevant to an admission, denial or explanation of a finding of fact in the notice of proposed determination under § 160.420, or to a specific circumstance or argument expressly stated in the request for hearing under § 160.504, including circumstances that may reduce penalties.

(2) After both parties have presented their cases, evidence may be admitted in rebuttal even if not previously exchanged in accordance with § 160.518.

§ 160.536 Statistical sampling.

(a) In meeting the burden of proof set forth in § 160.534, the Secretary may introduce the results of a statistical sampling study as evidence of the number of violations under § 160.406, or the factors considered in determining the amount of the civil money penalty under § 160.408. Such statistical sampling study, if based upon an appropriate sampling and computed by valid statistical methods, constitutes prima facie evidence of the number of violations and the existence of factors material to the proposed civil money

penalty as described in §§ 160.406 and 160.408.

(b) Once the Secretary has made a prima facie case, as described in paragraph (a) of this section, the burden of going forward shifts to the respondent to produce evidence reasonably calculated to rebut the findings of the statistical sampling study. The Secretary will then be given the opportunity to rebut this evidence.

§ 160.538 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing must be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony of witnesses other than the testimony of expert witnesses may be admitted in the form of a written statement. Any such written statement must be provided to the other party, along with the last known address of the witness, in a manner that allows sufficient time for the other party to subpoena the witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing must be exchanged as provided in § 160.518. The ALJ may, at his or her discretion, admit prior sworn testimony of experts that has been subject to adverse examination, such as a deposition or trial testimony.

(c) The ALJ must exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) Make the interrogation and presentation effective for the ascertainment of the truth;

(2) Avoid repetition or needless consumption of time; and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ must permit the parties to conduct cross-examination of witnesses as may be required for a full and true disclosure of the facts.

(e) The ALJ may order witnesses excluded so that they cannot hear the testimony of other witnesses, except that the ALJ may not order to be excluded—

(1) A party who is a natural person;

(2) In the case of a party that is not a natural person, the officer or employee of the party appearing for the entity pro se or designated as the party's representative; or

(3) A natural person whose presence is shown by a party to be essential to the presentation of its case, including a person engaged in assisting the attorney for the Secretary.

§ 160.540 Evidence.

(a) The ALJ must determine the admissibility of evidence.

(b) Except as provided in this subpart, the ALJ is not bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, for example, to exclude unreliable evidence.

(c) The ALJ must exclude irrelevant or immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence must be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement are inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) Evidence of crimes, wrongs, or acts other than those at issue in the instant case is admissible in order to show motive, opportunity, intent, knowledge, preparation, identity, lack of mistake, or existence of a scheme. This evidence is admissible regardless of whether the crimes, wrongs, or acts occurred during the statute of limitations period applicable to the acts or omissions that constitute the basis for liability in the case and regardless of whether they were referenced in the Secretary's notice of proposed determination under § 160.420.

(h) The ALJ must permit the parties to introduce rebuttal witnesses and evidence.

(i) All documents and other evidence offered or taken for the record must be open to examination by both parties, unless otherwise ordered by the ALJ for good cause shown.

§ 160.542 The record.

(a) The hearing must be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ. Cost of transcription will be borne equally by the parties.

(b) The transcript of the testimony, exhibits, and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for decision by the ALJ and the Secretary.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by any person, unless otherwise ordered by the ALJ for good cause shown.

(d) For good cause, the ALJ may order appropriate redactions made to the record.

§ 160.544 Post hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ must fix the time for filing the briefs. The time for filing may not exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. The briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 160.546 ALJ decision.

(a) The ALJ must issue a decision, based only on the record, which must contain findings of fact and conclusions of law.

(b) The ALJ may affirm, increase, or reduce the penalties imposed by the Secretary.

(c) The ALJ must issue the decision to both parties within 60 days after the time for submission of post-hearing briefs and reply briefs, if permitted, has expired. If the ALJ fails to meet the deadline contained in this paragraph, he or she must notify the parties of the reason for the delay and set a new deadline.

(d) Unless the decision of the ALJ is timely appealed as provided for in § 160.548, the decision of the ALJ will be final and binding on the parties 60 days from the date of service of the ALJ's decision.

§ 160.548 Appeal of the ALJ decision.

(a) Any party may appeal the decision of the ALJ to the Board by filing a notice of appeal with the Board within 30 days of the date of service of the ALJ decision. The Board may extend the initial 30 day period for a period of time not to exceed 30 days if a party files with the Board a request for an extension within the initial 30 day period and shows good cause.

(b) If a party files a timely notice of appeal with the Board, the ALJ must forward the record of the proceeding to the Board.

(c) A notice of appeal must be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions. Any party may file a brief in opposition to the exceptions, which may raise any relevant issue not addressed in the exceptions, within 30 days of receiving the notice of appeal and the accompanying brief. The Board may permit the parties to file reply briefs.

(d) There is no right to appear personally before the Board or to appeal to the Board any interlocutory ruling by the ALJ.

(e) The Board may not consider any issue not raised in the parties' briefs, nor any issue in the briefs that could have been raised before the ALJ but was not.

(f) If any party demonstrates to the satisfaction of the Board that additional evidence not presented at such hearing is relevant and material and that there were reasonable grounds for the failure to adduce such evidence at the hearing, the Board may remand the matter to the ALJ for consideration of such additional evidence.

(g) The Board may decline to review the case, or may affirm, increase, reduce, reverse or remand any penalty determined by the ALJ.

(h) The standard of review on a disputed issue of fact is whether the initial decision of the ALJ is supported by substantial evidence on the whole record. The standard of review on a disputed issue of law is whether the decision is erroneous.

(i) Within 60 days after the time for submission of briefs and reply briefs, if permitted, has expired, the Board must serve on each party to the appeal a copy of the Board's decision and a statement describing the right of any respondent who is penalized to seek judicial review.

(j)(1) The Board's decision under paragraph (i) of this section, including a decision to decline review of the initial decision, becomes the final decision of the Secretary 60 days after the date of service of the Board's decision, except with respect to a decision to remand to the ALJ or if reconsideration is requested under this paragraph.

