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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE214; Special Conditions No. 23–157–SC]

Special Conditions: Thielert Aircraft Engines GmbH, Cessna Model 172 Series, Diesel Cycle Engine Using Turbine (Jet) Fuel

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Cessna Model 172 airplane. This airplane as modified by Thielert Aircraft Engines GmbH will have a novel or unusual design feature(s) associated with the installation of an aircraft diesel engine. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective January 6, 2005.

FOR FURTHER INFORMATION CONTACT: Peter Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri 64106; 816–329–4135, fax 816–329–4090, e-mail *peter.rouse@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On February 11, 2002, Thielert Aircraft Engines GmbH applied for a supplemental type certificate for installation of an aircraft diesel engine in the Cessna Model 172 airplane. The Cessna 172 series airplanes are currently approved under Type Certificate No. 3A13, and they are four-place, high wing, fixed tricycle landing gear, conventional planform airplanes. The Cessna 172 airplanes affected have gross weights in the range of 2300 to 2558 pounds in the normal category. The affected series of airplanes have been equipped with gasoline reciprocating engines of 160 to 180 horsepower.

Type Certification Basis

Under the provisions of § 21.101, Thielert Aircraft Engines, GmbH must show that the Cessna Model 172, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. 3A13 or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. 3A13 are as follows:

The certification basis of models 172K, 172L, 172M, 172N, and 172P is:

Part 3 of the Civil Air Regulations, effective November 1, 1949, as amended by 3–1 through 3–12. In addition, effective S/N 17271035 and on, 14 CFR part 23, § 23.1559, effective March 1, 1978. 14 CFR part 36, dated December 1, 1969, plus Amendments 36–1 through 36–5 for Model 172N; 14 CFR part 36, dated December 1, 1969, plus Amendments 36–1 through 36–12 for Model 172P through 172Q. In addition, effective S/N 17276260 and on, 14 CFR part 23, § 23.1545(a), Amendment 23–23, dated December 1, 1978, including:

Equivalent Safety Items for:

Airspeed Indicator—CAR 3.757
Operating Limitations—CAR 3.778(a)

The certification basis for the model 172R is:

Part 23 of the Federal Aviation Regulations effective February 1, 1965, as amended by 23–1 through 23–6, except as follows:

14 CFR part 23, §§ 23.423; 23.611; 23.619; 23.623; 23.689; 23.775; 23.871; 23.1323; and 23.1563, as amended by Amendment 23–7. 14 CFR part 23, §§ 23.807 and 23.1524, as amended by Amendment 23–10. 14 CFR part 23, §§ 23.507; 23.771; 23.853(a), (b) and (c); and 23.1365, as amended by Amendment 23–14. 14 CFR part 23, § 23.951, as amended by Amendment 23–15. 14 CFR part 23, §§ 23.607; 23.675; 23.685; 23.733; 23.787; 23.1309 and 23.1322, as amended by Amendment 23–17. 14 CFR part 23, § 23.1301, as amended by Amendment 23–20. 14 CFR part 23, §§ 23.1353; and 23.1559, as amended by Amendment 23–21. 14 CFR part 23, §§ 23.603; 23.605; 23.613; 23.1329 and 23.1545, as amended by Amendment 23–23. 14 CFR part 23, §§ 23.441 and 23.1549, as amended by Amendment 23–28. 14 CFR part 23, §§ 23.779 and 23.781, as amended by Amendment 23–33. 14 CFR part 23, §§ 23.1; 23.51 and 23.561, as amended by Amendment 23–34. 14 CFR part 23, §§ 23.301; 23.331; 23.351; 23.427; 23.677; 23.701; 23.735; and 23.831, as amended by Amendment 23–42. 14 CFR part 23, §§ 23.961; 23.1093; 23.1143(g); 23.1147(b); 23.1303; 23.1357; 23.1361 and 23.1385, as amended by Amendment 23–43. 14 CFR part 23.562(a), 23.562(b)2, 23.562(c)1, 23.562(c)2, 23.562(c)3, and 23.562(c)4, as amended by Amendment 23–44. 14 CFR part 23, §§ 23.33; 23.53; 23.305; 23.321; 23.485; 23.621; 23.655 and 23.731, as amended by Amendment 23–45; and 14 CFR part 36, dated December 1, 1969, as amended by Amendments 36–1 through 36–21.

Equivalent Safety Items for:

Induction System Icing Protection—14 CFR 23.1093
Throttle Control—14 CFR 23.1143(g)
Mixture Control—14 CFR 23.1147(b)

The type certification basis for the modified airplanes is as stated previously with the following modifications:

The certification basis for the model 172S is:

Part 23 of the Federal Aviation Regulations effective February 1, 1965, as amended by 23–1 through 23–6, except as follows:

14 CFR part 23, §§ 23.423; 23.611; 23.619; 23.623; 23.689; 23.775; 23.871; 23.1323; and 23.1563, as amended by Amendment 23–7. 14 CFR part 23, §§ 23.807 and 23.1524, as amended by Amendment 23–10. 14 CFR part 23, §§ 23.507; 23.771; 23.853(a), (b) and (c); and 23.1365, as amended by Amendment 23–14. 14 CFR part 23, § 23.951, as amended by Amendment 23–15. 14 CFR part 23, §§ 23.607; 23.675; 23.685; 23.733; 23.787; 23.1309 and 23.1322, as amended by Amendment 23–17. 14 CFR part 23,

§ 23.1301, as amended by Amendment 23–20. 14 CFR part 23, §§ 23.1353 and 23.1559, as amended by Amendment 23–21. 14 CFR part 23, §§ 23.603; 23.605; 23.613; 23.1329 and 23.1545, as amended by Amendment 23–23. 14 CFR part 23, §§ 23.441 and 23.1549, as amended by Amendment 23–28. 14 CFR part 23, §§ 23.779 and 23.781, as amended by Amendment 23–33. 14 CFR part 23, §§ 23.1; 23.51 and 23.561, as amended by Amendment 23–34. 14 CFR part 23, §§ 23.301; 23.331; 23.351; 23.427; 23.677; 23.701; 23.735; and 23.831, as amended by Amendment 23–42. 14 CFR part 23, §§ 23.961; 23.1093; 23.1143(g); 23.1147(b); 23.1303; 23.1357; 23.1361 and 23.1385, as amended by Amendment 23–43. 14 CFR part 23, §§ 23.562(a); 23.562(b)2; 23.562(c)1; 23.562(c)2; 23.562(c)3; and 23.562(c)4, as amended by Amendment 23–44. 14 CFR part 23, §§ 23.33; 23.53; 23.305; 23.321; 23.485; 23.621; 23.655 and 23.731, as amended by Amendment 23–45.

14 CFR part 36, dated December 1, 1969, as amended by Amendments 36–1 through 36–21.

Equivalent Safety Items for:

Induction System Icing Protection—14 CFR 23.1093
Throttle Control—14 CFR 23.1143(g)
Mixture Control—14 CFR 23.1147(b)

14 CFR part 23, at Amendment level 23–51, applicable to the areas of change:

14 CFR part 23, §§ 23.1; 23.3; 23.21; 23.23; 23.25; 23.29; 23.33; 23.45; 23.49; 23.51; 23.53; 23.63; 23.65; 23.69; 23.71; 23.73; 23.77; 23.141; 23.143; 23.145; 23.151; 23.153; 23.155; 23.171; 23.173; 23.175; 23.177; 23.201; 23.221; 23.231; 23.251; 23.301; 23.303; 23.305; 23.307; 23.321; 23.335; 23.337; 23.341; 23.343; 23.361; 23.363; 23.371; 23.572; 23.573; 23.574; 23.601; 23.603; 23.605; 23.607; 23.609; 23.611; 23.613; 23.619; 23.621; 23.623; 23.625; 23.627; 23.629 (at Amendment 23–6 for Cessna 172 models R and S; Civil Aviation Regulation 3.159 applies to all other models); 23.773; 23.777; 23.777(d); 23.779; 23.779(d); 23.781; 23.831; 23.863; 23.865; 23.867; 23.901; 23.901(d)(1); 23.903; 23.905; 23.907; 23.909; 23.925; 23.929; 23.939; 23.943; 23.951; 23.951(c); 23.954; 23.955; 23.959; 23.961; 23.963; 23.965; 23.967; 23.969; 23.971; 23.973; 23.973(f); 23.975; 23.977; 23.991; 23.993; 23.994; 23.995; 23.997; 23.997(a)(2), in place of §§ 23.997(a)(1); 23.999; 23.1011; 23.1013; 23.1015; 23.1017; 23.1019; 23.1021; 23.1023; 23.1041; 23.1043; 23.1047; 23.1061; 23.1063; 23.1091; 23.1093; 23.1103; 23.1107; 23.1121; 23.1123; 23.1141; 23.1143; 23.1145; 23.1163; 23.1165; 23.1181; 23.1182; 23.1183; 23.1191; 23.1193; 23.1301; 23.1305; 23.1309; 23.1311; 23.1321; 23.1322; 23.1327; 23.1331; 23.1337; 23.1351; 23.1353; 23.1357; 23.1359; 23.1361; 23.1365; 23.1367; 23.1381; 23.1431; 23.1461; 23.1501; 23.1519; 23.1521; 23.1527; 23.1529; 23.1541; 23.1543; 23.1549; 23.1551; 23.1555; 23.1557; 23.1567; 23.1581; 23.1583; 23.1585; 23.1587 and 23.1589.

Equivalent levels of safety for:

Cockpit controls—23.777(d)
Motion and effect of cockpit controls—23.779(b)
Liquid Cooling—Installation—23.1061
Ignition switches—23.1145

The type certification basis includes exemptions, if any; equivalent level of safety findings, if any; and the special conditions adopted by this rulemaking action.

In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. The type certification basis for the modified airplanes is as stated previously with the following modifications:

If the Administrator finds that the applicable airworthiness regulations (i.e., part 23) do not contain adequate or appropriate safety standards for the Cessna Model 172 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Cessna Model 172 must comply with the part 23 noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The Cessna Model 172 will incorporate the following novel or unusual design features: The Cessna Model 172, as modified by Thielert Aircraft Engines GmbH, will incorporate an aircraft diesel engine utilizing turbine (jet) fuel.

Discussion of Comments

Notice of proposed special conditions No. 23–04–02–SC for the Thielert Aircraft Engines, GmbH, Cessna Model 172 Series airplanes was published on November 22, 2004, (69 FR 67860). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Thielert Aircraft Engines GmbH, Cessna Model 172 Series. Should Thielert Aircraft Engines GmbH apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. 3A12 to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Thielert Aircraft Engines GmbH, Cessna Model 172 Series is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Thielert Aircraft Engines GmbH, Cessna Model 172 Series airplanes modified by Thielert Aircraft Engines GmbH.

1. Engine Torque (Provisions Similar to § 23.361, paragraphs (b)(1) and (c)(3))

(a) For diesel engine installations, the engine mounts and supporting structure must be designed to withstand the following:

(1) A limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure.

The effects of sudden engine stoppage may alternately be mitigated to an acceptable level by utilization of isolators, dampers clutches and similar provisions, so that unacceptable load levels are not imposed on the previously certificated structure.

(b) The limit engine torque to be considered under paragraph 14 CFR part 23, § 23.361(a) must be obtained by multiplying the mean torque by a factor of four for diesel cycle engines.

(1) If a factor of less than four is utilized, it must be shown that the limit torque imposed on the engine mount is consistent with the provisions of § 23.361(c), that is, it must be shown that the utilization of the factors listed in § 23.361(c)(3) will result in limit torques being imposed on the mount that are equivalent or less than those imposed by a conventional gasoline reciprocating engine.

2. Powerplant—Installation (Provisions Similar to § 23.901(d)(1) for Turbine Engines)

Considering the vibration characteristics of diesel engines, the applicant must comply with the following:

(a) Each diesel engine installation must be constructed and arranged to result in vibration characteristics that—

(1) Do not exceed those established during the type certification of the engine; and

(2) Do not exceed vibration characteristics that a previously certificated airframe structure has been approved for—

(i) Unless such vibration characteristics are shown to have no effect on safety or continued airworthiness, or

(ii) Unless mitigated to an acceptable level by utilization of isolators, dampers clutches and similar provisions, so that unacceptable vibration levels are not imposed on the previously certificated structure.

3. Powerplant—Fuel System—Fuel System With Water Saturated Fuel (Compliance With § 23.951 requirements):

Considering the fuel types used by diesel engines, the applicant must comply with the following:

Each fuel system for a diesel engine must be capable of sustained operation throughout its flow and pressure range with fuel initially saturated with water at 80° F and having 0.75cc of free water per gallon added and cooled to the most critical condition for icing likely to be encountered in operation.

Methods of compliance that are acceptable for turbine engine fuel systems requirements of § 23.951(c) are also considered acceptable for this requirement.

4. Powerplant—Fuel System—Fuel System Hot Weather Operation (Compliance With § 23.961 Requirements)

In place of compliance with § 23.961, the applicant must comply with the following:

Each fuel system must be free from vapor lock when using fuel at its critical temperature, with respect to vapor formation, when operating the airplane in all critical operating and environmental conditions for which approval is requested. For turbine fuel, or for aircraft equipped with diesel cycle engines that use turbine or diesel type fuels, the initial temperature must be 110°F, -0°, +5° or the maximum outside air temperature for which approval is requested, whichever is more critical.

The fuel system must be in an operational configuration that will yield the most adverse, that is, conservative results.

To comply with this requirement, the applicant must use the turbine fuel requirements and must substantiate these by flight-testing, as described in Advisory Circular AC 23–8B, Flight Test Guide for Certification of Part 23 Airplanes.

5. Powerplant—Fuel System—Fuel Tank Filler Connection (Compliance With § 23.973(f) Requirements)

In place of compliance with § 23.973(e) and (f), the applicant must comply with the following:

For airplanes that operate on turbine or diesel type fuels, the inside diameter of the fuel filler opening must be no smaller than 2.95 inches.

6. Powerplant—Fuel System—Fuel Tank Outlet (Compliance With § 23.977 Requirements)

In place of compliance with § 23.977(a)(1) and (a)(2), the applicant will comply with the following:

There must be a fuel strainer for the fuel tank outlet or for the booster pump. This strainer must, for diesel engine powered airplanes, prevent the passage of any object that could restrict fuel flow or damage any fuel system component.

7. Powerplant—Powerplant Controls and Accessories—Engine Ignition Systems (Compliance With § 23.1165 Requirements)

Considering that the FADEC provides the same function as an ignition system for this diesel engine, in place of compliance to§ 23.1165, the applicant will comply with the following:

The electrical system must comply with the following requirements:

(a) In case of failure of one power supply of the electrical system, there will be no significant engine power change. The electrical power supply to the FADEC must remain stable in such a failure.

(b) The transition from the actual engine electrical network (FADEC network) to the remaining electrical system should be made at a single point only. If several transitions (for example, redundancy reasons) are needed, then the number of the transitions must be kept as small as possible.

(c) There must be the ability to separate the FADEC power supply (alternator) from the battery and from the remaining electrical system.

(d) In case of loss of alternator power the installation must guarantee that the battery will provide the power for an appropriate time after appropriate warning to the pilot. This period must be at least 120 minutes.

(e) FADEC, alternator and battery must be interconnected in an appropriate way, so that in case of loss of battery power, the supply of the FADEC is guaranteed by the alternator.

8. Equipment—General—Powerplant Instruments (Compliance With § 23.1305 Requirements)

In place of compliance with § 23.1305, the applicant will comply with the following:

The following are required powerplant instruments:

(a) A fuel quantity indicator for each fuel tank, installed in accordance with § 23.1337(b).

(b) An oil pressure indicator.

(c) An oil temperature indicator.

(d) A tachometer indicating propeller speed.

(e) A coolant temperature indicator.

(f) An indicating means for the fuel strainer or filter required by § 23.997 to indicate the occurrence of contamination of the strainer or filter before it reaches the capacity established in accordance with § 23.997(d).

Alternately, no indicator is required if the engine can operate normally for a specified period with the fuel strainer exposed to the maximum fuel contamination as specified in MIL–5007D and provisions for replacing the fuel filter at this specified period (or a shorter period) are included in the maintenance schedule for the engine installation.

(g) Power setting, in percentage.

(h) Fuel temperature.

(i) Fuel flow (engine fuel consumption).

9. Operating Limitations and Information—Powerplant Limitations—Fuel Grade or Designation (Compliance With § 23.1521(d) Requirements)

Instead of compliance with § 23.1521(d), the applicant must comply with the following:

The minimum fuel designation (for diesel engines) must be established so that it is not less than that required for the operation of the engines within the limitations in paragraphs (b) and (c) of § 23.1521.

10. Markings and Placards—Miscellaneous Markings and Placards—Fuel, Oil, and Coolant Filler Openings (Compliance With § 23.1557(c)(1) Requirements)

Instead of compliance with § 23.1557(c)(1), the applicant must comply with the following:

Fuel filler openings must be marked at or near the filler cover with—

For diesel engine-powered airplanes—

(a) The words "Jet Fuel"; and

(b) The permissible fuel designations, or references to the Airplane Flight Manual (AFM) for permissible fuel designations.

(c) A warning placard or note that states the following or similar:

"Warning—this airplane equipped with an aircraft diesel engine, service with approved fuels only."

The colors of this warning placard should be black and white.

11. Powerplant—Fuel System—Fuel-Freezing

If the fuel in the tanks cannot be shown to flow suitably under all possible temperature conditions, then fuel temperature limitations are required. These will be considered as part of the essential operating parameters for the aircraft and must be limitations.