(2) The Board will reconsider its decision only if it determines that the decision contains a clear error of fact or error of law. New evidence will not be a basis for reconsideration unless the party demonstrates that the evidence is newly discovered and was not previously available.

(3) A party may file a motion for reconsideration with the Board before the date the decision becomes final under paragraph (j)(1) of this section. A motion for reconsideration must be accompanied by a written brief specifying any alleged error of fact or law and, if the party is relying on additional evidence, explaining why the evidence was not previously available. Any party may file a brief in opposition within 15 days of receiving the motion for reconsideration and the accompanying brief unless this time limit is extended by the Board for good cause shown. Reply briefs are not permitted.

(4) The Board must rule on the motion for reconsideration not later than 30 days from the date the opposition brief is due. If the Board denies the motion, the decision issued under paragraph (i) of this section becomes the final decision of the Secretary on the date of service of the ruling. If the Board grants the motion, the Board will issue a reconsidered decision, after such procedures as the Board determines necessary to address the effect of any error. The Board's decision on reconsideration becomes the final decision of the Secretary on the date of service of the decision, except with respect to a decision to remand to the ALJ.

(5) If service of a ruling or decision issued under this section is by mail, the date of service will be deemed to be 5 days from the date of mailing.

(k)(1) A respondent's petition for judicial review must be filed within 60 days of the date on which the decision of the Board becomes the final decision of the Secretary under paragraph (j) of this section.

(2) In compliance with 28 U.S.C. 2112(a), a copy of any petition for judicial review filed in any U.S. Court of Appeals challenging the final decision of the Secretary must be sent by certified mail, return receipt requested, to the General Counsel of HHS. The petition copy must be a copy showing that it has been time-stamped by the clerk of the court when the original was filed with the court.

(3) If the General Counsel of HHS received two or more petitions within 10 days after the final decision of the Secretary, the General Counsel will notify the U.S. Judicial Panel on Multidistrict Litigation of any petitions that were received within the 10 day period.

§ 160.550 Stay of the Secretary's decision.

(a) Pending judicial review, the respondent may file a request for stay of the effective date of any penalty with the ALJ. The request must be accompanied by a copy of the notice of appeal filed with the federal court. The filing of the request automatically stays the effective date of the penalty until such time as the ALJ rules upon the request.

(b) The ALJ may not grant a respondent's request for stay of any penalty unless the respondent posts a bond or provides other adequate security.

(c) The ALJ must rule upon a respondent's request for stay within 10 days of receipt.

§ 160.552 Harmless error.

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in any act done or omitted by the ALJ or by any of the parties is ground for vacating, modifying or otherwise disturbing an otherwise appropriate ruling or order or act, unless refusal to take such action appears to the ALJ or the Board inconsistent with substantial justice. The ALJ and the Board at every stage of the proceeding must disregard any error or defect in the proceeding that does not affect the substantial rights of the parties.

PART 164—SECURITY AND PRIVACY

1. The authority citation for part 164 is revised to read as follows:

Authority: 42 U.S.C. 1320d–1320d–8 and sec. 264, Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d-2 (note)).

2. Revise § 164.530(g) to read as follows:

§ 164.530 Standard: refraining from intimidating or retaliatory acts.

* * * * *

(g) A covered entity—

(1) May not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against any individual for the exercise by the individual of any right established, or for participation in any process provided for by this subpart, including the filing of a complaint under this section; and

(2) Must refrain from intimidation and retaliation as provided in § 160.316 of this subchapter.

* * * * *

[FR Doc. 05–7512 Filed 4–14–05; 8:45 am]
BILLING CODE 4153–01–P

Federal Register

Monday,
April 18, 2005

Part IV

The President

Federal Register
Vol. 70, No. 73
Monday, April 18, 2005

Presidential Documents

Title 3—

The President

Executive Order 13376 of April 13, 2005

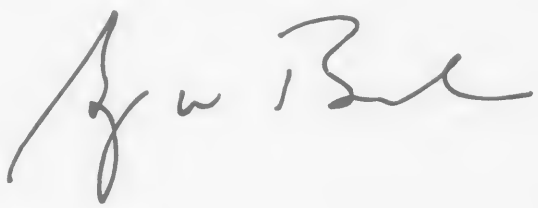
Amendments to Executive Order 12863, Relating to the President's Foreign Intelligence Advisory Board

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458), and to update and clarify Executive Order 12863, which created the President's Foreign Intelligence Advisory Board, Executive Order 12863 of September 13, 1993, as amended by Executive Orders 13070 of December 15, 1997, and 13301 of May 14, 2003, is further amended as follows:

(a) effective upon appointment of the Director of National Intelligence, by striking "Director of Central Intelligence" each place it appears and inserting in lieu thereof "Director of National Intelligence"; and

(b) by adding at the end thereof the following new section:

"**Sec. 3.4.** This order is intended only to improve the internal management of the executive branch of the Federal Government, and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.".



THE WHITE HOUSE,
April 13, 2005.

[FR Doc. 05–7830
Filed 4–15–05; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13377 of April 13, 2005

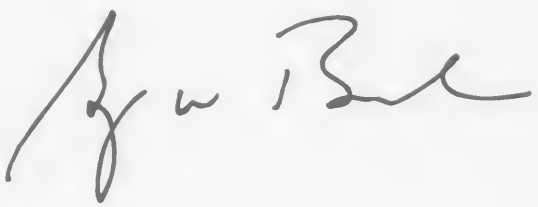
Designating the African Union as a Public International Organization Entitled To Enjoy Certain Privileges, Exemptions, and Immunities

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 1 and 12 of the International Organizations Immunities Act (22 U.S.C. 288 and 288f–2), as amended by section 569(h) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005 (Division D of Public Law 108–447), it is hereby ordered as follows:

Section 1. *Designation.* The African Union is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act.

Sec. 2. *Non-Abridgement.* The designation in section 1 of this order is not intended to abridge in any respect privileges, exemptions, or immunities that the African Union otherwise may have acquired or may acquire by law.

Sec. 3. *Revocation.* Executive Order 11767 of February 19, 1974, is revoked.



THE WHITE HOUSE,
April 13, 2005.

[FR Doc. 05–7831
Filed 4–15–05; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7885 of April 14, 2005

National Volunteer Week, 2005

By the President of the United States of America

A Proclamation

The great strength of our Nation is found in the hearts and souls of the American people. During National Volunteer Week, we recognize the millions of individuals who touch our lives as soldiers in America's armies of compassion. Our Nation's volunteers inspire us with their dedication, commitment, and efforts to build a more hopeful country for our citizens.

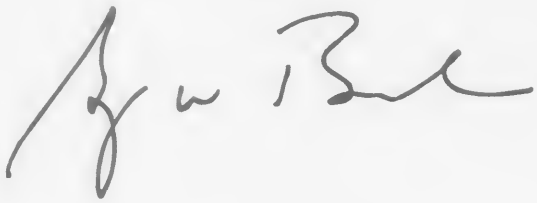
Americans take pride in the example of citizens who give their time and energy to care for the most vulnerable among us. In the past year, millions of volunteers have mentored children, provided shelter for the homeless, prepared for and responded to disasters, cared for the sick and elderly, fed the hungry, and performed other acts of kindness and community service. These selfless deeds have contributed to a culture of compassion and taught young people the importance of giving back to their communities.

My Administration is encouraging volunteer service through the USA Freedom Corps, and we have seen tremendous growth in the number of volunteers. Last year, over 64 million Americans offered their time as volunteers, an increase of nearly 5 million people since 2002. In the aftermath of the Indian Ocean tsunami, the world witnessed the compassion of our Nation as millions of our citizens donated generously to help the many people affected by the disaster. By participating in public service programs such as the Peace Corps, Senior Corps, AmeriCorps, and grassroots efforts such as Citizen Corps, our citizens are helping others. My Administration also supports faith-based and community groups whose volunteers bring hope and healing to those in need.

During National Volunteer Week, we thank those who volunteer to serve a cause greater than self, and I commend the more than 200,000 Americans who have earned the Volunteer Service Award from my Council on Service and Civic Participation. I urge all those who wish to get involved to visit the USA Freedom Corps website at www.usafreedomcorps.gov. By giving back to our communities, we can change America for the better one heart and one soul at a time.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 17 through April 23, 2005, as National Volunteer Week. I call upon all Americans to recognize and celebrate the important work that volunteers do every day across our country. I also encourage citizens to explore ways to help their neighbors and become involved in their communities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of April, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 05–7832
Filed 4–15–05; 8:45 am]
Billing code 3195–01–P

Federal Register

Monday,
April 18, 2005

Part V

The President

Proclamation 7886—Small Business Week, 2005

Federal Register
Vol. 70, No. 73
Monday, April 18, 2005

Presidential Documents

Title 3—

The President

Proclamation 7886 of April 14, 2005

Small Business Week, 2005

By the President of the United States of America

A Proclamation

America's economy is the most prosperous in the world, and the small business sector is one of its great strengths. During Small Business Week, we honor small business owners and workers, and we reaffirm our commitment to keeping America the best place in the world to do business.

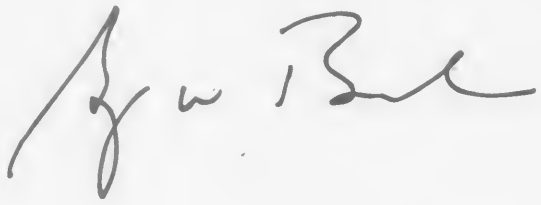
Our economy is strong and growing stronger. More Americans are working today than ever before. The unemployment rate is lower than the average rate of the 1970's, 1980's, and 1990's. Homeownership is at a record high. Family incomes are rising. Small businesses are at the heart of this growth, creating most new private-sector jobs in our economy and helping our citizens succeed.

My Administration is committed to keeping small businesses vibrant and strong. We provided tax relief and streamlined tax reporting requirements for small businesses. We are working to reduce the burden of unnecessary regulation and excessive litigation. We are working to make health care more available and affordable. We are opening up markets for U.S. products through free trade agreements and by enforcing existing trade laws. And we have promoted a culture of ownership so that more people can own their own homes and start their own businesses.

As small business owners and employees add to the vitality of our economy, they also inspire others to realize the full promise of our Nation. I join all Americans in celebrating the entrepreneurial spirit and hard work of our small business owners and employees.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 24 through April 30, 2005, as Small Business Week. I call upon all the people of the United States to observe this week with appropriate ceremonies, activities, and programs that celebrate the achievements of small business owners and their employees and encourage and foster the development of new small businesses.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of April, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 05–7843
Filed 4–15–05; 9:12 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 70, No. 73

Monday, April 18, 2005

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, APRIL

16691–16920 1
16921–17196 4
17197–17300 5
17301–17582 6
17583–17886 7
17887–18262 8
18263–18960 11
18961–19252 12
19253–19678 13
19679–19876 14
19877–20044 15
20045–20270 18

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7877 17197
7878 17293
7879 17295
7880 17297
7881 17301
7882 17883
7883 17885
7884 17887
7885 20265
7886 20269

Administrative Orders:
Memorandums:
Memorandums of March 31, 2005 17195

Executive Orders:
11767 (Revoked by EO 13377) 20263
12863 (Amended by EO 13376) 20261
13070 (See EO 13376) 20261
13295 (Amended by EO 13375) 17299
13301 (See EO 13376) 20261
13375 17299
13376 20261
13377 20263

4 CFR

Ch. I 17583
21 19679

5 CFR

Proposed Rules:
337 17610

6 CFR

Proposed Rules:
5 20061

7 CFR

54 17611
62 17611
272 18263
274 18263
354 16691
624 16921
723 17150
1001 18961
1124 18963
1463 17150
1464 17150
1700 17199
1709 17199
1738 16930
1942 19253
4279 17616