(1) The takeoff temperature limitation must be determined by testing or analysis to define the minimum cold-soaked temperature of the fuel that the airplane can operate on.

(2) The minimum operating temperature limitation must be determined by testing to define the minimum operating temperature acceptable after takeoff (with minimum takeoff temperature established in (1) above).

12. Powerplant Installation—Vibration Levels

Vibration levels throughout the engine operating range must be evaluated and:

(1) Vibration levels imposed on the airframe must be less than or equivalent to those of the gasoline engine; or

(2) Any vibration level that is higher than that imposed on the airframe by the replaced gasoline engine must be considered in the modification and the effects on the technical areas covered by the following paragraphs must be investigated: 14 CFR part 23, §§ 23.251; 23.613; 23.627; 23.629 (or CAR 3.159, as applicable to various models); 23.572; 23.573; 23.574 and 23.901.

Vibration levels imposed on the airframe can be mitigated to an acceptable level by utilization of isolators, dampers clutches and similar provisions; so that unacceptable vibration levels are not imposed on the previously certificated structure.

13. Powerplant Installation—One Cylinder Inoperative

It must be shown by test or analysis, or by a combination of methods, that the airframe can withstand the shaking or vibratory forces imposed by the engine if a cylinder becomes inoperative. Diesel engines of conventional design typically have extremely high levels of vibration when a cylinder becomes inoperative. Data must be provided to the airframe installer/modifier so either appropriate design considerations or operating procedures, or both, can be developed to prevent airframe and propeller damage.

14. Powerplant Installation—High Energy Engine Fragments

It may be possible for diesel engine cylinders (or portions thereof) to fail and physically separate from the engine at high velocity (due to the high internal pressures). This failure mode will be considered possible in engine designs with removable cylinders or other non-integral block designs. The following is required:

(1) It must be shown that the engine construction type (massive or integral block with non-removable cylinders) is inherently resistant to liberating high energy fragments in the event of a catastrophic engine failure; or,

(2) It must be shown by the design of the engine, that engine cylinders, other engine components or portions thereof (fragments) cannot be shed or blown off of the engine in the event of a catastrophic engine failure; or

(3) It must be shown that all possible liberated engine parts or components do not have adequate energy to penetrate engine cowlings; or

(4) Assuming infinite fragment energy, and analyzing the trajectory of the probable fragments and components, any hazard due to liberated engine parts or components will be minimized and the possibility of crew injury is eliminated. Minimization must be considered during initial design and not presented as an analysis after design completion.

Issued in Kansas City, Missouri, on January 6, 2005.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–852 Filed 1–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2004–17773; Airspace Docket No. 04–ASW–11]

RIN 2120–AA66

Modification of Restricted Areas 5103A, 5103B, and 5103C, and Revocation of Restricted Area 5103D; McGregor, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This action corrects a final rule (Airspace Docket No. 04-ASW–11) published in the **Federal Register** on December 13, 2004 (69 FR 72113). In that rule, the effective date was inadvertently published as January 20, 2005. The correct effective date is March 17, 2005. This action corrects that error.

DATES: 0901 UTC, March 17, 2005.

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

SUPPLEMENTARY INFORMATION: On December 13, 2004, Airspace Docket No. 04–ASW–11 (69 FR 72113), was published modifying R–5103A, R–5103B, and R–5103C, and revoking R–5103D in McGregor, NM. In that rule, the effective date was inadvertently published as January 20, 2005. The correct effective date is March 17, 2005. This action corrects that error.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the effective date for Airspace Docket No. 04–ASW–11, as published in the **Federal Register** on December 13, 2004 (69 FR 72113), is corrected as follows:

§ 73.51 [Corrected]

■ On page 72113, correct the effective date to read March 17, 2005.

Issued in Washington, DC, on January 11, 2005.

Edie Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–849 Filed 1–13–05; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

RIN 3038–AC18

Delegation of Authority to Director of the Division of Clearing and Intermediary Oversight; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Technical amendments.

SUMMARY: This document contains technical amendments to the final rule amendments that were published on October 7, 2002 (67 FR 62350). This rule relates to delegations of authority from the Commodity Futures Trading Commission (Commission) to its staff.

EFFECTIVE DATES: January 14, 2005.

FOR FURTHER INFORMATION CONTACT: Barbara S. Gold, Associate Director, or Peter Sanchez, Attorney Advisor, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, telephone numbers: (202) 418–5450 or (202) 418–5237, respectively; facsimile number: (202) 418–5528; and electronic mail: *bgold@cftc.gov* or *psanchez@cftc.gov*, respectively.

SUPPLEMENTARY INFORMATION:

1. Technical Amendments

By Rule 140.93, the Commission has delegated to the Director of the Division of Clearing and Intermediary Oversight (DCIO) various functions reserved to the Commission under Part 4 of the Commission's regulations, which relates to the operations and activities of commodity pool operators (CPOs) and commodity trading advisors.[1] As is explained below, the technical amendments the Commission is making to Rule 140.93 conform the rule to changes the Commission previously has made to certain paragraphs of the rule itself and to certain other rules to which Rule 140.93 applies.

On October 7, 2002, the Commission amended its rules to reflect the reassignment of responsibilities, including delegations of authority pursuant to Rule 140.83, resulting from its reorganization of its staff. Under the reorganized structure, the (former) Divisions of Trading and Markets and Economic Analysis were reconfigured into two new divisions and one new office, DCIO, the Division of Market Oversight, and the Office of the Chief Economist. As amended, the Commission's rules reflected new assignments of responsibilities, including delegated authorities. In this regard, the Commission removed the words "Trading and Markets" from the body of Rule 140.93 and added, in their place, the words "Clearing and Intermediary Oversight." However, the Commission neglected at that time to make a similar amendment to the title of the rule itself. Accordingly, one of the technical amendments the Commission is making is the removal of the words "Trading and Markets" from the title of Rule 140.93 and the addition, in their place, of the words "Clearing and Intermediary Oversight."

One of the rules to which Rule 140.93 applies is Rule 4.22, which concerns the Annual Report that a CPO registered or required to be registered under the Act must prepare and distribute to each participant in each pool it operates. On December 11, 2002, the Commission delegated to the National Futures Association (NFA) all functions under Rule 4.22(f)—*e.g.*, the receiving and granting or denying of applications for extensions of time to distribute Annual Reports.[2] On that date, the Commission also amended Rule 4.22(f) by removing the word "Commission" from the rule and adding, in its place, the words "National Futures Association."[3] Thus, other technical amendments the Commission is making are the removal of paragraph (a)(2) of Rule 140.93 (such that Rule 140.93 no longer refers to Rule 4.22(f)) and the redesignation of paragraphs (a)(3) through (a)(6) of Rule 140.93 as paragraphs (a)(2) through (a)(5) of Rule 140.93.

Another of the rules to which Rule 140.93 applies is Rule 4.5, which, among other things, provides an exclusion from the term "commodity pool operator" for specified "eligible persons" with respect to their operation of certain "qualifying entities," provided those persons comply with certain conditions in operating those entities. On August 1, 2003, the Commission eliminated certain of those conditions from Rule 4.5 by removing paragraphs (c)(2)(i) and (c)(2)(ii) and redesignating paragraphs (c)(2)(iii) and (c)(2)(iv) as paragraphs (c)(2)(i) and (c)(2)(ii) of the rule.[4] At that time, however, the Commission did not also amend Rule 140.93 to make conforming changes to its references to Rule 4.5. To remedy this oversight, the final technical amendment the Commission is making is the correction in (newly redesignated) Rule 140.93(a)(4) to refer to Rule 4.5(c)(2)(ii).

II. Need for Correction

As published, Rule 140.93 contains text which no longer is accurate. Thus, it is in need of correction.

III. Related Matters

A. The Administrative Procedure Act

The Commission finds that that Rule 140.93 relates solely to agency practice and procedure and that notice of proposed rulemaking and opportunity for public participation are not required. Thus, the Commission has determined to make the amendments to Rule 140.93 effective immediately. The forgoing is in accordance with the Administrative Procedure Act, as codified, 5 U.S.C. 553.[5]

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601, *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The RFA defines the term "rule" to mean "any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title * * * for which the agency provides an opportunity for notice and public

[1] Rule 140.93 further extends this delegation "to such members of the Commission's staff acting under [the Director's] direction as he may designate from time to time."

Commission rules cited to herein are found at 17 CFR Ch. I (2004). Both the Commodity Exchange Act (Act), 7 U.S.C. 1 *et seq.* (2000), and the Commission's rules issued thereunder can be accessed through the Commission's Web site, at: *http://www.cftc.gov/cftc/cftclawreg.htm.*

[2] 67 FR 77470 (December 18, 2002). NFA is a futures association registered as such with the Commission under Section 17 of the Act, 7 U.S.C. 21 (2000).

[3] 67 FR 77409 (December 18, 2002). The Commission did not delegate to NFA any functions under Rule 4.22(g), which concerns the election by a CPO of its pool's fiscal year and the authority of the Commission to disapprove a change of fiscal year after a fiscal year has been chosen.

[4] 68 FR 47221 (August 8, 2003).

[5] *See* 46 FR 26003, 26013, (May 6, 1981).

comment." 5 U.S.C. 601(2). Since the rules are not being effected pursuant to section 553(b), they are not "rules" as defined in the RFA, and the analysis and certification process certified in that statute do not apply.

C. The Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501, *et seq.*, which imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to these rule amendments because these rule amendments do not contain information collection requirements as defined by the PRA.

D. Cost-Benefit Analysis

Section 15 of the Act, as amended by section 119 of the CFMA, requires the Commission, before issuing a new regulation under the Act, to consider the costs and benefits of its action. The Commission understands that, by its terms, section 15 does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs.

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

The Commission has considered the costs and benefits of this rule package in light of the specific areas of concern identified in section 15, at the time that the Commission delegated these responsibilities to the Division and the National Futures Association.

List of Subjects in 17 CFR Part 140

Authority delegations (Government agencies), Organization and functions (Government agencies).

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

■ Accordingly, 17 CFR part 140 is corrected by making the following technical amendments:

■ 1. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2, 12a.

§ 140.93 [Corrected]

■ 2. In § 140.93:

■ a. Remove the words "Trading and Markets" in the title and add, in their place, "Clearing and Intermediary Oversight."

■ b. Remove paragraph (a)(2);

■ c. Redesignate paragraphs (a)(3) and (a)(4) as paragraphs (a)(2) and (a)(3), respectively;

■ d. Redesignate paragraph (a)(5) as paragraph (a)(4) and correct "§ 4.5(c)(2)(v)" in newly redesignated paragraph (a)(4) to read "§ 4.5(c)(2)(ii)"; and

■ e. Redesignate paragraph (a)(6) as paragraph (a)(5).

* * * * *

Issued in Washington, DC, on January 11, 2005 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–817 Filed 1–14–05; 8:45 am]

BILLING CODE 8351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Melengestrol

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 an abbreviated new animal drug application (ANADA) filed by Ivy Laboratories, Division of Ivy Animal Health, Inc. The ANADA provides for use of a melengestrol acetate liquid Type A medicated article to make Type C medicated feeds for heifers fed in confinement for slaughter and for heifers intended for breeding.

DATES: This rule is effective January 14, 2005.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lonnie.luther@fda.gov.*

SUPPLEMENTARY INFORMATION: Ivy Laboratories, Division of Ivy Animal Health, Inc., 8857 Bond St., Overland Park, KS 66214, filed ANADA 200–343 for use of HEIFERMAX 500 (melengestrol acetate) Liquid Premix, a liquid Type A medicated article used to make dry and liquid Type C medicated feeds for heifers fed in confinement for slaughter and for heifers intended for breeding. Ivy Laboratories' HEIFERMAX 500 Liquid Premix is approved as a generic copy of Pharmacia and Upjohn Co.'s MGA 500 (melengestrol acetate) Liquid Premix, approved under NADA 39–402. The application is approved as of December 3, 2004, and the regulations are amended in 21 CFR 558.342 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.

The agency has determined under 21 CFR 25.33(a)(1) 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.

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 558

Animal drugs, Animal feeds.

■ 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 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. Section 558.342 is amended by revising paragraph (b) and in the table in paragraphs (e)(1)(i) and (e)(1)(ii) in the "Sponsor" column by adding in numerical sequence "021641" to read as follows:

§ 558.342 Melengestrol.

* * * * *

(b) *Approvals.* See sponsors in § 510.600(c) of this chapter for use as in paragraph (e) of this section.

(1) No. 000009 for use of products described in paragraph (a) of this section.

(2) No. 021641 for use of product described in paragraph (a)(2) of this section.

* * * * *

Dated: December 29, 2004.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 05–761 Filed 1–13–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Decoquinate

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 two supplemental new animal drug applications (NADAs) filed by Alpharma Inc. The supplemental NADAs provide for the use of single-ingredient decoquinate and chlortetracycline Type A medicated articles to make two-way Type B and Type C medicated feeds for cattle at a broader range of concentrations.

DATES: This rule is effective January 14, 2005.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578, e-mail: *janis.messenheimer@fda.gov.*

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Drive, P.O. Box 1399, Fort Lee, NJ 07024, filed a supplement to NADA 141–147 for use of DECCOX (decoquinate) and CHLORMAX (chlortetracycline) Type A medicated articles to make two-way Type B and Type C medicated feeds for cattle at the broader range of concentrations. Alpharma Inc. also filed a supplement to NADA 141–185 for use of DECCOX and AUREOMYCIN (chlortetracycline) Type A medicated articles for the same revised conditions of use. The supplemental applications are approved as of December 16, 2004, and the regulations are amended in 21 CFR 558.195 to reflect the approval. The basis of approval is discussed in the freedom of information summaries.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), summaries of safety and effectiveness data and information submitted to support approval of these applications 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.

The agency has determined under 21 CFR 25.33(a)(1) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor environmental impact statement is required.

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 558

Animal drugs, Animal feeds.

■ 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 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. Section 558.195 is amended by redesignating paragraphs (e)(2)(ii), (e)(2)(iii), and (e)(2)(iv) as paragraphs (e)(2)(vi), (e)(2)(iv), and (e)(2)(iii) respectively; and by adding new paragraphs (e)(2)(ii) and (e)(2)(vii) to read as follows:

§ 558.195 Decoquinate.

* * * * *

(e) * * *

* * * * *

(2) *Cattle.*

Decoquinate in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
*	*	* *	* *	*
(ii) 12.9 to 90.8	Chlortetracycline 500 to 4,000.	Calves, beef, and nonlactating dairy cattle: As in paragraph (e)(2)(i) of this section; for treatment of bacterial enteritis caused by *Escherichia coli*; and for treatment of bacterial pneumonia caused by *Pasteurella multocida* organisms susceptible to chlortetracycline.	Feed Type C feed to provide 22.7 mg decoquinate and 1 gram chlortetracycline per 100 lb body weight per day for not more than 5 days. When consumed, feed 22.7 mg decoquinate per 100 lb body weight/day for a total of 28 days to prevent coccidiosis. Withdraw 24 hours prior to slaughter when manufactured from CTC (chlortetracycline) Type A medicated articles under NADA 141–147. Zero withdrawal time when manufactured from AUREOMYCIN (chlortetracycline) Type A medicated articles under NADA 141–185. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Do not feed to animals producing milk for food. Chlortetracycline as provided by No. 046573 in § 510.600(c) of this chapter.	046573

Decoquinate in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
*	*	* *	* *	*
(vii) 90.9 to 535.7	Chlortetracycline 4,000 to 20,000.	Calves, beef, and nonlactating dairy cattle: As in paragraph (e)(2)(i) of this section; for treatment of bacterial enteritis caused by *Escherichia coli*; and for treatment of bacterial pneumonia caused by *Pasteurella multocida* organisms susceptible to chlortetracycline.	Feed Type C medicated feed supplements as a top dress or mix into the daily ration to provide 22.7 mg decoquinate and 1 gram chlortetracycline per 100 lb body weight per day for not more than 5 days. When consumed, feed 22.7 mg decoquinate per 100 lb body weight per day for a total of 28 days to prevent coccidiosis. Withdraw 24 hours prior to slaughter when manufactured from CTC (chlortetracycline) Type A medicated articles under NADA 141–147. Zero withdrawal time when manufactured from AUREOMYCIN (chlortetracycline) Type A medicated articles under NADA 141–185. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Do not feed to animals producing milk for food. Chlortetracycline as provided by No. 046573 in §510.600(c) of this chapter.	046573

* * * * *

Dated: January 7, 2005.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 05–789 Filed 1–13–05; 8:45 am]

BILLING CODE 4160–01–S

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in February 2005. Interest assumptions are also published on the PBGC's Web site *http://www.pbgc.gov*.

EFFECTIVE DATE: February 1, 2005.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Acting Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, (202) 326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to (202) 326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during February 2005, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during February 2005, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during February 2005.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 4.00 percent for the first 20 years following the valuation date and 4.75 percent thereafter. These interest assumptions represent a decrease (from those in effect for January 2005) of 0.10 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.00 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for January 2005.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during February 2005, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. *See* 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 136, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*		*
136	2–1–05	3–1–05	3.00	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 136, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*		*
136	2–1–05	3–1–05	3.00	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for $t =$	i_t	for $t =$	i_t	for $t =$
*	*		*	*		*
February 2005	.0400	1–20	.0475	>20	N/A	N/A

Issued in Washington, DC, on this 10th day of January 2005.