Proposed Rules:
946 16759
1000 19012
1001 19012
1005 19012
1006 19012
1007 19012
1030 ..... 19012, 19709
1032 19012
1033 19012
1124 ..... 19012, 19636
1126 19012
1131 ..... 19012, 19636
1738 16967

8 CFR

217 17820
231 17820
251 17820

9 CFR

77 19877
93 18252
94 18252
95 18252
97 16691
98 18252

Proposed Rules:
93 17928
94 17928
98 17928

10 CFR

Proposed Rules:
52 20062

11 CFR

Proposed Rules:
100 16967
110 16967
114 16967

12 CFR

303 17550
325 17550
327 17550
347 17550
617 18965
1710 17303

13 CFR

134 17583
140 17583

14 CFR

23 ..... 19254, 19257
25 18271
39 ..... 17199, 17312, 17315, 17590, 17591, 17594, 17596, 17598, 17600, 17603, 17604, 17606, 17889, 18274, 18275, 18277, 18282, 18285, 18287, 18290, 18463, 19259, 19681, 19682, 19685, 20045

71 .....16931, 16932, 18294, 18295, 18296, 18297, 18968, 20046, 20047
95.....18299
97.....17318, 19878
Proposed Rules:
25.....18321, 19015
39 .....16761, 16764, 16767, 16769, 16771, 16979, 16981, 16984, 16986, 17212, 17216, 17340, 17342, 17345, 17347, 17349, 17351, 17353, 17354, 17357, 17359, 17361, 17366, 17368, 17370, 17373, 17375, 17377, 17618, 17620, 17621, 18322, 18324, 18327, 18332, 19340, 19342, 19345, 19718, 19893, 20080, 20083
71 .....18335, 18337, 19027, 20085, 20087, 20088, 20090, 20091, 20092, 20093, 20095, 20096
241.....20098
249.....20098
256.....16990
413.....19720
415.....19720
417.....19720

15 CFR

742.....19688
744.....19688
774.....19688

16 CFR

Proposed Rules:
410.....17623
Ch. II 18338
1214.....18339

17 CFR

211.....16693
231.....19672
241.....19672
271.....19672

18 CFR

Proposed Rules:
45.....17219

19 CFR

4.....17820
122.....17820
178.....17820

20 CFR

Proposed Rules:
404 .....19351, 19353, 19356, 19358, 19361
416 .....19351, 19353, 19356, 19358, 19361
655.....16774

21 CFR

2.....17168
510.....17319
520 .....16933, 17319, 19261
522.....16933
526.....20048
558.....16933
1305.....16902
1308.....16935
1311.....16902
Proposed Rules:
101 .....16995, 17008, 17010

22 CFR

10.....16937

23 CFR

772.....16707
Proposed Rules:
650.....18342

24 CFR

200.....19660
203.....19666
Proposed Rules:
990.....19858

26 CFR

1 .....18301, 18920, 20049
31.....19694
301 .....16711, 18920, 19697
602.....18920
Proposed Rules:
1.....20099
31.....19028, 19721
301.....19722, 20099

27 CFR

17.....19880
19.....19880
24.....19880
25.....19880
26.....19880
27.....19880
31.....19880
45.....19888
70.....19880
194.....19880
Proposed Rules:
1.....18949
9.....17940
301.....18949
479.....17624

28 CFR

2.....19262

29 CFR

1981.....17889
4022.....19890
4044.....19890

30 CFR

936.....16941
946.....19698
950.....16945
Proposed Rules:
701.....17626
774.....17626
913.....17014

31 CFR

10.....19559, 19892
351.....17288
542.....17201
Proposed Rules:
29.....19366

32 CFR

199.....19263
527.....18301
634.....18969

33 CFR

100.....20049
110.....17898
117 .....18301, 18989, 20051
165 .....17608, 18302, 18305
Proposed Rules:
100.....16781
117.....19029
165.....17627, 18343

34 CFR

Proposed Rules:
Ch. I.....16784

36 CFR

7.....16712
1270.....16717

37 CFR

258.....17320
Proposed Rules:
1.....17629
2.....17636
3.....17629
7.....17636
10.....17629

40 CFR

9.....18074
49.....18074
52 .....16717, 16955, 16958, 17321, 18308, 18991, 18993, 18995, 19000, 19702
55.....20053
63.....19266, 19895
81.....19844
82.....19273
174.....17323
180 .....17901, 17908, 19278, 19283
271.....17286
300.....20058
Proposed Rules:
51.....17018
52 .....18346, 19030, 19031, 19035, 19723, 19895
63.....19369
70.....19914
71.....19914
81.....19895
82.....19371
122.....18347
180.....20036
300 .....18347, 19915, 20099
52 .....16784, 17027, 17028, 17029, 17640
152.....16785
158.....16785

42 CFR

403.....16720
405.....16720
410.....16720
411.....16720
412.....16724
413.....16724
414.....16720
418.....16720
424.....16720
484.....16720
486.....16720

44 CFR

64.....16964
65.....16730, 16733
67.....16736, 16738
Proposed Rules:
67 .....16786, 16789, 17037

45 CFR

Proposed Rules:
160.....20224
164.....20224

46 CFR

Proposed Rules:
67.....19376
221.....19376

47 CFR

1.....19293
2.....17327
11.....19312
15.....17328
22 .....17327, 19293, 19315
24.....17327
25.....19316
52.....19321
64 .....17330, 17334, 19330
73.....17334, 19337
74.....17327
78.....17327
80.....19315
87.....19315
90 .....17327, 19293, 19315
101.....19315
Proposed Rules:
1.....19377
69.....19381
73 .....17042, 17043, 17044, 17045, 17046, 17047, 17048, 17049, 17381, 17382, 17383, 17384, 19396, 19397, 19398, 19399, 19400, 19401, 19402, 19403, 19404, 19405, 19406, 19407, 19408

48 CFR

Ch. 1.....18954, 18959
8.....18954
25.....18954
39.....18958
52.....18959
237.....19003
Proposed Rules:
2.....17945
7.....17945
34.....17945
42.....17945
52.....17945
204.....19036, 19037
205.....19038
211.....19039
213.....19041, 19042
223.....19039
226.....19038
242.....19043
244.....19044
252 .....19038, 19039, 19043, 19044
253.....19042
538.....19045
546.....19051
552.....19042, 19051

49 CFR

171.....20018
174.....20018
219.....16966
571.....18136
573.....16742
585.....18136
1002.....17335
Proposed Rules:
172.....17385

50 CFR

13.....18311
17.....17864, 17916, 18220, 19154, 19562
20.....17574
21.....18311
92.....18244
216.....19004
223.....17211, 17386
300.....16742, 19004
622.....16754, 17401
648.....16758
679.....16742, 19338, 19708

Proposed Rules:

223.....17223
224.....17223
600.....17949
648.....19724
679.....19409

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 18, 2005

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Agricultural Bioterrorism Protection Act:
Biological agents and toxins; possession, use, and transfer of select agents and toxins; published 3-18-05
FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Arkansas and Massachusetts; published 3-23-05
Oklahoma and Texas; published 3-18-05
Various states; published 3-23-05
FEDERAL ELECTION COMMISSION
Designations, reports, and statements; priority mail, express mail, and overnight delivery service timely filing; published 3-18-05
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Ceftiofur; published 4-18-05
HEALTH AND HUMAN SERVICES DEPARTMENT
Quarantine, inspection, and licensing:
Select agents and toxins; possession, use, and transfer; published 3-18-05
HEALTH AND HUMAN SERVICES DEPARTMENT
Inspector General Office, Health and Human Services Department
Quarantine, inspection, and licensing:
Select agents and toxins; possession, use, and transfer; published 3-18-05
HOMELAND SECURITY DEPARTMENT
Coast Guard
Boating safety:
Numbering of vessels; terms imposed by States; published 3-18-05
Correction; published 3-28-05
Drawbridge operations:
New Jersey; published 3-18-05
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; published 3-14-05
Boeing; published 3-14-05
Dornier; published 3-14-05
Eurocopter France; published 3-14-05
Honeywell International, Inc.; published 3-14-05
TRANSPORTATION DEPARTMENT
Saint Lawrence Seaway Development Corporation
Seaway regulations and rules:
Miscellaneous amendments; published 3-17-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing and standards:
Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]
Spearmint oil produced in—
Far West; comments due by 4-25-05; published 2-23-05 [FR 05-03480]
AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Citrus canker; comments due by 4-26-05; published 2-25-05 [FR 05-03685]
AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
General administrative regulations; policies submission, policies provisions, premium rates and premium reduction plans; comments due by 4-25-05; published 2-24-05 [FR 05-03435]
AGRICULTURE DEPARTMENT
Rural Business-Cooperative Service
Special programs:
Business and industry guaranteed loan program; annual renewal fee; comments due by 4-29-05; published 2-28-05 [FR 05-03775]
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Sea turtles conservation requirements—
Exceptions to taking prohibitions; Florida and Pacific coast of Mexico; comments due by 4-28-05; published 3-29-05 [FR 05-06187]
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Vermilion snapper; comments due by 4-25-05; published 2-24-05 [FR 05-03579]
Vermilion snapper; comments due by 4-25-05; published 3-9-05 [FR 05-04608]
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; correction; comments due by 4-29-05; published 3-30-05 [FR 05-06323]
COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA
Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]
DEFENSE DEPARTMENT
Army Department
Privacy Act; implementation; comments due by 4-26-05; published 2-25-05 [FR 05-03663]
DEFENSE DEPARTMENT
Acquisition regulations:
Advisory and assistance services; comments due by 4-25-05; published 2-22-05 [FR 05-03203]
Foreign ball and roller bearings; restrictions; comments due by 4-25-05; published 2-22-05 [FR 05-03201]
Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]
Provision of information to cooperative agreement holders; comments due by 4-25-05; published 2-22-05 [FR 05-03200]
Specialized service contracting; comments due by 4-25-05; published 2-22-05 [FR 05-03206]
Telecommunications services; comments due by 4-25-05; published 2-22-05 [FR 05-03207]
Utility rates etablished by regulatory bodies; comments due by 4-25-05; published 2-22-05 [FR 05-03196]
Utility services; comments due by 4-25-05; published 2-22-05 [FR 05-03198]
Privacy Act; implementation; comments due by 4-26-05; published 2-25-05 [FR 05-03666]
DEFENSE DEPARTMENT
Engineers Corps
Danger zones and restricted areas:
Florida; various military sites; comments due by 4-25-05; published 3-25-05 [FR 05-05905]
DEFENSE DEPARTMENT
Navy Department
Privacy Act; implementation; comments due by 4-26-05; published 2-25-05 [FR 05-03670]
EDUCATION DEPARTMENT
Grants and cooperative agreements; availability, etc.:
Vocational and adult education—
Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]
ENERGY DEPARTMENT
Meetings:
Environmental Management Site-Specific Advisory Board—
Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]
Worker Sfety and Health Program; comments due by 4-26-05; published 1-26-05 [FR 05-01203]
ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Commercial and industrial equipment; energy efficiency program:
Test procedures and efficiency 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/public_laws/public_laws.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html.* Some laws may not yet be available.

H.R. 1270/P.L. 109–6

To amend the Internal Revenue Code of 1986 to extend the Leaking Underground Storage Tank Trust Fund financing rate. (Mar. 31, 2005; 119 Stat. 20)

Last List April 1, 2005

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

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.

The CFR is available free on-line through the Government Printing Office's GPO Access Service at http://www.access.gpo.gov/nara/cfr/index.html. For information about GPO Access call the GPO User Support Team at 1-888-293-6498 (toll free) or 202-512-1530.

The annual rate for subscription to all revised paper volumes is $1195.00 domestic, $298.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 512–1800** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2250**.