Joseph H. Grant,

Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 05–793 Filed 1–13–05; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–05–005]

RIN 1625–AA09

Drawbridge Operation Regulations; Upper Mississippi River, Dubuque, IA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Illinois Central Railroad Drawbridge, across the Upper Mississippi River, mile 579.9 at Dubuque, Iowa. This deviation allows the drawbridge to remain closed to navigation unless at least 12 hours advance notice is given for an opening from 6 a.m., January 17, 2005, until 6 p.m., February 28, 2005, Central Standard Time. The deviation is necessary to allow time for making repairs of critical mechanical components essential to the continued safe operation of the drawbridge.

DATES: This temporary deviation is effective from 6 a.m., January 17, 2005 through 6 p.m., February 28, 2005.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Room 2.107F in the Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION: The Chicago, Central and Pacific Railroad requested a temporary deviation to allow time to conduct repairs to the Illinois Central Railroad Drawbridge, across the Upper Mississippi River, mile 579.9 at Dubuque, Iowa. The Illinois Central Railroad Drawbridge currently operates in accordance with 33 CFR 117.5 which requires the drawbridge to open promptly and fully for passage of vessels when a request to open is given in accordance with 33 CFR 117, subpart A. In order to repair the main stringers over the turntable of the swing span, the bridge must be kept in the closed to navigation position. This deviation allows the bridge to remain closed to navigation for 43 days from 6 a.m., January 17, 2005 until 6 p.m., February 28, 2005. The drawbridge will open during this time period upon 12 hours advance notice. There are no alternate routes for vessels transiting through mile 579.9 on the Upper Mississippi River.

The Illinois Central Railroad Drawbridge provides a vertical clearance of 19.9 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 7, 2005.

Roger K. Wiebusch,

Bridge Administrator.

[FR Doc. 05–790 Filed 1–13–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–156]

Drawbridge Operation Regulations; Merrimack River, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Essex Merrimack Bridge, mile 5.8, across the Merrimack River, at Newburyport, Massachusetts. This deviation allows the bridge to remain in the closed position from January 22, 2005 through February 3, 2005. This temporary deviation is necessary to facilitate structural repairs at the bridge.

DATES: This deviation is effective from January 22, 2005 through February 3, 2005.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The Essex Merrimack Bridge, at mile 5.8, across the Merrimack River, has a vertical clearance of 15 feet at mean high water, and 22 feet at mean low water in the closed position. The existing regulations are listed at 33 CFR 117.605(c).

The bridge owner, Massachusetts Highway Department, requested a temporary deviation from the drawbridge operating regulations to facilitate necessary structural repairs to the balance wheels at the bridge.

This deviation to the operating regulations allows the bridge to remain in the closed position from January 22, 2005 through February 3, 2005.

This deviation from the operating regulations is authorized under 33 CFR 117.35 and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: January 7, 2005.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 05–791 Filed 1–13–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–05–006]

RIN 1625–AA09

Drawbridge Operation Regulations; Upper Mississippi River, Fort Madison, IA and Burlington, IA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Fort Madison Drawbridge, mile 383.9, Fort Madison, Iowa and the Burlington Railroad Drawbridge, mile 403.1, Burlington, Iowa, across the Upper Mississippi River. This deviation allows the drawbridges to remain closed to navigation unless at least 4 hours advance notice is given for an opening from 8 a.m., January 24, 2005, until 8 a.m., March 1, 2005, Central Standard

Time. The deviation is necessary to allow time for making repairs of critical mechanical components essential to the continued safe operation of the drawbridges.

DATES: This temporary deviation is effective from 8 a.m., January 24, 2005 through 8 a.m., March 1, 2005.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Room 2.107F in the Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION: The Burlington Northern and Santa Fe Railway Company requested a temporary deviation to allow time to conduct repairs to the Fort Madison Drawbridge, mile 383.9 at Fort Madison, Iowa and Burlington Railroad Drawbridge, mile 403.1 at Burlington, Iowa, across the Upper Mississippi River. The Fort Madison Drawbridge and Burlington Railroad Drawbridge currently operates in accordance with 33 CFR 117.5 which requires the drawbridges to open promptly and fully for passage of vessels when a request to open is given in accordance with 33 CFR 117, subpart A. In order to facilitate required bridge maintenance during the winter months, when the number of vessels likely to be impacted is minimal, the bridges must be kept in the closed to navigation position. This deviation allows the bridges to remain closed to navigation for 37 days from 8 a.m., January 24, 2005 until 8 a.m., March 1, 2005. The drawbridges will open during this time period upon 4 hours advance notice. There are no alternate routes for vessels transiting through mile 383.9 and 403.1 on the Upper Mississippi River.

The Fort Madison Drawbridge provides a vertical clearance of 13.1 feet above normal pool and the Burlington Railroad Drawbridge provides a vertical clearance of 21.5 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridges to normal operation as soon as possible.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 7, 2005.

Roger K. Wiebusch,

Bridge Administrator.

[FR Doc. 05–792 Filed 1–13–05; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–4058, MB Docket No. 04–282, RM–11042]

Digital Television Broadcast Service; El Dorado, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Arkansas Educational Television Commission, substitutes DTV channel *12 for DTV channel *30 at El Dorado, Arkansas. *See* 69 FR 52220, August 25, 2004. DTV channel *12 can be allotted to El Dorado in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 33–04–41 N. and 92–13–41 W. with a power of 6, HAAT of 541 meters and with a DTV service population of 339 thousand. With this action, this proceeding is terminated.

DATES: Effective February 18, 2005.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 04–282, adopted December 27, 2004, and released January 4, 2005. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 301–816–2820, facsimile 301–816–0169, or via-e-mail *joshir@erols.com.*

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

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

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Arkansas, is amended by removing DTV channel *30 and adding DTV channel *12 at El Dorado.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 05–829 Filed 1–13–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–4057, MB Docket No. 04–182, RM–10963]

Digital Television Broadcast Service; Great Falls, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Montana State University, allots DTV channel *21 for noncommercial use at Great Falls, Montana. *See* 69 FR 30853, June 1, 2004. DTV channel *21 can be allotted to Great Falls, Montana, in compliance with the minimum geographic spacing requirements of Section 73.623(d) at reference coordinates 47–32–08 N. and 111–17–02 W. Since the community of Great Falls is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government was obtained for this

allotment. With this action, this proceeding is terminated.

DATES: Effective February 18, 2005.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 04–182, adopted December 14, 2004, and released January 4, 2005. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 301–816–2820, facsimile 301–816–0169, or via-e-mail *joshir@erols.com*.

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

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

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Montana, is amended by adding DTV channel *21 at Great Falls.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 05–828 Filed 1–13–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–4065, MB Docket No. 04–250, RM–11006]

Digital Television Broadcast Service; Medical Lake, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Thomas Desmond, allots DTV channel 51 to Medical Lake, Washington, as the community's first local television service. *See* 69 FR 44482, July 26, 2004. DTV channel 51 can be allotted to Medical Lake in compliance with sections 73.623(d) and 73.625(a) at coordinates 47–34–12 N. and 117–41–32 W. Since the community of Medical Lake is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government was obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective February 18, 2005.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 04–250, adopted December 27, 2004, and released January 4, 2005. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 301–816–2820, facsimile 301–816–0169, or via-e-mail *joshir@erols.com*.

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

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

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Washington, is amended by adding Medical Lake, DTV channel 51.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 05–827 Filed 1–13–05; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 70, No. 10
Friday, January 14, 2005

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 360

[Docket No. 04–037–2]

Noxious Weeds; Notice of Availability of Petitions To Regulate Caulerpa

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Petition and request for comments; reopening of comment period.

SUMMARY: We are reopening the comment period for our notice announcing the receipt of two petitions requesting that additional aquatic plants of the genus *Caulerpa* be added to the list of noxious weeds. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before January 26, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate Docket 04–037–1.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–037–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–037–1.
- E-mail: Address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 04–037–1" on the subject line.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Petitions: The petitions discussed in this document are available on the APHIS Web site at *http://www.aphis.usda.gov/ppq/weeds/* or from the individual listed as the contact for further information.

Reading Room: You may read any comments that we receive on Docket 04–037–1 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Alan V. Tasker, Noxious Weeds Program Coordinator, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1237; (301) 734–5225.

SUPPLEMENTARY INFORMATION:

Background

On October 26, 2004, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (69 FR 62419–62421, Docket No. 04–037–1) a notice in which we announced the receipt of, and requested comments on, two petitions from the International Center for Technology Assessment. The first petition requested that APHIS add the entire genus *Caulerpa* to the list of noxious weeds. The second petition requested, in the case that the first petition was denied, that all varieties of the species *C. taxifolia* be added to the list of noxious weeds.

Comments on the petitions were required to be received on or before December 27, 2004. We are reopening the comment period on Docket No. 04–037–1 for an additional 30 days from the original close of the comment period. This action will allow interested persons additional time to prepare and submit comments. We will consider all comments received between December 28, 2004 (the day after the close of the original comment period) and the date of this notice.

Authority: 7 U.S.C. 7711–7714, 7718, 7731, 7751, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 10th day of January 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–801 Filed 1–13–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket Nos. AO–F&V–923–3; FV03–923–01]

Sweet Cherries Grown in Designated Counties in Washington; Secretary's Decision and Referendum Order on Proposed Amendments to Marketing Agreement and Order No. 923

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amending the marketing agreement and order (order) for sweet cherries grown in Washington, and provides growers with the opportunity to vote in a referendum to determine if they favor the changes. The amendments are based on those proposed by the Washington Cherry Marketing Committee (Committee), which is responsible for local administration of the order. The amendments include: adding authority for promotion, including paid advertising, and production research projects; adding authority for supplemental rates of assessment for individual varieties of cherries; adding authority for the Committee to accept voluntary contributions for research and promotion; and, adding a public member to the Committee. Two additional amendments are based on those proposed by the Agricultural Marketing Service: Establishing tenure limitations for Committee members and, requiring that continuance referenda be

conducted every 6 years. The proposed amendments are intended to improve the operation and functioning of the sweet cherry marketing order program.

DATES: The referendum will be conducted from March 1 through March 21, 2005. The representative period for the purpose of the referendum is April 1, 2003 through March 31, 2004.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Post Office Box 1035, Moab, UT 84532, telephone: (435) 259–7988, fax: (435) 259–4945.

Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding include: a Notice of Hearing issued on October 6, 2003, and published in the October 10, 2003, issue of the **Federal Register** (68 FR 58636), and a Recommended Decision issued on September 29, 2004 and published in the October 5, 2004 issue of the **Federal Register** (69 FR 59551).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

The amendments are based on the record of a public hearing held November 18, 2003, in Yakima, Washington. The hearing was held to consider the proposed amendment of Marketing Agreement and Order No. 923, regulating the handling of sweet cherries grown in the State of Washington, hereinafter referred to as the "order". The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained numerous proposals submitted by the Committee and two proposals by the Agricultural Marketing Committee (AMS).

The amendments included in this decision would: (1) Add the authority for promotion, including paid advertising, and production research projects; (2) add the authority for supplemental rates of assessment for individual varieties of cherries; (3) add the authority for the Committee to accept voluntary contributions for marketing research and promotion, including paid advertising, and production research projects; and (4) add a public member and alternate public member to the Committee.

The Fruit and Vegetable Programs of AMS proposed to establish tenure limitations for Committee members and to require that continuance referenda be conducted on a periodic basis to ascertain grower support for the order. In addition, AMS proposed to allow such changes as may be necessary to the order, if any of the proposed changes are adopted, so that all of the order's provisions conform to the effectuated amendments.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on October 4, 2004, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by November 4, 2004. That document also announced AMS's intent to request approval of new information collection requirements to implement the program. Written comments on the proposed information collection requirements were due by November 4, 2004. None were filed.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small agricultural growers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms are defined as those with annual receipts of less than $5,000,000.

The record shows that there are approximately 1,500 growers of sweet cherries in the production area and approximately 62 handlers subject to regulation under the order. The average production of sweet cherries in Washington State for the last three years is 64,676 tons with an average grower price of $1,943 per ton. Using this number, the average annual grower revenue is calculated to be approximately $83,777, thus indicating that the average Washington sweet cherry grower would qualify as a small entity according to the SBA definition.

Using Committee data regarding each individual handler's total shipments during the 2002 marketing year, and an estimated average FOB price of $24 per 20-pound container, 79 percent of the Washington sweet cherry handlers shipped under $5 million worth of sweet cherries, and 21 percent shipped over $5 million worth of sweet cherries. Therefore, the majority of Washington sweet cherry handlers may be classified as small entities.

The Committee is currently comprised of 10 growers and 6 handlers. Both small and large growers and handlers are members and member alternates on the Committee. Committee meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and all other interested persons, who are encouraged to participate in the deliberations and voice their opinions on topics under discussion.

At a May 22, 2003, full Committee meeting, all industry representatives present could present their views concerning the recommended amendments. Both large and small businesses were represented. The Committee believes that small and large entities would benefit equally from the proposed amendments.

Testimony indicates that the proposal to include paid advertising and production research under the order would assist both small and large growers and handlers in marketing Washington sweet cherry crops. While addition of this authority could result in increased assessments under the order, witnesses stated that the benefits arising from these activities, as evidenced by similar activities under the Commission, would outweigh the costs.

Similarly, the proposal to add authority for supplemental varietal assessments could require additional payments per individual variety of sweet cherry. However, witnesses stated that they believed the benefits of those research and promotion activities would outweigh the costs.

Witnesses used the example of recent Commission activities as evidence that research and promotion activities would lead to increased grower returns and market stability by providing tools to the industry to address expanding production and evolving consumer trends in the industry. Witnesses were unanimous in their belief that the benefits of the Commission's activities more than outweigh the costs of these programs. They stated that the same results would be expected from any such activities conducted under the order.

The proposal to add authority for the Committee to accept voluntary contributions would not result in any increased costs or burdens to the industry. In fact, witnesses stated that this authority would benefit the industry greatly as it could provide for additional funding sources of research and promotional activities. Safeguards against donor control over the use of voluntary contributions would ensure that these funds would be used in the best interest of the industry. The Committee would decide how to use those funds, and the decision-making process would be open to industry input and feedback.

The proposal to add a public member and alternate public member to the Committee is not expected to result in any substantial cost increases. While the new members would be entitled to reimbursement for their expenses, the additional cost would be minimal. Additionally, the benefit of adding a non-industry, consumer perspective to Committee deliberations and decision-making could prove very beneficial. Witnesses stated that this additional perspective would improve the Committee's understanding of the consumer in the marketplace and could enhance Committee activities aimed at increasing consumer demand for Washington sweet cherries.

The proposed amendment to add tenure requirements for Committee members would allow more persons the opportunity to serve as members of the Committee. It would provide for more diverse membership, provide the Committee with new perspectives and ideas, and increase the number of individuals in the industry with Committee experience.

The proposal to require continuance referenda on a periodic basis to ascertain grower support for the order would allow growers to vote on whether to continue the operation of the program. The referenda would be conducted by USDA.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impacts of the proposed amendments to the order on small entities. The record evidence is that while some minimal costs may occur, those costs would be outweighed by the benefits expected to accrue to the sweet cherry industry in designated counties of Washington.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. All of the amendments are designed to enhance the administration and functioning of the program to the benefit of Washington cherry growers and handlers.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS has submitted a request to OMB for approval of the increase in information collection burden for the Washington Cherry marketing order.

This decision adds a public member and alternate public member to the Committee. A confidential qualification and acceptance statement would be used to nominate and appoint the public and alternate public committee members. This form is based on the currently approved Confidential Background Statement for the Washington Cherry Marketing Committee. If this proposal is implemented the form would only be used after approval by OMB.

Civil Justice Reform

The amendments to Marketing Order 923 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

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

Findings and Conclusions

The material issues, findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the October 5, 2004, issue of the **Federal Register** are hereby approved and adopted.

Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Sweet Cherries Grown in Washington." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register.**

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400 *et seq.*) to determine whether the annexed order amending the order regulating the handling of sweet cherries grown in Washington is approved or favored by growers, as defined under the terms of the order, who during the representative period were engaged in the production of sweet cherries in the production area.

The representative period for the conduct of such referendum is hereby determined to be April 1, 2004, through February 28, 2005.

The agent of the Secretary to conduct such referendum is hereby designated to be Robert Curry and Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, Room 369, Portland, Oregon 97204; telephone (503) 326–2724.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

Dated: January 11, 2005.

A.J. Yates,

Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Sweet Cherries Grown in Washington [1]

Findings and Determinations

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and

[1] This order shall not become effective unless and until the requirements of §900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 923 (7 CFR part 927), regulating the handling of sweet cherries grown in Washington. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of sweet cherries grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of sweet cherries grown in the production area; and

(5) All handling of sweet cherries grown in the production area as defined in the marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of sweet cherries grown in Washington shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the Recommended Decision issued by the Administrator on September 29, 2004, and published in the **Federal Register** on October 5, 2004, will be and are the terms and provisions of this order amending the order and are set forth in full herein.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 923 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 923.20 is revised to read as follows:

§ 923.20 Establishment and membership.

There is hereby established a Washington Cherry Marketing Committee consisting of seventeen members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he or she is an alternate. Ten members and their respective alternates shall be growers or officers or employees of corporate growers. Six of the members and their respective alternates shall be handlers, or officers or employees of handlers. One member and his or her respective alternate shall be a public member who is neither a grower nor a handler. The ten members of the committee who are growers or employees or officers of corporate growers are referred to in this part as "grower members" of the committee; and six members of the committee who shall be handlers, or officers or employees of handlers are referred to in this part as "handler members" of the committee. Five of the grower members and their respective alternates shall be growers of cherries in District 1, and five of the grower members and their respective alternates shall be growers of cherries in District 2. Three of the handler members and their respective alternates shall be handlers of cherries in District 1, and three of the handler members and their representative alternates shall be handlers of cherries in District 2.