Title	Stock Number	Price	Revision Date
1	(869–056–00001–4)	5.00	Jan. 1, 2005
2	(869–056–00002–2)	5.00	Jan. 1, 2005
3 (2003 Compilation and Parts 100 and 101)	(869–052–00002–7)	35.00	[1] Jan. 1, 2004
4	(869–056–00004–9)	10.00	[4] Jan. 1, 2005
5 Parts:			
1–699	(869–056–00005–7)	60.00	Jan. 1, 2005
700–1199	(869–056–00006–5)	50.00	Jan. 1, 2005
1200–End	(869–056–00007–3)	61.00	Jan. 1, 2005
6	(869–056–00008–1)	10.50	Jan. 1, 2005
7 Parts:			
1–26	(869–056–00009–0)	44.00	Jan. 1, 2005
27–52	(869–056–00010–3)	49.00	Jan. 1, 2005
53–209	(869–052–00010–8)	37.00	Jan. 1, 2004
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	(869–052–00024–8)	61.00	Jan. 1, 2004
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	(869–052–00031–1)	34.00	Jan. 1, 2004
200–219	(869–052–00032–9)	37.00	Jan. 1, 2004
*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	(869–052–00050–7)	50.00	Apr. 1, 2004
200–239	(869–052–00051–5)	58.00	Apr. 1, 2004
240–End	(869–052–00052–3)	62.00	Apr. 1, 2004
18 Parts:			
1–399	(869–052–00053–1)	62.00	Apr. 1, 2004
400–End	(869–052–00054–0)	26.00	Apr. 1, 2004
19 Parts:			
1–140	(869–052–00055–8)	61.00	Apr. 1, 2004
141–199	(869–052–00056–6)	58.00	Apr. 1, 2004
200–End	(869–052–00057–4)	31.00	Apr. 1, 2004
20 Parts:			
1–399	(869–052–00058–2)	50.00	Apr 1, 2004
400–499	(869–052–00059–1)	64.00	Apr. 1, 2004
500–End	(869–052–00060–9)	63.00	Apr. 1, 2004
21 Parts:			
1–99	(869–052–00061–2)	42.00	Apr. 1, 2004
100–169	(869–052–00062–1)	49.00	Apr. 1, 2004
170–199	(869–052–00063–9)	50.00	Apr. 1, 2004
200–299	(869–052–00064–7)	17.00	Apr. 1, 2004
300–499	(869–052–00065–5)	31.00	Apr. 1, 2004
500–599	(869–052–00066–3)	47.00	Apr. 1, 2004
600–799	(869–052–00067–1)	15.00	Apr. 1, 2004
800–1299	(869–052–00068–0)	58.00	Apr. 1, 2004
1300–End	(869–052–00069–8)	24.00	Apr. 1, 2004
22 Parts:			
1–299	(869–052–00070–1)	63.00	Apr. 1, 2004
300–End	(869–052–00071–0)	45.00	Apr. 1, 2004
23	(869–052–00072–8)	45.00	Apr. 1, 2004
24 Parts:			
0–199	(869–052–00073–6)	60.00	Apr. 1, 2004
200–499	(869–052–00074–4)	50.00	Apr. 1, 2004
500–699	(869–052–00075–2)	30.00	Apr. 1, 2004
700–1699	(869–052–00076–1)	61.00	Apr. 1, 2004
1700–End	(869–052–00077–9)	30.00	Apr. 1, 2004
25	(869–052–00078–7)	63.00	Apr. 1, 2004
26 Parts:			
§§ 1.0–1–1.60	(869–052–00079–5)	49.00	Apr. 1, 2004
§§ 1.61–1.169	(869–052–00080–9)	63.00	Apr. 1, 2004
§§ 1.170–1.300	(869–052–00081–7)	60.00	Apr. 1, 2004
§§ 1.301–1.400	(869–052–00082–5)	46.00	Apr. 1, 2004
§§ 1.401–1.440	(869–052–00083–3)	62.00	Apr. 1, 2004
§§ 1.441–1.500	(869–052–00084–1)	57.00	Apr. 1, 2004
§§ 1.501–1.640	(869–052–00085–0)	49.00	Apr. 1, 2004
§§ 1.641–1.850	(869–052–00086–8)	60.00	Apr. 1, 2004
§§ 1.851–1.907	(869–052–00087–6)	61.00	Apr. 1, 2004
§§ 1.908–1.1000	(869–052–00088–4)	60.00	Apr. 1, 2004
§§ 1.1001–1.1400	(869–052–00089–2)	61.00	Apr. 1, 2004
§§ 1.1401–1.1503–2A	(869–052–00090–6)	55.00	Apr. 1, 2004
§§ 1.1551–End	(869–052–00091–4)	55.00	Apr. 1, 2004
2–29	(869–052–00092–2)	60.00	Apr. 1, 2004
30–39	(869–052–00093–1)	41.00	Apr. 1, 2004
40–49	(869–052–00094–9)	28.00	Apr. 1, 2004
50–299	(869–052–00095–7)	41.00	Apr. 1, 2004

Title	Stock Number	Price	Revision Date
300–499	(869–052–00096–5)	61.00	Apr. 1, 2004
500–599	(869–052–00097–3)	12.00	[5]Apr. 1, 2004
600–End	(869–052–00098–1)	17.00	Apr. 1, 2004
27 Parts:			
1–199	(869–052–00099–0)	64.00	Apr. 1, 2004
200–End	(869–052–00100–7)	21.00	Apr. 1, 2004
28 Parts:			
0–42	(869–052–00101–5)	61.00	July 1, 2004
43–End	(869–052–00102–3)	60.00	July 1, 2004
29 Parts:			
0–99	(869–052–00103–1)	50.00	July 1, 2004
100–499	(869–052–00104–0)	23.00	July 1, 2004
500–899	(869–052–00105–8)	61.00	July 1, 2004
900–1899	(869–052–00106–6)	36.00	July 1, 2004
1900–1910 (§§ 1900 to 1910.999)	(869–052–00107–4)	61.00	July 1, 2004
1910 (§§ 1910.1000 to end)	(869–052–00108–2)	46.00	[8]July 1, 2004
1911–1925	(869–052–00109–1)	30.00	July 1, 2004
1926	(869–052–00110–4)	50.00	July 1, 2004
1927–End	(869–052–00111–2)	62.00	July 1, 2004
30 Parts:			
1–199	(869–052–00112–1)	57.00	July 1, 2004
200–699	(869–052–00113–9)	50.00	July 1, 2004
700–End	(869–052–00114–7)	58.00	July 1, 2004
31 Parts:			
0–199	(869–052–00115–5)	41.00	July 1, 2004
200–End	(869–052–00116–3)	65.00	July 1, 2004
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–052–00117–1)	61.00	July 1, 2004
191–399	(869–052–00118–0)	63.00	July 1, 2004
400–629	(869–052–00119–8)	50.00	[8]July 1, 2004
630–699	(869–052–00120–1)	37.00	[7]July 1, 2004
700–799	(869–052–00121–0)	46.00	July 1, 2004
800–End	(869–052–00122–8)	47.00	July 1, 2004
33 Parts:			
1–124	(869–052–00123–6)	57.00	July 1, 2004
125–199	(869–052–00124–4)	61.00	July 1, 2004
200–End	(869–052–00125–2)	57.00	July 1, 2004
34 Parts:			
1–299	(869–052–00126–1)	50.00	July 1, 2004
300–399	(869–052–00127–9)	40.00	July 1, 2004
400–End	(869–052–00128–7)	61.00	July 1, 2004
35	(869–052–00129–5)	10.00	[6]July 1, 2004
36 Parts			
1–199	(869–052–00130–9)	37.00	July 1, 2004
200–299	(869–052–00131–7)	37.00	July 1, 2004
300–End	(869–052–00132–5)	61.00	July 1, 2004
37	(869–052–00133–3)	58.00	July 1, 2004
38 Parts:			
0–17	(869–052–00134–1)	60.00	July 1, 2004
18–End	(869–052–00135–0)	62.00	July 1, 2004
39	(869–052–00136–8)	42.00	July 1, 2004
40 Parts:			
1–49	(869–052–00137–6)	60.00	July 1, 2004
50–51	(869–052–00138–4)	45.00	July 1, 2004
52 (52.01–52.1018)	(869–052–00139–2)	60.00	July 1, 2004
52 (52.1019–End)	(869–052–00140–6)	61.00	July 1, 2004
53–59	(869–052–00141–4)	31.00	July 1, 2004
60 (60.1–End)	(869–052–00142–2)	58.00	July 1, 2004
60 (Apps)	(869–052–00143–1)	57.00	July 1, 2004
61–62	(869–052–00144–9)	45.00	July 1, 2004
63 (63.1–63.599)	(869–052–00145–7)	58.00	July 1, 2004
63 (63.600–63.1199)	(869–052–00146–5)	50.00	July 1, 2004
63 (63.1200–63.1439)	(869–052–00147–3)	50.00	July 1, 2004
63 (63.1440–63.8830)	(869–052–00148–1)	64.00	July 1, 2004
63 (63.8980–End)	(869–052–00149–0)	35.00	July 1, 2004
64–71	(869–052–00150–3)	29.00	July 1, 2004
72–80	(869–052–00151–1)	62.00	July 1, 2004
81–85	(869–052–00152–0)	60.00	July 1, 2004
86 (86.1–86.599–99)	(869–052–00153–8)	58.00	July 1, 2004
86 (86.600–1–End)	(869–052–00154–6)	50.00	July 1, 2004
87–99	(869–052–00155–4)	60.00	July 1, 2004
100–135	(869–052–00156–2)	45.00	July 1, 2004
136–149	(869–052–00157–1)	61.00	July 1, 2004
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	(869–052–00162–7)	42.00	July 1, 2004
400–424	(869–052–00163–5)	56.00	[8]July 1, 2004
425–699	(869–052–00164–3)	61.00	July 1, 2004
700–789	(869–052–00165–1)	61.00	July 1, 2004
790–End	(869–052–00166–0)	61.00	July 1, 2004
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–052–00167–8)	24.00	July 1, 2004
101	(869–052–00168–6)	21.00	July 1, 2004
102–200	(869–052–00169–4)	56.00	July 1, 2004
201–End	(869–052–00170–8)	24.00	July 1, 2004
42 Parts:			
1–399	(869–052–00171–6)	61.00	Oct. 1, 2004
400–429	(869–052–00172–4)	63.00	Oct. 1, 2004
430–End	(869–052–00173–2)	64.00	Oct. 1, 2004
43 Parts:			
1–999	(869–052–00174–1)	56.00	Oct. 1, 2004
1000–end	(869–052–00175–9)	62.00	Oct. 1, 2004
44	(869–052–00176–7)	50.00	Oct. 1, 2004
45 Parts:			
1–199	(869–052–00177–5)	60.00	Oct. 1, 2004
200–499	(869–052–00178–3)	34.00	Oct. 1, 2004
500–1199	(869–052–00179–1)	56.00	Oct. 1, 2004
1200–End	(869–052–00180–5)	61.00	Oct. 1, 2004
46 Parts:			
1–40	(869–052–00181–3)	46.00	Oct. 1, 2004
41–69	(869–052–00182–1)	39.00	Oct. 1, 2004
70–89	(869–052–00183–0)	14.00	Oct. 1, 2004
90–139	(869–052–00184–8)	44.00	Oct. 1, 2004
140–155	(869–052–00185–6)	25.00	Oct. 1, 2004
156–165	(869–052–00186–4)	34.00	Oct. 1, 2004
166–199	(869–052–00187–2)	46.00	Oct. 1, 2004
200–499	(869–052–00188–1)	40.00	Oct. 1, 2004
500–End	(869–052–00189–9)	25.00	Oct. 1, 2004
47 Parts:			
0–19	(869–052–00190–2)	61.00	Oct. 1, 2004
20–39	(869–052–00191–1)	46.00	Oct. 1, 2004
40–69	(869–052–00192–9)	40.00	Oct. 1, 2004
70–79	(869–052–00193–8)	63.00	Oct. 1, 2004
80–End	(869–052–00194–5)	61.00	Oct. 1, 2004
48 Chapters:			
1 (Parts 1–51)	(869–052–00195–3)	63.00	Oct. 1, 2004
1 (Parts 52–99)	(869–052–00196–1)	49.00	Oct. 1, 2004
2 (Parts 201–299)	(869–052–00197–0)	50.00	Oct. 1, 2004
3–6	(869–052–00198–8)	34.00	Oct. 1, 2004
7–14	(869–052–00199–6)	56.00	Oct. 1, 2004
15–28	(869–052–00200–3)	47.00	Oct. 1, 2004
29–End	(869–052–00201–1)	47.00	Oct. 1, 2004