3. Revise § 923.21 to read as follows:

§ 923.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years beginning April 1 and ending March 31. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. Committee members shall not serve more than three consecutive terms. Members who have served for three consecutive terms must leave the committee for at least one year before becoming eligible to serve again.

4. Amend § 923.22 by adding a new paragraph (b)(4) to read as follows:

§ 923.22 Nomination.

* * * * *

(b) * * *

(4) The grower and handler members of the committee shall nominate the public member and alternate public member at the first meeting following the selection of members for a new term of office.

5. In § 923.41, paragraph (c) is redesignated as paragraph (d) and a new paragraph (c) is added to read as follows:

§ 923.41 Assessments.

* * * * *

(c) Based upon a recommendation of the committee or other available information, the Secretary shall fix the rate of assessment that handlers shall pay on all cherries handled during each fiscal period, and may also fix supplemental rates of assessment on individual varieties or subvarieties to secure sufficient funds to provide for projects authorized under § 923.45. At any time during the fiscal period when it is determined on the basis of a committee recommendation or other information that a different rate is necessary for all cherries or for any varieties or subvarieties, the Secretary may modify a rate of assessment and such new rate shall apply to any or all varieties or subvarieties that are shipped during the fiscal period.

* * * * *

6. A new § 923.43 is added to read as follows:

§ 923.43 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 923.45. Furthermore, such contributions shall be free from any encumbrances by the donor and the committee shall retain complete control of their use.

7. Section 923.45 is revised to read as follows:

§ 923.45 Production and marketing research, promotion and market development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving production research, marketing research and development, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption or efficient production of cherries. The expense of such projects shall be paid from funds collected pursuant to §§ 923.41 and 923.43.

8. Section 923.64 is amended by:

A. Revising paragraph (c).

B. Redesignating paragraph (d) as paragraph (e).

C. Adding a new paragraph (d).

The revision and addition read as follows:

§ 923.64 Termination.

* * * * *

(c) The Secretary shall terminate the provisions of this part whenever it is found that such termination is favored by a majority of growers who, during a representative period, have been engaged in the production of cherries: *Provided*, that such majority has, during such representative period, produced for market more than 50 percent of the volume of such cherries produced for market.

(d) The Secretary shall conduct a referendum six years after the effective date of this section and every sixth year thereafter, to ascertain whether continuance of this subpart is favored by growers. The Secretary may terminate the provisions of this subpart at the end of any fiscal period in which the Secretary has found that continuance of this subpart is not favored by growers who, during a representative period determined by the Secretary, have been engaged in the production of cherries in the production area.

* * * * *

[FR Doc. 05–825 Filed 1–13–05; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket No. PRM–20–25]

Sander C. Perle, ICN Worldwide Dosimetry; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Denial.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by Sander C. Perle, ICN Worldwide Dosimetry (now Global Dosimetry Solutions, Inc.) (PRM–20–25). The petitioner requested that the NRC amend its regulations to require that any dosimeter, without exception, that is used to report dose of record and demonstrate compliance with the dose limits specified in the Commission's regulations be processed and evaluated by a dosimetry processor holding accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; the definition of "Individual monitoring devices" (individual monitoring equipment) be revised to mean any device used by licensees to show compliance with the Commission's regulations; and "electronic dosimeters and optically stimulated dosimeters" be added as additional examples of individual monitoring devices.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection and/or copying in the NRC Public Document room, 11555 Rockville Pike, Rockville, Maryland. These same documents are also available on the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. For information about the interactive rulemaking Web site, contact Carol Gallagher, (301) 415–5905, e-mail: *CAG@nrc.gov*.

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. Note: Public access to documents, including access via ADAMS and the PDR, has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. However, access to the documents identified in this **Federal Register** continues to be available through the rulemaking Web site at *http://ruleforum.llnl.gov*, which was not affected by the ADAMS shutdown. Please check with the listed NRC contact concerning any issues related to document availability.

FOR FURTHER INFORMATION CONTACT: Torre Taylor, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–7900; e-mail: *tmt@nrc.gov*.

SUPPLEMENTARY INFORMATION:

The Petition

On May 5, 2003 (68 FR 23618), the NRC published a notice of receipt of a petition for rulemaking filed by Sander C. Perle, ICN Worldwide Dosimetry (now Global Dosimetry Solutions, Inc.). The petitioner requested that the NRC amend its regulations to require that any dosimeter, without exception, that is used to report dose of record and demonstrate compliance with the dose limits specified in the Commission's regulations be processed and evaluated by a dosimetry processor holding accreditation from NVLAP; the definition of "Individual monitoring devices" [in 10 CFR 20.1003] (hereafter, "10 CFR Section" referred to as §) (individual monitoring equipment) be revised to mean any device used by licensees to show compliance with § 20.1201; and "electronic dosimeters and optically stimulated dosimeters" be added as additional examples of individual monitoring devices in the definition of "Individual monitoring devices."

The petitioner stated that the current wording of § 20.1501©) precludes testing and accreditation requirements for an electronic dosimeter. The petitioner also stated that today's electronic dosimeters use multiple microprocessors that include many complex user input parameters that ultimately affect the final dose and/or dose rate reported. The dose determined from an electronic dosimeter is a "processed" dose. The electronic dosimeter requires that the licensee program the dosimeter to respond to various spectra, based on the calibration and other licensee set parameters. According to the petitioner, the NRC's position is that, because the current § 20.1501(c) does not appear to include the definition of an electronic dosimeter, nothing prohibits a licensee from using an electronic dosimeter to establish a dose of record. The petitioner states that the NRC's philosophy is that the NRC onsite inspector can assess the validity of the electronic dosimeter quality assurance program. The petitioner believes that the NVLAP onsite assessor [the NVLAP onsite assessor who inspects the facility requesting accreditation] is the most appropriate individual to assess a facility's quality assurance program, and to determine if the electronic dosimeter is capable of measuring and reporting accurate and precise dose results for workers in a specific radiation work environment, as the NVLAP onsite assessor does for all other NVLAP accredited whole body dosimeters.

The petitioner also stated that the current wording of § 20.1501(c) precludes testing and accreditation requirements for an extremity dosimeter (finger or wrist dosimeter). The petitioner states that because § 20.1201, Occupational dose limits for adults, specifies a dose limit, including the annual limits to the extremities, which are a shallow dose equivalent of 50 rems (0.5 Sv) to the skin or to an extremity, it would seem logical that the dosimeter used to make this dose determination should be accredited through the same process as a whole body dosimeter. The petitioner indicated that NVLAP has accredited [processors of] extremity dosimeters per American National Standards Institute (ANSI) standard N13.32–1995, "Performance Testing of Extremity Dosimeters," for the past 8 years. The petitioner believes that there is no reason to continue to exclude [processors of] extremity dosimeters from required NVLAP accreditation.

The petitioner believes that requiring NVLAP accreditation [for the use] of electronic dosimeters provides an unbiased third-party evaluation and recognition of performance, as well as expert technical guidance to upgrade laboratory performance. NVLAP accreditation signifies that a laboratory has demonstrated that it operates in accordance with NVLAP management and technical requirements pertaining to quality systems; personnel; accommodation and environment; test and calibration methods; equipment; measurement traceability; sampling; handling of test and calibration items; and test and calibration reports. NVLAP accreditation does not imply any guarantee (certification) of laboratory performance or test/calibration data; it is solely a finding of laboratory competence.

Public Comments on the Petition

The notice of receipt of the petition for rulemaking invited interested persons to submit comments. The petition was docketed as PRM–20–25. The petition was published in the **Federal Register** on May 5, 2003 (68 FR 23618), for a 75-day comment period. The comment period closed on July 21, 2003. NRC received nine comment letters from utilities, industry, the public, and a State radiation control program. NRC also received three comment letters from the petitioner, in response to public comments NRC received regarding the petition. Six commenters recommended that NRC deny the petition, three commenters supported the petition, but with substantial changes, and three comments were received from the petitioner responding to comments that the NRC received on the petition. The majority of the commenters opposed the petition. Two commenters agreed with the intent of the petition; however, they had concerns with the proposed regulatory language. Several commenters noted that the proposed revision would require NVLAP accreditation [of processors] for all dosimeters, including dosimeters that are used as backup dosimeters. [Note that the terms "secondary" and "backup dosimetry" are used by the commenters. NRC does not have a definition for "secondary" or "backup dosimetry."] Some commenters indicated that electronic dosimeters are control devices for real-time exposure information and should not be subject to NVLAP accreditation for the processor. The concern is that licensees might then issue only one NVLAP accredited dosimeter and remove the redundancy now in place with wearing a second dosimeter.

Cost was a major issue with the commenters. One commenter believes the proposed revision could force a licensee to hire a third party to oversee and implement its use of electronic dosimeters. Others commented that NVLAP testing costs would at least double. Some commenters believe that the cost of accreditation does not warrant the benefit of having all dosimeters evaluated by a NVLAP accredited dosimetry processor. Several commenters believed that the proposed revision would impose additional burden that is unnecessary and unjustified.

One commenter questioned the petitioner's statement that electronic dosimetry is processed. One commenter questioned the availability of a viable standard for electronic dosimetry upon which to base NVLAP testing.

Regarding the petitioner's proposed change to require NVLAP accreditation for processors of extremity dosimetry, one commenter indicated that the current standard for extremity dosimetry, ANSI/Health Physics Society (HPS) N13.32–1995, "Performance Testing of Extremity Dosimeters," is undergoing a major revision, and that NRC should defer any rulemaking on this issue until the revision of this standard is completed.

One commenter believes that the proposed revision represents a backfit requirement and that it would impose new requirements on licensees with an additional burden to revise programs and procedures, and to provide training. Many commenters believe that the current programs for monitoring and recording occupational radiation dose are adequate to assure protection of worker health and safety and did not believe the petitioner provided information to the contrary. One commenter did not believe that the petition described a regulatory problem or issue in the current program and that the proposed revision only provided an enhancement to the regulations. One commenter stated that: "There are certain situations where NVLAP accreditation is not available for all neutron fields. * * * the proposal would leave no compliance option for licensees with radiation fields beyond the standard NVLAP parameters." Another commenter indicated that the proposed revision would empower NVLAP to dictate to the licensee the categories for which testing would be required.

The petitioner provided three comments in response to public comments that were submitted to NRC, which are summarized as follows. The petitioner stated that the intent of the petition is for the proposed revisions to apply only to the primary dosimeter, and not to the secondary dosimeter. [Note that the terms "primary" and "secondary" are used by the petitioner; NRC does not have a definition of these terms in its regulations. The NRC staff understands that the petitioner means the "primary" dosimeter as the dosimeter that provides the "dose of record" and that the "secondary" dosimeter is the "backup" dosimeter.] The petitioner disagreed with a comment that no compliance options are left for licensees with radiation fields beyond NVLAP parameters. A facility would test in those radiation categories that are representative of the radiation field to which its employees are exposed. The petitioner also stated that if the petition was not approved, the extremity ring or wrist dosimeters would continue to be worn with no requirement that they be tested under any proficiency testing program.

Reasons for Denial

After reviewing the petition and the public comments, the NRC is denying the petition. NRC has determined that the current NRC regulations are adequate to protect worker and public health and safety. The NRC is denying the petition because there is insufficient evidence that it solves a regulatory problem or improves health and safety. The additional requirements would be an increase in burden for licensees who have their own accreditation, and for processors, without a commensurate benefit of increased protection of worker health and safety. The increase in burden would be from the additional resources for the NVLAP accreditation process, which includes the accreditation fee, as well as the staff time to go through the accreditation process, which includes an on-site assessment of the facility. The accreditation is renewed every two years, so this is not a one time cost. This would be an imposed burden with no additional benefit in health and safety.

Discussion of the specific requests of the petitioner follows. The NRC is denying the petitioner's request that the NRC amend its regulations to require that any dosimeter, without exception, that is used to report dose of record and demonstrate compliance with the dose limits specified in the Commission's regulations be processed and evaluated by a dosimetry processor holding accreditation from NVLAP. The NRC does not agree with the petitioner that electronic dosimeters are processed. Although not defined in the regulations, NRC interprets processing to mean a process, separate from, and independent of, the design of the dosimeter, that is required to extract dose information from the dosimeter after exposure to radiation. Processing is necessary with film or thermoluminescent (TLD) dosimetry to obtain the dose information. With film or TLD dosimetry, the quality of the processing is dependent on the competence of the processor, and not on the dosimeter design. Quality is built into the design of dosimeters that do not require processing. Additionally, these devices are calibrated on a routine basis to ensure the device is responding properly. The NRC is not aware of any problem with the current calibration processes, and the petitioner has not provided any evidence of an existing deficiency in the calibration process. The NRC reviews licensees' calibration programs during routine inspections. Subjecting processors to NVLAP accreditation for dosimeters that do not require processing will not improve the reliability of these dosimeters.

Regarding the petitioner's request to remove the exception for NVLAP accreditation for extremity dosimetry, currently allowed in § 20.1501(c), the NRC agrees in principle that it is a good idea to include extremity dosimeters that require processing in the requirement for NVLAP accreditation for processors. However, the ANSI and HPS standard for extremity dosimeters, ANSI/HPS N13.32–1995, "Performance Testing of Extremity Dosimeters," is undergoing a major revision. The petitioner has provided no evidence that there is a current health and safety problem and much of the industry is voluntarily obtaining NVLAP accreditation for processing of extremity dosimetry. Consequently, the NRC believes it is premature to remove this regulatory exception. Therefore, NRC is not taking regulatory action on this issue.

Granting the petitioner's request to revise the definition of "Individual monitoring device" in § 20.1003 to add "used by licensees to show compliance with § 20.1201" would result in unintended requirements. There are many devices used to show compliance, such as alarming ratemeters, chirpers, and lapel air samplers. The petition, if granted, would result in a requirement that users of essentially all listed types of dosimeters would go through a process that is accredited by NVLAP. Many individual monitoring devices do not require processing to obtain the dose information, such as alarming ratemeters, chirpers, etc., and NVLAP accreditation will not improve the reliability of the devices. The petitioner also proposed adding two more examples, electronic dosimeters and optically stimulated dosimeters, in the definition of "Individual monitoring device." The current examples in the definition of "Individual monitoring device" are not meant to be all inclusive, and adding two more examples will not add any safety value and does not justify a rulemaking.

This petition must also be evaluated with respect to NRC's backfitting requirements. Backfit is defined, in part, as the modification of, or addition to, the procedures or organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position (See §§ 50.109, 70.76, 72.62, and 76.76). The NRC requires backfitting only when it determines that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from the backfit, and that the direct and indirect costs of implementation are justified in view of this increased protection.

The petitioner's proposed action would be considered a backfit because it would require licensees to modify their procedures and organization to operate a facility, and the proposed action does not fall within any of the exceptions in the above referenced sections of the regulations. The petition, if granted, would require that any dosimeter that could possibly be used to report the dose of record and demonstrate compliance with the dose limits specified in the NRC regulations be processed and evaluated by a dosimetry processor holding NVLAP accreditation. This would require an expansion of the requirements for the dosimeters with an increased cost and burden to licensees, without a commensurate benefit in health and safety or the common defense and security.

After reviewing the proposed actions, NRC believes that the proposed actions would not pass a detailed backfit analysis. There is insufficient evidence that the petition, if granted, would solve a regulatory problem or improve health and safety. No data were provided by the petitioner, nor did the NRC find any data, to show that existing regulations are inadequate to protect health and safety. The increase in cost to licensees, without a commensurate health and safety benefit or the common defense and security, does not warrant granting this petition.

In conclusion, there is insufficient evidence that the petition solves a regulatory problem or improves health and safety. If the petition were granted, there would be a large increase in burden to licensees that is unjustified without a health and safety concern. Therefore, the NRC has determined that existing NRC regulations are adequate to provide the basis for reasonable assurance that worker health and safety are protected.

For the reasons cited in this document, the NRC denies this petition.

Dated at Rockville, Maryland, this 23 day of December, 2004.

For the Nuclear Regulatory Commission.

Ellis W. Merschoff,

Acting, Executive Director for Operations.

[FR Doc. 05–778 Filed 1–13–05; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 312

RIN 3084–AB00

Children's Online Privacy Protection Rule

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice of proposed rulemaking, request for comment.

SUMMARY: The Federal Trade Commission proposes amending the Children's Online Privacy Protection Rule ("the Rule") to permanently allow website operators and online services to obtain verifiable parental consent for the collection of personal information from children for internal use by the website operator through sending an e-mail message to parents coupled with additional steps.

DATES: Comments must be received by February 14, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Sliding Scale 2005, Project No. P054503" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 159–H (Annex Y), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2004).[1]

Comments filed in electronic form should be submitted by clicking on the following Web link: *https://secure.commentworks.com/ftcslidingscale/* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the *https://secure.commentworks.com/ftcslidingscale/* Web link. You may also visit *http://www.regulations.gov* to read this notice of proposed rulemaking, and may file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/privacy/privacyinitiatives/childrens_lr.html.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Rona Kelner, (202) 326–2752, or Karen Muoio, (202) 326–2491, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 601 New Jersey Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

On October 20, 1999, the Commission issued its final Rule[2] pursuant to the Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. 6501, *et seq.* The Rule imposes certain requirements on operators of websites or online services directed to children under 13 years of age, or other websites or online services that have actual knowledge that they have collected personal information from a child under 13 years of age. Among other things, the Rule requires that website operators or online services obtain verifiable parental consent prior to collecting, using, or disclosing personal information from children under 13 years of age.

II. The Sliding Scale

The Rule provides that, "[a]ny method to obtain verifiable parental consent must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent."[3] The Rule sets forth a sliding scale approach to obtaining verifiable parental consent. If the website operator is collecting personal information for its internal use only, the Rule allows verifiable parental consent to be obtained through the use of an e-mail message to the parent, coupled with additional steps to provide assurances that the parent is providing the consent. Such additional steps include: sending a confirmatory e-mail to the parent after receiving consent or obtaining a postal address or telephone number from the parent and confirming the parent's consent by letter or telephone call.[4]

In contrast, for uses of personal information that will involve disclosing the information to the public or third parties, the Rule requires that website operators use more reliable methods of obtaining verifiable parental consent. These methods include: using a print-and-send form that can be faxed or mailed back to the website operator; requiring a parent to use a credit card in connection with a transaction; having a parent call a toll-free telephone number staffed by trained personnel; using a digital certificate that uses public key technology; and using e-mail accompanied by a PIN or password obtained through one of the above methods.[5]

An effect of the sliding scale is that the relatively lower cost of seeking permission for internal use of children's information may encourage website operators to collect personal information for their internal use only, rather than for disclosure to third parties and the public. As noted in the Rule's Statement of Basis and Purpose, "the record shows that disclosures to third parties are among the most sensitive and potentially risky uses of children's personal information."[6]

The sliding scale was originally set to expire on April 21, 2002, but was extended, following a notice and public comment period, for an additional three years.[7] It is now scheduled to expire on April 21, 2005, at which time website operators would have to obtain verifiable parental consent using the more reliable (and costly) methods for all uses of personal information.[8] At the time it issued the final Rule, the Commission anticipated that the sliding scale was necessary only in the short term because more reliable methods of obtaining verifiable parental consent would soon be widely available at a

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[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] 64 FR 59888 (1999).

[3] 16 CFR 312.5(b)(1).

[4] *Id.*

[5] 16 CFR 312.5(b)(2).

[6] 64 FR 59899 (1999).

[7] *See http://www.ftc.gov/privacy/privacyinitiatives/childrens_lr.html* for notice and public comments.

[8] 67 FR 18818 (2002).

reasonable cost. At the present time, however, as in 2002, it appears that the expected progress in available technology has not occurred. The Commission therefore proposes to amend the Rule to make the sliding scale mechanism permanent.[9] The Commission requests public comment on this proposed amendment.

III. Request for Comments

The Commission proposes to amend the Children's Online Privacy Protection Rule to make permanent the sliding scale mechanism for obtaining verifiable parental consent. Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of this proposed amendment, including written data, views, facts, and arguments addressing the proposed amendment to the Rule. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received by February 14, 2005. The Commission is particularly interested in comments addressing the following questions:

(1) Are secure electronic mechanisms now widely available to facilitate verifiable parental consent at a reasonable cost? Please include comments on the following:

(a) Digital signature technology;

(b) Digital certificate technology;

(c) Other digital credentialing technology;

(d) P3P technology; and

(e) Other secure electronic technologies.

(2) Are infomediary services now widely available to facilitate verifiable parental consent at a reasonable cost?

(3) When are secure electronic mechanisms and/or infomediary services for obtaining verifiable parental consent anticipated to become available at a reasonable cost? To what extent would the Commission's decision to eliminate, make permanent, or extend the sliding scale mechanism affect the incentive to develop and deploy these means of obtaining verifiable parental consent?

(4) What effect would eliminating the sliding scale have on the information collection and use practices of website operators? For example, would the elimination of the sliding scale mechanism encourage website operators to collect children's personal information for uses other than the operators' own internal use because the cost of obtaining parental consent would be the same for internal as well as external uses?

(5) Is there any evidence that the sliding scale mechanism is being misused, or is not working effectively?

(6) Should the sliding scale mechanism be extended? If so, why and for how long?

(7) Should the sliding scale mechanism be eliminated? If so, why?

(8) Should the sliding scale mechanism be made permanent? If so, why?

IV. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries of transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. *See* 16 CFR 1.26(b)(5).

V. Paperwork Reduction Act

The proposed amendment to the Rule does not change any information collection requirements that have previously been reviewed and approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed rule and a Final Regulatory Flexibility Analysis ("FRFA"), if any, with the final rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603–605.

The Commission does not anticipate that the proposed amendment to the Rule will have a significant economic impact on a substantial number of small entities. The proposed amendment is merely extending a sliding scale mechanism that is already in place. The proposed amendment does not alter the *status quo*, and would postpone the potential economic impact, if any, of the expiration of the sliding scale mechanism. Thus, the economic impact of the amendment to the Rule is expected to be comparatively minimal.

Accordingly, this document serves as notice to the Small Business Administration of the agency's certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comment on whether the proposed amendment to the Rule will have a significant impact on a substantial number of small entities, including specific information on the effect of the proposed amendment on the costs, profitability, and competitiveness of, and employment in, small entities. Although the Commission certifies under the RFA that the amendment proposed in this notice would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed Rule on small entities. Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons That Action by the Agency Is Being Considered

The Rule's sliding scale mechanism for obtaining parental consent is scheduled to expire on April 21, 2005. At the time it issued the final Rule, the Commission anticipated that the sliding scale was necessary only in the short term because more reliable methods of obtaining verifiable parental consent would soon be widely available at a reasonable cost. At the present time, however, it appears that the expected progress in available technology has not occurred. Therefore, in this action, the Commission is proposing, and seeking comment on, a proposed amendment to the Rule that would make the sliding scale permanent.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Amendment to the Rule

The objective of the proposed amendment to the Rule is to allow operators of websites or online services who collect children's personal information for internal uses only to continue to have the option of using email-based parental consent, instead of having to use one of the more costly methods. The proposed amendment would continue the *status quo* instead of allowing the sliding scale to expire in April 2005. The proposed amendment is authorized by and based upon section 312.5 of the Children's Online Privacy Protection Rule, 16 CFR 312.5(b)(2), which in turn is based upon section 1303(b) of COPPA.

C. Small Entities to Which the Proposed Amendment to the Rule Will Apply

As described above, the proposed amendment to the Rule applies to any commercial operator of a website or online service, including operators who are small entities, who collects children's personal information for

[9] The Commission would continue to monitor developments in the technology available to obtain verifiable parental consent at a reasonable cost.

internal uses only. The Commission does not currently have sufficient information to determine the number of small entities that may be affected. The Commission invites comment and information on this issue.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Rule does not directly impose any "reporting" or "recordkeeping" requirements within the meaning of the Paperwork Reduction Act, but does require that operators make certain third-party disclosures to the public, *i.e.*, provide parents with notice of their privacy policies. The proposed amendment to make permanent the sliding scale mechanism for obtaining parental consent would not impose any additional reporting, recordkeeping, or other compliance requirements. In addition, the amendment would not affect the costs of complying with the Rule because it is merely extending a sliding scale mechanism that is already in place and that enables qualified website operators to obtain parental consent through lower-cost email-based means.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that duplicate, overlap, or conflict with the proposed amendment to the Rule. The Commission invites comment and information on this issue.

F. Significant Alternatives to the Proposed Amendment to the Rule

Under the proposed amendment to the Rule, subject operators will continue to be able to choose email-based methods of obtaining parental consent instead of having to rely solely on the more costly methods. Therefore, the proposed amendment actually permits greater flexibility for small entities than would allowing the sliding scale to expire in April 2005. A delayed effective date was not considered here, because the regulatory uncertainty resulting from such a delay would not benefit small entities.

The Commission invites comment and information on the economic impact of the proposed amendment on small entities, including significant alternatives, if any, to the proposed amendment that would result in greater flexibility for small businesses, while meeting the objectives and requirements of COPPA and the Rule. After considering such comments, if any, the Commission will determine whether preparation of a final regulatory flexibility analysis (pursuant to 5 U.S.C. 605) is required.

List of Subjects in 16 CFR Part 312

Children, Communications, Consumer protection, Electronic mail, E-mail, Internet, Online service, Privacy, Record retention, Safety, Science and technology, Trade practices, Website, Youth.

Accordingly, for the reasons stated in the preamble, the Federal Trade Commission proposes to amend 16 CFR Part 312 as follows:

PART 312—CHILDREN'S ONLINE PRIVACY PROTECTION RULE

1. The authority citation for Part 312 continues to read as follows:

Authority: 15 U.S.C. 6501 *et seq.*

2. Amend § 312.5 by revising the second sentence of paragraph (b)(2) to read as follows:

§ 312.5 Parental consent.

* * * * *

(b) * * *

(2) * * * *Provided that:* Methods to obtain verifiable parental consent for uses of information other than the "disclosures" defined by § 312.2 may also include use of e-mail coupled with additional steps to provide assurances that the person providing the consent is the parent. * * *

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By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–877 Filed 1–13–05; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF EDUCATION

34 CFR Part 230

RIN 1855–AA04

Innovation for Teacher Quality

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations prescribing criteria to be used in selecting eligible members of the Armed Forces to participate in the Troops-to-Teachers program and receive financial assistance. These proposed regulations would implement section 2303(c) of the Elementary and Secondary Education Act of 1965 (the Act), as amended by the No Child Left Behind Act of 2001 (NCLB). The proposed regulations also would define the terms "high-need local educational agency" and "public charter school" in which a participant must agree to be employed under section 2304(a)(1)(B) of the Act, as amended by the NCLB.

DATES: We must receive your comments on or before February 14, 2005.

ADDRESSES: Address all comments about these proposed regulations to Thelma Leenhouts, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W302, FOB6, Washington, DC 20202–6140. If you prefer to send your comments through the Internet, you may address them to us at the U.S. Government Web site: *http://www.regulations.gov.*

Or you may send your Internet comments to us at the following address: *comments@ed.gov.*

You must include the term "Troops program" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts. Telephone: (202) 260–0223 or via Internet: *thelma.leenhouts@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

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 these proposed regulations. 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 these proposed regulations in room 4W306, 400 Maryland Avenue, SW., 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 these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

These proposed regulations would implement section 2303(c) of Title II, Part C, Subpart 1, Chapter A of the Act, as amended by the NCLB (Pub. L. 107–110), enacted January 8, 2002. Subpart 1, Transitions to Teaching, of Chapter A authorizes the Troops-to-Teachers program. Under this program, the Secretary of Education transfers funds to the Department of Defense for the Defense Activity for Non-Traditional Education Support (DANTES) to provide assistance, including stipends of up to $5,000, to eligible members of the Armed Forces so that they can obtain certification or licensing as elementary school teachers, secondary school teachers, or vocational/technical teachers and become highly qualified teachers by demonstrating competency in each of the subjects they teach. In addition, the program helps these participants find employment in high-need local educational agencies (LEAs) or public charter schools, and participants agree to teach in these LEAs or public charter schools for at least three years.

Section 2303(d) of the Act, as amended by the NCLB, requires the Secretary, in selecting eligible service members, to give priority to members with educational or military experience in science, mathematics, special education, or vocational and technical education who agree to seek employment teaching those subjects. In addition, section 2303(c)(1) directs the Secretary to prescribe criteria to be used to select eligible members of the Armed Forces to participate in the program. These proposed regulations would implement the statutory directive in section 2303(c)(1) and provide a binding interpretation to resolve an ambiguity in the statute regarding the definition of a high-need LEA and public charter school.

These proposed regulations were developed in consultation with DANTES, which administers the Troop-to-Teachers program under a memorandum of agreement with the Department of Education.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain.

Section 230.1 What Is the Troops-to-Teachers Program?

Statute: The Act, as amended by the NCLB, provides for the Secretary of Education to transfer funds to DANTES to provide assistance, including stipends of up to $5,000, to an eligible member of the Armed Forces so that he or she can obtain certification or licensing as an elementary school teacher, secondary school teacher, or vocational/technical teacher and become a highly qualified teacher by demonstrating competency in each of the subjects he or she teaches. In addition, the statute provides for the Secretary to assist eligible members of the Armed Forces in finding employment in a high-need LEA or public charter school. It further provides that DANTES may pay bonuses in lieu of stipends to participants who agree to teach in high-poverty schools.

Proposed Regulations: Section 230.1 provides a general description of the Troops-to-Teachers program.

Reasons: The proposed regulation provides context for the proposed regulations that follow it.

Section 230.2 What Definitions Apply to the Troops-to-Teacher Program?

Statute: Section 2303(c)(1) of the Act, as amended by the NCLB, directs the Secretary to prescribe criteria for the selection of eligible members of the Armed Forces to participate in the Troops-to-Teachers program and receive financial assistance to become certified teachers. Section 2304(a)(1)(B) of the Act, as amended by the NCLB, requires program participants to enter into a participation agreement with the Secretary in which they agree, among other things, to accept an offer of full-time employment as an elementary school teacher, secondary school teacher, or vocational/technical teacher for not less than three school years with a high-need LEA or public charter school as such terms are defined in section 2101 of the Act. However, the statute's reference to section 2101 is clearly erroneous since the latter section describes the purpose of Title II, Part A and does not contain any definitions. Under these circumstances, there is ambiguity in the statute, which the Secretary is proposing to resolve through this rulemaking proceeding.

Proposed Regulations: Section 230.2 of the proposed regulations would define the term "high-need local educational agency" as used in section 2304(a)(1)(B) to mean an LEA: (1) That serves not fewer than 10,000 children from families with incomes below the poverty line; or (2) for which not less than 20 percent of the children served by the agency are from families below the poverty line; or (3) for which not less than 15 nor more than 19 percent of the children served by the agency are from families below the poverty line and that assigns all teachers receiving financial assistance through the Troops-to-Teachers program to high-need schools, as defined in section 2304(d)(3) of the Act, as amended by the NCLB.

The proposed regulation would also define "public charter school" to mean a charter school as defined in section 5210(1) of the Act, as amended by the NCLB.

Reasons: The proposed regulation would cure the absence of a definition for two terms, "high-need local educational agency" and "public charter school", caused by the faulty reference to section 2101 of the Act, which contains no definitions.

The Act contains a definition of high-need LEA, but it is limited in application to certain provisions of Title II, specifically part A governing the Teacher and Principal Training and Recruitment Fund; part A, subpart C governing National Activities; and part C, subpart I, chapter B governing the Transition to Teaching Program. Specifically, section 2102(3) of the Act defines high-need LEA to mean: Those serving no fewer than 10,000 children from families with incomes below the poverty line, or those for which not less than 20 percent of the children served by the agency are from families with incomes below the poverty line; and for which there is a high percentage of (1) teachers not teaching in the academic subjects or grade levels that they were trained to teach, or (2) teachers with emergency, provisional, or temporary certification or licensing. The Secretary considers this definition to be unsuitable for the Troops-to-Teachers program because prior experience with job placements under the Troops-to-Teachers program indicates that it is too restrictive to permit the recruitment of eligible members of the Armed Forces to the program at an optimal level. Use of this definition results in a universe of agencies that is insufficiently broad to permit participants some reasonable degree of choice in employment opportunities that will satisfy their three-year teaching commitments. Accordingly, to resolve the ambiguity in the statute, the Secretary is proposing to define "high-need local educational agency", as used in section 2304(a)(1)(B), to mean an LEA: (1) That serves not fewer than 10,000 children from families with incomes below the poverty line; or (2) for which not less than 20 percent of the children served by the agency are from families with incomes below the poverty line; or (3) for which not less than 15 nor more than 19 percent of the children served by the agency are from families with incomes below the poverty line and that assigns all teachers funded by the Troops-to-Teachers program to high-need schools, as defined in section 2304(d)(3) of the Act.

This definition is intended to balance the need to provide program participants with reasonable opportunities to satisfy their teaching commitments under the program and the need to target recruitment assistance to LEAs with the greatest need for that assistance.

The definition of charter schools pertaining to Charter School Programs in section 5210(1) of the Act is appropriate for purposes of the Troops-to-Teachers program; consequently, the proposed regulation would incorporate that definition for the term "public charter school."

Section 230.3 What Criteria Does the Secretary Use To Select Eligible Participants in the Troops-to-Teacher Program?

Statute: Section 2303(c)(1) of the Act directs the Secretary to prescribe criteria for the selection of eligible members of the Armed Forces (service members) to participate in the Troops-to-Teachers program.

Proposed Regulations: Section 230.3 would establish the order of priority for selection and funding of eligible service members who enter into a participation agreement, as provided by section 2304 of the Act, to teach in a high-need LEA or a public charter school for at least three years. The Secretary would give first priority to all eligible individuals not presently in the teaching profession. Within that category of candidates, candidates would be selected in the following order of preference: (1) Individuals who will both obtain certification to teach science, mathematics, or special education and teach in high-need schools (as defined in section 2304(d)(3) of the Act); (2) individuals who will obtain certification to teach other subjects and will teach in high-need schools; (3) individuals who will obtain certification to teach science, mathematics, or special education or obtain certification to teach at the elementary level without committing to teach in a high-need school; and (4) individuals who will obtain certification in a subject other than science, mathematics and special education and will teach at the secondary level without committing to teach in a high-need school.

After all eligible first-priority participants new to teaching are selected, the Secretary would give priority to all eligible service members currently employed as teachers who enter into a participation agreement as provided by section 2304 of the Act. These candidates would be selected in the following order of preference: (1) Individuals who will obtain certification to teach science, mathematics, or special education and teach in high-need schools (as defined in section 2304(d)(3) of the Act); (2) individuals who will obtain certification to teach other subjects and will teach in high-need schools; (3) individuals who will obtain certification to teach science, mathematics, or special education, instead of the subjects they currently teach, but not in high-need schools; and (4) individuals currently teaching and seeking assistance to be deemed "highly qualified" by their State within the meaning of section 9101(23) of the Act.