Title	Stock Number	Price	Revision Date
49 Parts:			
1–99	(869–052–00202–0)	60.00	Oct. 1, 2004
100–185	(869–052–00203–8)	63.00	Oct. 1, 2004
186–199	(869–052–00204–6)	23.00	Oct. 1, 2004
200–399	(869–052–00205–4)	64.00	Oct. 1, 2004
400–599	(869–052–00206–2)	64.00	Oct. 1, 2004
600–999	(869–052–00207–1)	19.00	Oct. 1, 2004
1000–1199	(869–052–00208–9)	28.00	Oct. 1, 2004
1200–End	(869–052–00209–7)	34.00	Oct. 1, 2004
50 Parts:			
1–16	(869–052–00210–1)	11.00	Oct. 1, 2004
17.1–17.95	(869–052–00211–9)	64.00	Oct. 1, 2004
17.96–17.99(h)	(869–052–00212–7)	61.00	Oct. 1, 2004
17.99(i)–end and 17.100–end	(869–052–00213–5)	47.00	Oct. 1, 2004
18–199	(869–052–00214–3)	50.00	Oct. 1, 2004
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, 2002, through July 1, 2004. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2003, through July 1, 2004. The CFR volume issued as of July 1, 2003 should be retained.

Public Laws

108th 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 108th Congress.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara1/nara005.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 108th Congress for $285 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

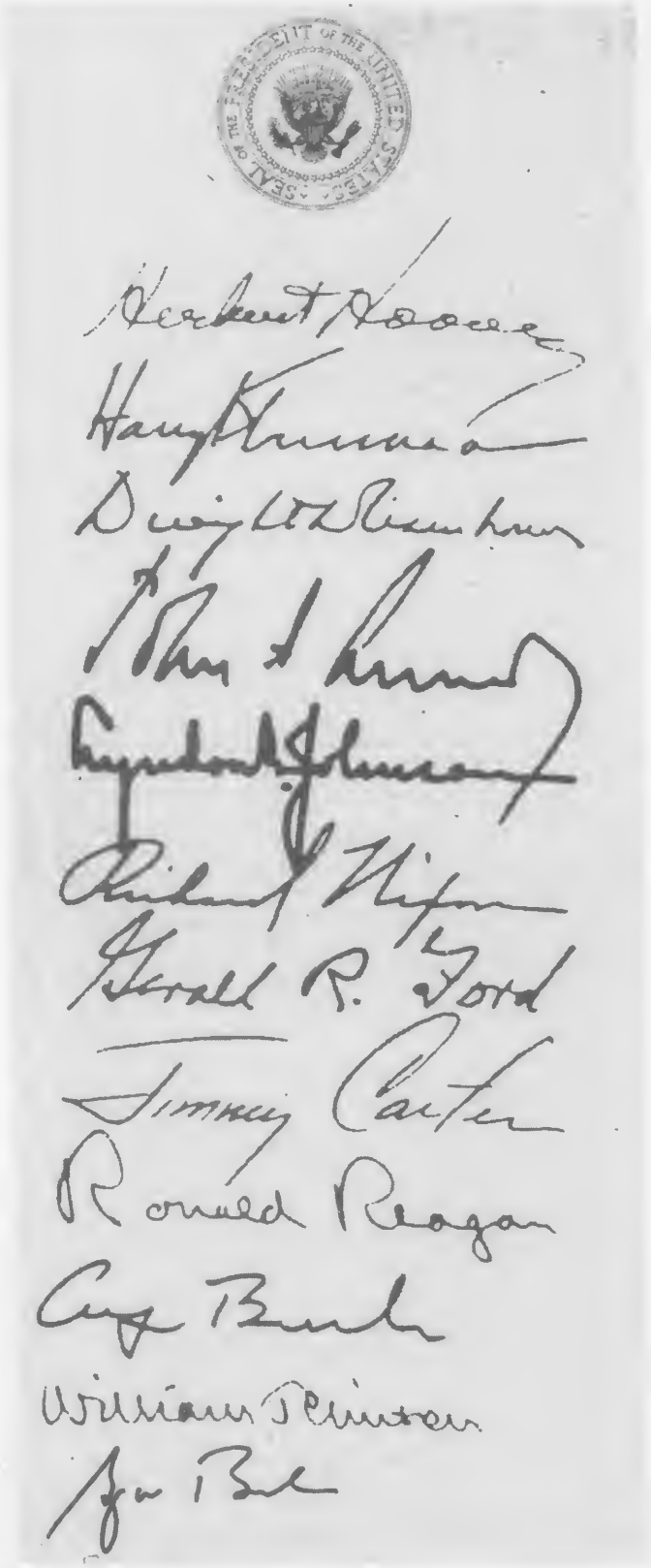
Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 2/03

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954



Public Papers of the Presidents of the United States

William J. Clinton

1997
(Book I) $69.00

1997
(Book II) $78.00

1998
(Book I) $74.00

1998
(Book II) $75.00

1999
(Book I) $71.00

1999
(Book II) $75.00

2000–2001
(Book I) $68.50

2000–2001
(Book II) $63.00

2000–2001
(Book III) $75.00

George W. Bush

2001
(Book I) $70.00

(Book II) $47.00

Published by the Office of the Federal Register,
National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954
(Rev 5/04)

Printed on recycled paper