Reasons: It is the intent of these proposed criteria to give priority to attracting new members to the teaching profession from among eligible service members. To the extent that additional funds are available, in appropriate cases the criteria also permit the use of program funds as an inducement to retain eligible service members as existing teachers in the profession when they undertake an additional service commitment. Within each set of proposed priorities, the intent is to give priority to those willing both to teach in critical shortage fields—science, mathematics, or special education—and to teach in a high-need school, followed by those willing to teach other subjects in a high-need school and then those willing to teach in the critical shortage fields or in elementary education. The proposed priorities for those willing to teach science, mathematics, and special education encompass service members with educational or military experience in science, mathematics, special education, or vocational/ technical subjects who agree to seek employment as science, mathematics, or special education teachers as described in section 2303(d) of the Act.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local and tribal governments in the exercise of their governmental functions.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 230.1 What is the Troops-to-Teachers program?)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

These proposed regulations would affect only individuals wishing to participate in the Troops-to-Teachers program, and individuals are not defined as small entities in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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 84.815)

The Secretary of Education has delegated authority to the Assistant Deputy Secretary for Innovation and Improvement to issue these proposed amendments to 34 CFR Chapter II.

List of Subjects in 34 CFR Part 230

Armed forces, Education, Elementary and secondary education, Stipends, Teachers, Vocational education.

Dated: January 11, 2005.

Nina Shokraii Rees,

Assistant Deputy Secretary for Innovation and Improvement.

For the reasons discussed in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by adding part 230 to read as follows:

PART 230—Innovation for Teacher Quality

Subpart A—Troops-to-Teachers Program

Sec.
230.1 What is the Troops-to-Teachers program?
230.2 What definitions apply to the Troops-to-Teacher program?
230.3 What criteria does the Secretary use to select eligible participants in the Troops-to-Teachers program?

Subpart B—[Reserved]

Authority: 20 U.S.C. 1221e–3, 3474, and 6671–6684, unless otherwise noted.

Subpart A—Troops-to-Teachers program

§ 230.1 What is the Troops-to-Teacher program?

Under the Troops-to-Teachers program, the Secretary of Education transfers funds to the Department of Defense for the Defense Activity for Non-Traditional Education Support (DANTES) to provide assistance, including a stipend of up to $5,000, to an eligible member of the Armed Forces so that he or she can obtain certification or licensing as an elementary school teacher, secondary school teacher, or vocational/technical teacher and become a highly qualified teacher by demonstrating competency in each of the subjects he or she teaches. In addition, the program helps the individual find employment in a high-need local educational agency or public charter school. In lieu of a stipend, DANTES may pay a bonus of $10,000 to a participant who agrees to teach in high-poverty school.

(Authority: 20 U.S.C. 1221e–3, 3474, and 6671–6677)

§ 230.2 What definitions apply to the Troops-to-Teacher program?

As used in this subpart—

Act means the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001.

High-Need Local Educational Agency as used in section 2304(a) of the Act means a local educational agency—

(1) That serves not fewer than 10,000 children from families with incomes below the poverty line; or

(2) For which not less than 20 percent of the children served by the agency are from families with incomes below the poverty line; or

(3) For which not less than 15 nor more than 19 percent of the children served by the agency are from families with incomes below the poverty line and that assigns all teachers funded by the Troops-to-Teachers program to a high-need school as defined in section 2304(d)(3) of the Act for the duration of their service commitment under the Act.

(Authority: 20 U.S.C. 1221e–3, 3474, and 6672(c)(1))

Public Charter School means a charter school as defined in section 5210(1) of the Act.

§ 230.3 What criteria does the Secretary use to select eligible participants in the Troops-to-Teacher program?

(a) The Secretary establishes the following criteria for the selection of eligible participants in the Troops-to-Teachers program in the following order:

(1) First priority is given to eligible service members who are not employed as an elementary or secondary school teacher at the time that they enter into a participation agreement with the Secretary under section 2304(a) of the Act, which requires participants to teach in a high-need local educational agency (LEA) or public charter school for at least three years, who will be selected in the following order:

(i) Those who agree to obtain certification to teach science, mathematics, or special education and who agree to teach in a "high-need school" as defined in section 2304(d)(3) of the Act.

(ii) Those who agree to obtain certification to teach another subject or subjects and who agree to teach in a "high-need school" as defined in section 2304(d)(3) of the Act.

(iii) Those who agree to obtain certification to teach science, mathematics, or special education or obtain certification to teach at the elementary school level.

(iv) All other eligible applicants.

(2) After all eligible first-priority participants are selected, second priority is given to eligible service members who are employed as an elementary or secondary school teacher at the time that they enter into a new participation agreement with the Secretary under section 2304(a) of the Act, which requires participants to teach in a high-need local educational agency (LEA) or public charter school for at least three years, who will be selected in the following order:

(i) Those who agree to obtain certification to teach science, mathematics or special education rather than the subjects they currently teach and who agree to teach in a "high-need school" as defined in section 2304(d)(3) of the Act.

(ii) Those who agree to obtain certification to teach another subject or subjects and who agree to teach in a "high-need school" as defined in section 2304(d)(3) of the Act.

(iii) Those who agree to obtain certification to teach science, mathematics, or special education rather than the subjects they currently teach.

(iv) All others seeking assistance necessary to be deemed "highly qualified" by their State within the meaning of section 9101(23) of the Act.

(b) [Reserved]

(Authority: 20 U.S.C. 1221e–3, 3474, and 6672(c)(1))

[FR Doc. 05–861 Filed 1–13–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 041229366–4366–01; I.D. 122304D]

RIN 0648–AQ25

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery; Amendment 2

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Amendment 2 to the Monkfish Fishery Management Plan (FMP) developed jointly by the New England and Mid-Atlantic Fishery Management Councils (Councils). Amendment 2 was developed to address essential fish habitat (EFH) and bycatch issues, and to revise the FMP to address several issues raised during the public scoping process. This proposed action includes the following programs and measures: A new limited access permit for qualified vessels fishing south of 38° 20′ N. lat.; an offshore trawl fishery in the Southern Fishery Management Area (SFMA); a maximum disc diameter of 6–inches (15.2 cm) for trawl gear vessels fishing in the SFMA; closure of two deep-sea canyon areas to all gears when fishing under the monkfish day-at-sea (DAS) program; establishment of a research DAS set-aside program; an exemption program for vessels fishing outside of the Exclusive Economic Zone (EEZ); adjustments to the incidental monkfish catch limits; a decrease in the minimum monkfish size in the SFMA; removal of the 20-day block requirement; revisions to the monkfish baseline provisions; and additions to the frameworkable measures. This intent of this action is to provide efficient management of the monkfish fishery and to meet conservation objectives.

DATES: Comments must be received by 5 p.m., February 14, 2005.

ADDRESSES: Written comments on the proposed rule may be submitted by any of the following methods:

- E-mail: E-mail comments may be submitted to mnkamnd2@noaa.gov. Include in the subject line the following "Comments on the Proposed Rule for Monkfish Amendment 2."
- Federal e-Rulemaking Portal: *http://www.regulations.gov*
- Mail: Comments submitted by mail should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope "Comments on the Proposed Rule for Monkfish Amendment 2."
- Facsimile (fax): Comments submitted by fax should be faxed to (978) 281–9135.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule should be submitted to the Regional Administrator at the address above and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Copies of Amendment 2, its Regulatory Impact Review (RIR), including the Initial Regulatory Flexibility Analysis (IRFA), and the Final Supplemental Environmental Impact Statement (FSEIS) are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at*http://www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: Allison R. Ferreira, Fishery Policy Analyst, (978) 281–9103; fax (978) 281–9135; e-mail *allison.ferreira@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Councils developed Amendment 2 to address a number of issues that arose out of the implementation of the original FMP, as well as issues that were identified during public scoping. Issues arising from the original FMP include: The displacement of vessels from their established monkfish fisheries due to restrictive trip limits; unattainable permit qualification criteria for vessels in the southern end of the range of the fishery; discards (bycatch) of monkfish due to regulations (i.e., minimum size restrictions and incidental catch limits); and deficiencies in meeting Magnuson-Stevens Act requirements pertaining to protection of Essential Fish Habitat (EFH) in accordance with the Joint Stipulation and Order resulting from the legal challenge *American Oceans Campaign, et al.* v. *Daley.* Issues arising from public scoping include: Deficiencies in meeting Magnuson-Stevens Act requirements, including preventing overfishing and rebuilding overfished stocks; a need to improve monkfish data collection and research; the need to establish a North Atlantic Fisheries Organization (NAFO) exemption program for monkfish; multiple vessel baseline specifications for limited access monkfish vessels; a need to update environmental documents describing the impact of the FMP; and a need to reduce FMP complexity where possible.

A notice of availability of a Draft Supplemental Environmental Impact Statement (DSEIS), which analyzed the impacts of all of the measures under consideration in Amendment 2, was published on April 30, 2004 (69 FR 23571), with public comment accepted through July 28, 2004. Public hearings were held between June 15 and June 24, 2004, in six locations from Maine to North Carolina.

Proposed Measures

1. Modification of the Limited Access Permit Qualification Criteria

Modification of the limited access monkfish permit qualification criteria is being proposed to address concerns raised by some vessel owners who believe that they were not adequately notified of the monkfish control date and/or because of confusion regarding the southern boundary of the monkfish management unit in the initial FMP.

Amendment 2 would provide a renewed opportunity for a non-limited access monkfish vessel to qualify for a new limited access monkfish permit if it could demonstrate that it had monkfish landed in the area south of 38° 00′ N. lat. during the qualification period March 15 through June 15, for the years 1994 through 1998. Two permits would be available, depending on the amount of monkfish the vessel landed during the qualification period. Qualifying monkfish landing levels for these permits (specified below) would be the same amounts that were required for the original monkfish limited access permits. Vessels that could demonstrate that they landed at least 50,000 lb (22,680 kg) tail-weight, or 166,000 lb (75,298 kg) whole-weight, of monkfish from the area south of 38° 00' N. lat. during the qualification period would qualify for a monkfish limited access Category G permit (these landing criteria correspond to the current Category A and C permits). Vessels that could demonstrate that they landed at least 7,500 lb (3,402 kg) tail-weight, or 24,900 lb (11,295 kg) whole-weight, of monkfish from the area south of 38° 00' N. lat. during the qualification period would qualify for a monkfish limited access Category H permit (these landing criteria correspond to the current Category B and D permits). Vessels would be prequalified for these permits based on landings information currently on file with NMFS. Vessels that have not prequalified for the Category G or H permits, or vessels that want to obtain a different permit than the one for which they qualified, would be required to submit written information documenting monkfish landings during the qualification period specified above. Landings would need to be documented through dealer weighout receipts or dealer reports submitted to NMFS or other NMFS-approved entity. An appeal process would be established, similar to the appeal process established for the original monkfish limited access program, to allow a vessel owner to appeal a denial of a Category G or H permit, if it is determined that the denial was based on incorrect information.

Vessels qualifying for a Category G or H permit would be restricted to fishing on a monkfish DAS south of 38° 20' N. lat. (the initial line was established at 38° 00' N. lat. but was revised to 38° 20' N. lat. in response to sea turtle protection measures). In addition, the landing limit for Category G vessels when fishing under a monkfish DAS would be the same as for Category A or C vessels. The landing limit for Category H vessels when fishing under a monkfish DAS would be the same as Category B or D vessels. The Councils did not address the issue of monkfish incidental catch limits when not fishing under a monkfish DAS for Category G and H vessels. Therefore, NMFS intends to keep the incidental catch limit for these vessels the same as the incidental catch limits for vessels not issued a limited access monkfish permit (Category E vessels).

2. Offshore Fishery Program

Amendment 2 would establish an Offshore Fishery Program in the SFMA that would allow vessels to elect to fish under a monkfish trip limit of 1,600 lb (725.8 kg) tail-weight (or 5,312 lb (2,410 kg) whole-weight) when fishing in the Offshore Fishery Program Area, under specific conditions, regardless of the trip limit that would otherwise be applicable to that vessel. For a vessel electing to fish in this program, monkfish DAS would be pro-rated based on a trip limit ratio (the standard permit category trip limit applicable to non-program vessels fishing in the SFMA, divided by 1,600 lb (725.8 kg) (the trip limit specified for vessels fishing in the program)), multiplied by the monkfish DAS available to the vessel's permit category when fishing in the SFMA. For example, in fishing year 2004, when the trip limit and DAS for permit Category C were set at 550 lb (249.5 kg) tail-weight and 28 DAS, respectively, a permit Category C vessel would be provided 9.6 monkfish DAS if electing to fish under the Offshore Fishery Program (550 lb (249.5 kg)/1,600 lb (725.8 kg) x 28 DAS = 9.6 DAS).

Vessels electing to fish in this program would be required to fish under the program rules for the entire fishing year and would receive a separate monkfish permit category (Category F). For the 2005 fishing year, vessels would be allowed to change their current permit category to permit Category F within 45 days of the effective date of the final rule implementing Amendment 2, if approved, provided the vessel did not fish under a monkfish DAS during the 2005 fishing year.

A vessel electing to fish in this program would be allowed to fish its monkfish DAS only within the Offshore Fishery Program Area from October through April. In addition, vessels would be prohibited from fishing on a monkfish DAS outside the program area. Enrolled vessels would be required to have on board a vessel monitoring system (VMS) that is operational during the entire October through April season. Unless subject to VMS requirements under regulations specific to another FMP, vessels would be allowed to turn their VMS units off between May 1 and September 30 for a minimum of 30 days.

A vessel electing to fish in this program would be subject to the gear requirements applicable to monkfish permit Category A and B vessels (monkfish vessels that do not also possess a Northeast (NE) multispecies or scallop limited access permit) when fishing under a monkfish DAS, i.e., vessels fishing with trawl gear must fish with a minimum mesh size of 10–inch (25.4–cm) square or 12–inch (30.5–cm) diamond mesh throughout the codend. Monkfish Category C and D vessels that elect to fish in this program would still be required to use a NE multispecies or scallop DAS when fishing on a monkfish DAS. Any vessel not electing to fish under this program would still be allowed to fish in the Offshore Fishery Program Area under the rules and regulations applicable to non-program vessels.

Establishment of the Offshore Fishery Program would help restore the offshore monkfish fishery that has largely ceased to occur due to the small trip limits implemented under the initial FMP and the disapproval of the "running clock" measure that was proposed in the FMP, which would have provided vessels with the ability to account for any trip limit overages. This program is intended to provide flexibility to the fishing industry without impacting the mortality objectives of the FMP.

3. Closure of Oceanographer and Lydonia Canyons

Under this proposed rule, vessels fishing on a monkfish DAS would be prohibited from fishing in the offshore canyon areas known as Oceanographer and Lydonia Canyons, which contain deep-sea corals, regardless of gear used. This measure is being proposed to minimize, to the extent practicable, the adverse impact of monkfish fishing on EFH, especially due to the potential impacts associated with an expansion of the directed offshore monkfish fishery under the Offshore Fishery Program proposed in this rule.

Twenty-three federally managed species have been observed or collected in surveys within the two proposed closure areas, and many of them have EFH defined as hard substrates in depths greater than 200 m. In addition, the EFH designations for juvenile and/ or adult life stages of six of these species (redfish, tilefish, and four species of skates) overlap with the two proposed area closures. EFH for all six of these species has been determined to be moderately or highly vulnerable to the effects of bottom trawls and minimally vulnerable to bottom gillnets. Deep-sea corals have not been identified as a component of EFH for any species in the NE region, although they are known to grow on hard substrates, which are included in the EFH descriptions for many of the federally managed species within the proposed closures. They are also known to be particularly vulnerable to damage or loss by bottom trawls, and likely to be damaged or removed from the bottom by gillnet gear. Additionally, avoiding any direct adverse impacts of monkfish bottom trawl gear and gillnet gear for six species of fish, and any indirect adverse impacts on hard bottom substrates and species of emergent epifauna, including corals, that grow on those substrates within the boundaries of the two proposed closure areas, would minimize any adverse impacts resulting from the potentially expanding offshore monkfish fishery proposed under this amendment. These closures are also expected to help mitigate bycatch concerns.

4. SFMA Roller Gear Restriction

Amendment 2 proposes to restrict the diameter of roller gear used on trawl net vessels when fishing in the SFMA. Under this proposed rule, the roller gear on all trawl vessels fishing under a monkfish DAS would be restricted to a maximum diameter of 6 inches (15.2 cm). This measure is being proposed to minimize, to the extent practicable, the adverse impact of trawl fishing in the SFMA on EFH. This measure is specific to the SFMA, since it would help ensure that trawl vessels, which are known to be able to better target monkfish successfully with smaller roller gear in the SFMA than in the Northern Fishery Management Area (NFMA), do not fish in areas of more complex bottom characteristics, including the offshore canyon areas.

5. Cooperative Research Incentive Programs

Amendment 2 proposes two programs that would encourage vessels to engage in cooperative research, including, but not limited to: Research to minimize bycatch and interactions of the monkfish fishery with sea turtles and other protected species; research to minimize the impact of the monkfish fishery on EFH; research or experimental fisheries for the purpose of establishing a monkfish trawl exempted fishery (under the NE Multispecies FMP) in the NFMA; research on the biology or population structure and dynamics of monkfish; cooperative surveys; and gear efficiency.

A pool of 500 DAS would be set aside to distribute to vessels to engage in cooperative research projects. These DAS would be created by removing 500 DAS from the total available monkfish DAS prior to distribution to individual vessels. This reduction would amount to less than 1 DAS deducted for each individual vessel allocation. Should this program be approved, and individual DAS allocations changed because of this approval, vessel owners would be notified of their new monkfish DAS allocation.

Under the first research program, NMFS would publish a request for proposals (RFP) and vessels would submit competitive bids to participate in specific research or survey projects. NMFS would then convene a review panel composed of Council members from the Councils' Monkfish Oversight Committee, the Council's Research Steering Committee, and other technical experts to review the proposals. NMFS would consider the recommendations of each panel member and award the contracts to successful applicants, including a distribution of DAS from the set-aside pool.

Any of the 500 DAS not distributed through the RFP process would be available to vessels through a second program, i.e., the existing experimental fishery permit (EFP) process, on a first-come-first-served basis. Under this second program, vessels applying for an EFP would indicate the number of monkfish DAS they would require to complete their research project. NMFS would then review the EFP application and, if approved, issue the permit exempting the vessel from monkfish DAS usage requirements. The total number of monkfish DAS that could be used in the two programs (distributed under the RFP process or used in the exemption program) could not exceed the originally established 500 DAS annual set-aside pool. For any DAS requested that exceed the analyzed 500 DAS set-aside, the applicant would be required to prepare an Environmental Assessment for the additional DAS exemption request.

These two research programs are being proposed for the purpose of expanding incentives to participate in a range of monkfish research and survey activities by reducing costs associated with research, and to streamline the EFP process.

6. Northwest Atlantic Fisheries Organization (NAFO) Regulated Area Exemption Program

Amendment 2 proposes an exemption from certain FMP regulations for vessels that are fishing for monkfish under a High Seas Permit in the NAFO Regulated Area and transiting the EEZ with monkfish on board or landing monkfish in U.S. ports. Similar to the NAFO waters exemption in the NE Multispecies FMP, monkfish vessels enrolled in the NAFO Regulated Area Exemption Program would be exempt from the monkfish regulations pertaining to permit, minimum mesh size, effort control (DAS) and possession limit rules. Further, the monkfish catch from the NAFO Regulated Area would not count against the monkfish total allowable catch (TAC), provided: The vessel has on board a letter of authorization (LOA) issued by the Regional Administrator; except for transiting purposes, the vessel fishes exclusively in the NAFO Regulated Area and does not harvest fish in, or possess fish harvested from, the EEZ; when transiting the EEZ, all gear is properly stowed and not available for immediate use; and the vessel complies with all High Seas Fishing Compliance Permit and NAFO conservation and enforcement measures while fishing in the NAFO Regulated Area. This proposed action would provide additional flexibility to monkfish vessels without compromising the mortality objectives of the FMP.

7. Incidental Catch Provisions

Three adjustments to the monkfish incidental catch limits would be made under this rule. The first adjustment would increase the current 50–lb (22.7–kg) possession limit to 50 lb (22.7 kg) per day, or partial day, up to a maximum of 150 lb (68 kg) per trip, for vessels not fishing under a monkfish DAS and fishing with handgear and small mesh (see below), and for NE multispecies limited access vessels that are less than 30 feet in length. Small mesh is defined as mesh smaller than the NE multispecies minimum mesh size requirements when fishing in the Georges Bank, Gulf of Maine, and Southern New England Regulated Mesh Areas (RMAs), and mesh smaller than the summer flounder minimum mesh size when fishing in the Mid-Atlantic RMA.

The second adjustment would implement the same incidental monkfish trip limit of 50 lb (22.7 kg) per day, or partial day, up to a maximum of 150 lb (68 kg) per trip, for vessels fishing with surfclam or ocean quahog hydraulic dredges, and General Category sea scallop vessels fishing with a scallop dredge. These vessels are currently prohibited from retaining monkfish. For the purposes of these new trip limits, a day would be counted starting with the time the vessel leaves port (as recorded in it's Vessel Trip Report (VTR)), or, if the vessel has an operational VMS, when the vessel crosses the VMS demarcation line.

The third monkfish incidental catch limit adjustment would be applicable to vessels fishing with large mesh in the NE Multispecies Mid-Atlantic Exemption Area (an area defined as west of 72°30' N. long. and which extends eastward around Long Island, NY). This adjustment would increase the current 50–lb (22.7–kg) possession limit to 5 percent of the total weight of fish on board, up to a maximum of 450 lb (204.1 kg), based on tail weight equivalent. These three adjustments are proposed for the purpose of minimizing regulatory discards due to the incidental catch regulations without affecting the overall stock rebuilding program. Additionally, the third adjustment is being proposed to restore the trip limit that was in effect prior to redefining the Mid-Atlantic RMA in the NE Multispecies FMP.

8. Decrease in Minimum Fish Size

Amendment 2 proposes to reduce the minimum fish size for monkfish in the SFMA to 11 inches (27.9 cm) tail length, 17 inches (43.2 cm) total length, from the current limit of 14 inches (35.6 cm) tail length, 21 inches (53.3 cm) total length. This change would make the minimum size consistent with that which currently applies in the NFMA, simplifying the FMP rules and improving enforceability. Allowing vessels to retain smaller monkfish would also likely minimize regulatory discards.

9. Removal of 20-day Spawning Block Requirement

Current monkfish regulations require limited access monkfish permit holders to take a 20-day block out of the fishery during April through June each year, paralleling a similar regulation in the NE Multispecies FMP that applies from March through May. Amendment 2 proposes to eliminate this requirement, since it imposes an enforcement burden and increases the regulatory burden on monkfish vessels with no apparent biological or economic benefit. This change does not affect the requirement for monkfish vessels that also hold a NE multispecies limited access permit and, who, therefore, must abide by the NE multispecies 20-day spawning block requirement when fishing under a monkfish/multispecies DAS.

10. Vessel Permit Baseline Modification

Currently, a vessel is limited to upgrading its vessel permit characteristics by 10 percent of the length and tonnage, and 20 percent of the horsepower of the vessel at the time it was issued a monkfish limited access permit. Since the monkfish limited access program was not implemented until 1999, vessels that also had been issued a prior limited access permit under another FMP, and that also downsized the vessel characteristics (either through a vessel replacement or modifications to the vessel, such as an engine replacement) in the period between the issuance of the two permits, would have two different vessel permit baselines--one for the initial vessel characteristics, and one for the vessel characteristics at the time the monkfish permit was issued. This situation limits the ability of the vessel owner to transfer the permit to another vessel that is within the original upgrading limitations but that exceeds the monkfish permit upgrading limitations, without losing the vessel's monkfish permit. Amendment 2 would provide a one-time opportunity to allow vessel owners to set the monkfish permit baseline at the characteristics of the vessel when it was issued its first Federal limited access permit, rather than the vessel characteristics at the time it was issued a monkfish limited access permit under the initial monkfish FMP. Such an adjustment would only be made at the request of the vessel owner, provided such a request is made on or before April 30, 2006, or within 1 year of implementation of the final rule for Amendment 2, if approved, whichever is later.

Although this measure would benefit some vessels, it would not provide a solution to the broader problem of there being more than one vessel permit baseline for many vessels. For example, a monkfish vessel that holds Federal limited access permits in fisheries for which limited access programs were established after implementation of the initial monkfish FMP would not be affected by this proposed change and, therefore, could continue to have more than one vessel permit baseline on that vessel. Because it would not address the issue of more than one baseline for all fisheries, NMFS believes that it may be more efficient and comprehensive to address this particular change in an omnibus amendment that would address all FMP regulations that include Federal limited access permits and corresponding vessel permit baselines. Due to this concern, NMFS is highlighting this particular measure for comment.

11. Modification of the Framework Adjustment Procedures

Amendment 2 proposes three additions to the list of actions that can be taken under the existing framework adjustment procedure. The proposed additional items that the Councils could consider under the framework adjustment procedure are: A monkfish DAS Leasing Program; measures to minimize the impact of the fishery on endangered or protected species; and measures that would implement bycatch reduction devices.

12. Regulatory Changes

The proposed regulations also include several editorial revisions to the existing text in 50 CFR 648, subpart F, that are not proposed in Amendment 2. These revisions would remove obsolete language (references to regulations in effect during previous fishing years) and improve the organization and clarity of the regulations.

This proposed rule would also correct an error in the incidental catch limit regulations for scallop vessels fishing under a scallop DAS found at 50 CFR 648.94(c)(2). The original FMP and the preamble to the final rule implementing the FMP (64 FR 54732, October 7, 1999) stated that all vessels issued an incidental monkfish permit that are fishing under a scallop DAS, including both dredge vessels and vessels fishing under the trawl net exemption, are subject to an incidental catch limit of 300 lb (136.1 kg) tail-weight per DAS (see section 4.6.3.2 of the FMP). However, the regulatory text in the final rule implementing the FMP inadvertently only referenced scallop dredge vessels fishing under a scallop DAS. This proposed rule would correct the regulations at § 648.94(c)(2) to apply to all vessels fishing under a scallop DAS, consistent with the intent of the original FMP.

In addition, this proposed rule would correct the monkfish minimum trawl mesh size for the Southern New England (SNE) Monkfish and Skate Trawl Exemption Area, specified at § 648.80(b)(5)(i)(B), to be consistent with the minimum trawl mesh size for vessels fishing under only a monkfish DAS, specified at § 648.91(c)(1)(i). The necessary minimum mesh size change to this exemption program under the NE Multispecies FMP was inadvertently omitted from the regulatory text for the final rule implementing the original FMP.

Finally, this proposed rule would correct an error in the possession limit regulations for limited access Category C and D vessels fishing on a multispecies DAS in the SFMA with gear other than trawl gear, specified at § 648.94(b)(3)(ii), to reference the fact that the 50–lb (22.7–kg) tail-weight possession limit is per multispecies DAS. This error inadvertently occurred in the regulatory text of the final rule implementing the FMP, but was correctly described in the preamble to that rule.

Classification

At this time, NMFS has not determined that the FMP amendment that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Councils prepared a DSEIS for this amendment; a notice of availability was published on April 30, 2004 (69 FR 23751); a correction of the telephone number included in the April 30, 2004, **Federal Register** notice (69 FR 23751) was published on May 7, 2004 (69 FR 25574). The Councils prepared an FSEIS for this amendment and submitted the final version to NMFS on December 10, 2004. A notice of availability for the FSEIS will publish shortly. The FSEIS analyzed the impact of the proposed action and alternatives compared to taking no action. The FSEIS concluded that the biological impact of the proposed measures would be neutral, except for a possible minor negative impact on monkfish yield per recruit resulting from the reduction in minimum fish size in the SFMA, if vessels target smaller fish. Also, the proposed Offshore Fishery Program in the SFMA and the modification of the permit qualification criteria could cause some effort to shift from inshore to offshore areas, but the impact of such a shift cannot be predicted. The proposed measures are not expected to have a significant impact on protected species, although the Offshore Fishery Program may have a positive impact, since overall effort would be reduced due to the pro-rating of DAS. The proposed measures will not have an adverse impact on habitat. Two measures are specifically designed to minimize, to the extent practicable, the effect of the fishery on EFH. These measures, the SFMA roller gear restriction and the closure of Oceanographer and Lydonia Canyons, would have a positive, but not significant, impact on habitat, since both are preventative, rather than restrictive, when compared to current fishing practices. The socio-economic impacts of the proposed action are expected to be slightly positive, although some measures would have no impact because they are either administrative or do not affect current fishing activities (i.e., they are preventative).

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

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action, are contained in the preamble to this proposed rule. There are no Federal rules that may duplicate, overlap, or conflict with the proposed rule. A summary of the IRFA follows. A copy of this analysis is available from the New England Fishery Management Council (see **ADDRESSES**).

Description of Small Entities to Which the Proposed Rule Will Apply

The measures proposed in Amendment 2 could impact any commercial vessel issued a Federal monkfish vessel permit. There are two main components of the monkfish fleet: Vessels eligible to participate in the limited access sector of the fleet, and vessels that participate in the open access sector under the incidental catch permit. In 2001, there were 723 monkfish limited access vessels, 687 of which were participants during fishing year (FY) 2001. In addition, there were 1,977 incidental catch permits, 1,023 of which participated in the fishery. Under the Small Business Administration (SBA) size standards for small fishing entities, i.e., $3.5 million, all of the participating vessels are considered small, as gross sales by any entity do not exceed this threshold. The proposed actions would provide regulatory relief to small fishing vessels participating in the monkfish fishery.

Economic Impacts of the Proposed Action

1. Modification of the Permit Qualification Criteria

Under the new limited access permits proposed in Amendment 2, economic opportunities would be restored for some vessels fishing south of 38° 20′N. lat. It is possible that the addition of new moratorium permitted vessels will have an impact on the trip limits for other vessels fishing in the SFMA, since the TAC would be distributed over an increased number of vessels, although this economic impact from this change cannot be accurately estimated. Preliminary estimates indicate that up to five additional vessels could qualify for a limited access monkfish permit under the proposed action. From January 1, 1995, to the implementation of the initial FMP in November 1999, these five vessels averaged approximately $78,000 in revenues from monkfish, out of their total revenues of $480,000 for the same period.

2. Offshore Fishery Program

The proposed Offshore Fishery Program in the SFMA would be voluntary and would allow vessels to use their available fishing time more efficiently by providing vessels with an increased monkfish trip limit in exchange for a reduction in their monkfish DAS. Over a fishing season, a vessel participating in the program could potentially achieve higher profitability because more monkfish could be retained using fewer overall inputs. While VMS would be required for participating vessels, and vessels currently not having VMS would have to bear the cost of installation (approximately $3,100 per unit), each individual would be able to weigh the benefits and costs of participating in the program.

3. Closure of Oceanographer and Lydonia Canyons

The economic effect of the proposed closure of Oceanographer and Lydonia Canyons to monkfish vessels was estimated by identifying the fishing activity taking place within the areas using the position coordinates provided in VTRs for calendar years 1999 and 2001. No trips were identified as having occurred within the proposed closure areas. Based upon this analysis, the economic effect of the closure would be zero.

Although vessels have not fished for monkfish in these canyon areas in the past, the establishment of an Offshore Fishery Program in this amendment, if approved, could encourage monkfish vessels to fish in these areas in the future. Thus, the intent of this measure is proactive in that it would prohibit monkfish vessels from fishing in these areas, which contain sensitive deep water coral habitat.

4. SFMA Roller Gear Restriction

Restricting the trawl roller gear diameter to a 6–inch (15.2–cm) maximum for vessels fishing on a monkfish DAS in the SFMA may have some short-term negative economic impacts on some vessels, since vessels using non-conforming gear would be required to bear the cost of making the necessary change. However, 6–inch (15.2–cm) roller gear is already used by many vessels in the SFMA, reducing the potential impact of this proposed measure. The effect of this measure is not quantifiable, since the number of non-conforming vessels cannot be determined at this time.

5. Cooperative Research Incentive Programs

The economic impacts of the changes to the cooperative research programs funding would be, at most, redistributive in nature. The 500–DAS set-aside available for research purposes would be drawn equally from the DAS allocations of all monkfish vessels. Thus, monkfish vessels that use their full allocation of DAS and do not participate in research projects would experience a loss in fishing opportunities, although minor (less than 1 DAS per vessel), while other vessels could expand their fishing opportunities through participation in such projects. Vessels not using their full allocations of DAS would not be affected.

6. NAFO Regulated Area Exemption Program

The proposed action would exempt anyone fishing in the NAFO regulatory area from EEZ regulations. Vessels would be assumed compliant with NAFO regulations and would be issued a High Seas Fishing Compliance permit, relieving participating vessels from dual compliance with both NAFO and EEZ regulations. While this would provide vessels with greater flexibility compared to current regulations, the economic impact of this change cannot be estimated, since the extent that current regulations inhibit domestic vessels from participating in the NAFO Regulatory Area is unknown. However, this reduction in regulatory burden would likely have a positive economic impact, since the EEZ measures are more restrictive that their NAFO counterparts.

7. Incidental Catch Provisions

Based on FY 2001 VTR records, modification of the incidental catch limits would affect a total of 835 trips made by 112 vessels, providing these small entities an opportunity to retain more monkfish than under current conditions. Since the proposed change represents an increase over current trip limits, it is impossible to provide a precise estimate of the economic benefit provided by the change; however, an upper bound estimate of the economic benefit can be calculated by assuming that all trips would retain the maximum allowable limit. Using the average 2001 monkfish (tail-weight) price of $2.53 per lb, the maximum revenue gain would be $192,000, an average benefit of $1,700 in gross fishing revenue for the 112 vessels that would benefit.

Based on FY2001 VTR data, 1,620 trips made by 52 vessels would potentially be affected by the proposed change to the incidental catch limit for General category scallop and clam dredge vessels. Most of these trips were 24 hours or less, and nearly all were less than 48 hours. Thus, the maximum benefit from a 50–lb (22.7–kg) trip limit would be $204,000, again using the average 2001 monkfish price of $2.53 per lb. This maximum benefit assumes that catch rates on every trip would be at least 50 lb (22.7 kg), which is unlikely, since the median landings for vessels with a monkfish incidental catch permit were only 25 lb (11.3 kg). At this median level, the revenue gain would be approximately $102,000, an average of just under $2,000 per vessel. The proposed incidental catch limit increase would provide only a modest increase above this level since few General category scallop or clam dredge trips are more than 24 hours, and nearly all are less than 48 hours. Assuming median landings, the maximum benefit would be only $10,250 more than that of the 50–lb (22.7–kg) incidental trip limit.

Based on FY 2001 VTR records, the proposed change to the incidental catch limit for summer flounder vessels would affect 114 vessels. Using these VTR records, an estimate of the potential revenues that would be restored to these vessels was calculated. Adjusting the observed monkfish landings by the current incidental catch limit of 50 lb (22.7 kg) per trip, the average annual restored landings per vessel would be 326 lb (147.9 kg), translating to $825 per vessel at the average 2001 monkfish price per pound of $2.53. However, the impact varies greatly across vessels, ranging from no impact for vessels without an observed trip exceeding 50 lb (22.7 kg), to almost $10,000.

8. Minimum Fish Size

The proposed Amendment 2 change to the minimum fish size is specific to the SFMA and, therefore, would affect only vessels that fish in that area. Based on FY 2001, the 170 vessels that fished in the SFMA would experience reduced regulatory burden as well as increased economic opportunities under this proposed measure. The 73 additional vessels that chose to fish in both management areas would also benefit, though only on the trips in the SFMA. However, as noted above, without detailed information on the size distribution of the commercial catch in both areas, an accurate assessment of the economic benefit that would accrue to each vessel is not possible.

9. Removal of the 20-day Block Requirement

The proposed removal of the 20-day block requirement would result in a reduction in regulatory burden when compared to current conditions for the 45 Category A and B monkfish limited access vessels. Category C and D monkfish permitted vessels that also hold a NE multispecies permit, are required to take a 20-day block out of the NE multispecies fishery. However, the extent of the regulatory relief provided by the proposed removal of this requirement is unknown. The current requirement to be out of the fishery for 20 days only means that vessels cannot call in a monkfish DAS during that time. The vessels are still able to fish in other fisheries and are allowed to retain monkfish up to the incidental catch limits for those fisheries. Since the 20-day block may be taken at any time during the prescribed period, vessels can choose the block they expect to be the most advantageous. Nonetheless, as above noted, removal of this requirement does afford the vessels greater flexibility in choosing when to fish for monkfish and when to fish for other species.

10. Vessel Baseline Modification

Allowance of a vessel permit baseline modification would not have an immediate economic impact on a vessel's ability to earn fishing income in the monkfish fishery, since no proposed measures are tied to the physical dimensions of the vessels. However, the value of the vessel could be affected, depending on whether the baseline is higher or lower than the current monkfish baseline, and there may be implications for the pool of trading partners should a monkfish DAS leasing program be developed in the future.

11. Modification of the Framework Adjustment Procedure

The proposed action would modify the framework adjustment process, expanding the list of frameworkable measures to include development of a monkfish DAS leasing program, measures to minimize impact on protected species, and requirements to use bycatch reduction devices. While the individual frameworkable measures may have associated economic impacts and regulatory burdens, which will be dependent on the specific measures that may be proposed in the future, simply adding these measures to the list of actions that can be taken under the framework adjustment process is administrative in nature and does not have any impacts on any participant in the fishery. The economic impact of each measure will be analyzed in the associated framework action, should the measures be given further consideration by the Councils.

Economic Impacts of Alternatives to the Proposed Action

This section describes the impacts of management measures that were considered by the Councils but not adopted as part of Amendment 2 and compares the economic of the specified measure to those resulting from no action under Amendment 2.

1. Monkfish DAS Usage by Limited Access Monkfish Category C and D Vessels

The Councils considered several alternatives that would have allowed limited access monkfish Category C and D vessels to fish under a monkfish DAS without concurrently using a NE multispecies or scallop DAS, including two options that would have allocated monkfish-only DAS uniformly among all vessels or individually based on a vessel's fishing history. These alternatives would have affected 662 limited access Category C or D monkfish vessels. Economic impacts would have likely resulted in neutral or positive economic impacts, assuming that the overall effort within the monkfish fishery would not have increased. If effort in the monkfish fishery would have increased, necessary reductions in trip limits and DAS allocations would have resulted in reduced economic opportunities.

2. Incidental Catch Limits

The Councils considered increasing the current monkfish incidental catch limit of 50 lb (22.7 kg) per trip to a maximum of 500 lb (226.8 kg) per trip by allowing vessels to retain up to 50 lb (22.7 kg) of monkfish per day for a 10-day trip. A total of 112 vessels would have been affected by this measure, resulting in a revenue gain of $322,000, or an average benefit of $2,900 per vessel.

3. Minimum Trawl Mesh Size When Fishing on a Monkfish DAS

Two alternatives were considered by the Councils that would have required vessels to use 12–inch (30.5–cm) square mesh in the codend and either 12–inch (30.5–cm) diamond mesh or the minimum mesh size required in the NE Multispecies FMP in the body of the net. These gear requirements would have been required when fishing monkfish-only DAS, if de-coupled from NE multispecies or scallop DAS as proposed in other rejected alternatives specified above, or on a monkfish/multispecies DAS for limited access monkfish Category C or D vessels. These measures would have affected all limited access monkfish vessels using large mesh otter trawls. These vessels would have had to replace any nonconforming gear, at considerable expense.

4. Minimum Fish Size

The Council considered four alternatives for minimum fish size: (1) The no action alternative (11–inch (27.9–cm) tail-length, 17–inch (43.2–cm) total-length in the NFMA, and 14–inch (35.6–cm) tail-length, 21–inch (53.3–cm) total-length in the SFMA); (2) a uniform 10–inch (25.4–cm) tail-length or 15–inch total-length minimum fish size (Alternative 2, Option 2); (3) elimination of the minimum size limit (Alternative 3); and (4) a 14–inch (35.6–cm) tail-length or 21–inch (53.3–cm) total-length minimum fish size for vessels fishing under a monkfish-only DAS (Alternative 4). Alternative 2 would likely have increased economic opportunities for all vessels fishing for monkfish, but would have had a greater beneficial impact on vessels fishing in the SFMA than those fishing in the NFMA since it would have resulted in a greater reduction in the minimum size, and, therefore, more of an increase in the size range of monkfish that vessels fishing in the SFMA are able to land. Based on public comment, Alternative 3 would have provided an incentive to develop markets for smaller monkfish, which could have had a negative impact on yield-per-recruit. Finally, the analysis in the FSEIS indicates that Alternative 4 would not have affected vessels fishing in the SFMA, but would have resulted in decreased economic opportunities for vessels fishing in the NFMA under a monkfish-only DAS, with only negligible affects.

5. Closed Season or Time Out of the Fishery

The Councils rejected an alternative that would have doubled the current 20-day block out of the fishery to 40 days, but that would have allowed vessels to take the entire 40 days out of the fishery consecutively or as two 20-day blocks. The Councils also rejected an alternative that would have required all limited access monkfish vessels, including scallop vessels also possessing limited access monkfish Category C or D permits, to take time out of the monkfish fishery. The economic impacts of these alternatives are unclear, given the difficulty in assessing when individual vessels will plan their trips. However, it is not expected that the latter alternative would have adversely impacted scallop vessels.

6. Offshore Fishery Program

The Councils are proposing the establishment of an Offshore Fishery Program in Amendment 2 (Alternative 2). However, within Alternative 2, the Councils considered, but rejected, options for the area covered under this program (Area Option 2), and for the applicable trip limits and associated DAS allocation (DAS/Trip Limit Option 1).

Since the rejected area option is not significantly different from the proposed area, and given the proposed distance from shore, participation in the fishery would likely be limited to larger vessels. Further, the rejected trip limit option would provide vessels with the flexibility of choosing the DAS/trip limit ratio that is most economically beneficial to them. Under these rejected options, vessels would still be subject to VMS requirements. As a result, vessels that do not have a VMS unit currently installed would have to bear the cost of installation in order to participate in this voluntary program.

7. Modification of the Limited Access Permit Qualification Criteria

The Councils considered four alternatives, plus the no action alternative, for modifying the limited access permit qualification criteria, and ultimately selected Alternative 3. The only difference between the non-preferred alternatives and the preferred alternative is the qualification period. The qualification periods for the non-preferred alternatives are as follows: Alternative 1, the four years prior to June 15, 1998; Alternative 2, the four years prior to June 15, 1997; Alternative 4, the four years prior to June 15, 1997, where landing took place during the months of March 15 - June 15. Under the no action alternative, no additional vessels would qualify for a limited access monkfish permit. Analysis of the NOAA Fisheries weighout and North Carolina Division of Marine Fisheries data indicate that the number of vessels that would qualify for monkfish limited access permits range from three under Alternatives 2 and 4, to seven under Alternative 1.

The vessel level economic impact on affected vessels is likely to be positive, due to the increased opportunity to fish for monkfish in the EEZ, but the magnitude of the impact cannot be determined for the following reasons: These vessels already prosecute the monkfish fishery in state waters during the same limited season when they would be able to fish in the EEZ; and it is unclear how the limitations on the fishery resulting from the sea turtle closures would offset any immediate benefit these vessels might realize from obtaining a Federal limited access monkfish permit.

8. Alternatives to Protect EFH

The Councils considered an alternative that contained alternative trawl configurations designed to minimize the impact of the monkfish fishery on EFH for other species if DAS usage requirements were separated. This alternative (Alternative 4) may have had some short-term negative economic effects depending on the trawl configuration selected and the management area to which the configuration requirements would have applied. Changing the trawl configuration would require vessels using non-conforming gear to bear the cost of making the necessary changes.

The Councils also considered an option to close the waters above up to 12 large canyons from Norfolk Canyon to the Hague Line. Information from the VTR database shows that 30 trips occurred in these areas during 1999 and 2001. An assessment of all non-directed monkfish trips indicates that the majority of vessels were targeting squid or whiting, while most other trips were associated with the directed summer flounder fishery. Under closure option 1 (trawl gear only), nine trawl trips would have been affected based on the 1999 VTR data, and less than 3 trips would have been affected based on the 2001 VTR data. Option 2 would have affected an additional 21 gillnet trips based on the 2001 VTR data.

9. NFMA Monkfish Trawl Experimental Fishery

A 2-year experimental fishery to establish a trawl exempted fishery in the NFMA was not adopted by the Councils. This experimental fishery would have allowed vessels to determine the appropriate time, place, and gear to target monkfish while on a monkfish-only DAS, without concurrently using a NE multispecies DAS. Since the Councils did not adopt a measure that would separate monkfish DAS from scallop or NE multispecies DAS, there would be little economic benefit for trawl vessels to use large mesh in the NFMA, as the current trip limits for vessels using groundfish gear would provide more economic opportunity for affected vessels.

10. Changes to the Fishing Year

The Councils did not adopt several alternatives that would have changed the start date of the fishing year. These changes would have complicated the permit renewal process, since the monkfish fishing year would no longer have corresponded to the NE multispecies fishing year and would have affected a vessel owner's ability to effectively plan vessel operations for the year, as vessels would have received their DAS allocations for various fisheries at different times of the year. This would also have resulted in increased costs for applying for and administering permit renewals.

Description of the Proposed Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

Reporting and Recordkeeping Requirements

The proposed measures under Amendment 2 include the following provisions requiring either new or revised reporting and recordkeeping requirements: (1) Annual declaration into the Offshore Fishery Program on the initial vessel permit application or vessel permit renewal application; (2) VMS purchase and installation; (3) VMS proof of installation; (4) automated VMS polling of vessel position once per hour while fishing under a Monkfish DAS in the Offshore Fishery Program; (5) request to power down VMS unit for a minimum of 30 days; (6) initial application for a limited access monkfish permit (Category G or H) under program for vessels fishing south of 38°20' N. lat.; (7) renewal of limited access monkfish permit (Category G or H) under program for vessels fishing south of 38°20' N. lat.; (8) appeal of denial of a limited access monkfish permit (Category G or H) under the program for vessels fishing south of 38°20' N. lat.; (9) application for a vessel operator permit for new limited access monkfish vessels; (10) vessel replacement or upgrade application for new limited access monkfish vessels; (11) confirmation of permit history application for new limited access monkfish vessels; (12) DAS reporting requirements (call-in/call-out) for new limited access monkfish vessels; (13) application for Good Samaritan DAS credit for new limited access monkfish vessels; (14) annual gillnet declaration and tag order request; (15) requests for additional gillnet tags; (16) notification of lost tags and request for replacement tags; (17) requests to change limited access monkfish vessel baseline specifications; and (18) requests for a LOA to fish for monkfish in NAFO Regulatory Area under the proposed exemption program.

Other Compliance Requirements

The measures proposed under Amendment 2 would require that all vessels participating in the Offshore Fishery Program purchase and install a VMS unit. The average VMS unit offered by the two vendors currently approved by NMFS costs approximately $3,100 to purchase and install. Many of the limited access monkfish vessels expected to participate in the Offshore Fishery Program also possess limited access NE multispecies permits. Since several new programs implemented under Amendment 13 to the NE Multispecies FMP also require the use of VMS, it is estimated that half of the 50 vessels expected to participate in the Offshore Fishery Program already have VMS units through participation in these NE multispecies programs and only 25 additional limited access monkfish vessels would be required to purchase a VMS under Amendment 2. This results in a combined one-time cost of $77,500 for these 25 vessels. In addition, the average monthly cost to operate a VMS unit is $150. This results in a combined annual cost associated with VMS usage under Amendment 2 of $45,000 for these new VMS users. Five vessels fishing south of 38°20' N. lat. are expected to qualify for a limited access monkfish permit under Amendment 2. These vessels would be required to obtain a Federal vessel operator permit, if they do not already have one. These permits cost approximately $10 due to the need for a color photograph, and are valid for 3 years. As a result, the yearly cost to these five vessels is estimated at $16.67, or approximately $3.33 per vessel. Finally, limited access monkfish vessels using gillnet gear must purchase gillnet tags. Each tag costs $1.20 and may be used for at least 3 years. Monkfish vessels are allowed to use up to 160 gillnets. Therefore, if the five vessels fishing south of 38°20' N. lat. expected to qualify for a limited access monkfish permit under Amendment 2 elect to fish with gillnet gear, yearly costs associated with purchasing gillnet tags for each vessel would be a maximum of $64 (i.e., $192 every 3 years).

Public Reporting Burden

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average as follows:

1. Annual declaration into the Offshore Fishery Program on initial vessel permit application or vessel permit renewal application, OMB Control Number 0648–0202 (30 min/response);
2. VMS purchase and installation, OMB Control Number 0648–0202 (1 hr/response);
3. VMS proof of installation, OMB Control Number 0648–0202 (5 min/response);
4. Automated VMS polling of vessel position once per hour while fishing

under a monkfish DAS in the Offshore Fishery Program, OMB Control Number 0648–0202 (5 sec/response);

5. Request to power down VMS unit for a minimum of 30 days, OMB Control Number 0648–0202 (5 min/response);

6. Initial application for a limited access monkfish permit (Category G or H) under program for vessels fishing south of 38° 20' N. lat., OMB Control Number 0648–0202 (45 min/response);

7. Renewal of limited access monkfish permit (Category G or H) under program for vessels fishing south of 38° 20' N. lat., OMB Control Number 0648–0202 (30 min/response);

8. Appeal of denial of a limited access monkfish permit (Category G or H) under the program for vessels fishing south of 38° 20' N. lat., OMB Control Number 0648–0202 (2 hr/response);

9. Application for a vessel operator permit for new limited access monkfish vessels, OMB Control Number 0648–0202 (1 hr/response);

10. Vessel replacement or upgrade application for new limited access monkfish vessels, OMB Control Number 0648–0202 (3 hr/response);

11. Confirmation of permit history application for new limited access monkfish vessels, OMB Control Number 0648–0202 (30 min/response);

12. DAS reporting requirements (call-in/call-out) for new limited access monkfish vessels, OMB Control Number 0648–0202 (2 min/response);

13. Application for Good Samaritan DAS credit for new limited access monkfish vessels, OMB Control Number 0648–0202 (30 min/response);

14. Annual gillnet declaration and tag order request, OMB Control Number 0648–0202 (10 min/response);

15. Requests for additional gillnet tags, OMB Control Number 0648–0202 (2 min/response);

16. Notification of lost tags and request for replacement tags, OMB Control Number 0648–0202 (2 min/response);

17. Requests to change limited access monkfish vessel baseline specifications, OMB Control Number 0648–0202 (30 min/response); and

18. Requests for a letter of authorization to fish for monkfish in the NAFO Regulatory Area under the proposed exemption program, OMB Control Number 0648–0202 (5 min/response).

These burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**).

Notwithstanding any other provision of the 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 PRA, unless that collection of information displays a currently valid OMB Control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 7, 2005.

Rebecca Lent,

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

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.2, the definition of "Prior to leaving port" is revised to read as follows:

§ 648.2 Definitions.

* * * * *

Prior to leaving port, with respect to the call-in notification system for NE multispecies, and the call-in notification system for monkfish vessels that are fishing under the limited access monkfish Category C, D, F, G or H permit provisions that are also fishing under a NE multispecies DAS, means no more than 1 hour prior to the time a vessel leaves the last dock or mooring in port from which that vessel departs to engage in fishing, including the transport of fish to another port. With respect to the call-in notification system for monkfish vessels that are fishing under the limited access monkfish Category A or B permit provisions, it means prior to the last dock or mooring in port from which a vessel departs to engage in fishing, including the transport of fish to another port.

* * * * *

3. In § 648.4, the introductory text of paragraph (a)(9)(i) is revised, paragraphs (a)(9)(i)(B), (H), and (M), and (a)(9)(i)(N)(*1*) and (*3*) are revised, and paragraphs (a)(9)(i)(A)(*5*), (*6*), and (*7*) are added to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(9) * * *

(i) *Limited access monkfish permits.*

(A) * * *

(*5*) *Category F (vessels electing to participate in the Offshore Fishery Program).* Vessels intending to fish, or are fishing in, the Offshore Fishery Program, as described under 648.95, must apply for and be issued a Category F permit and fish under this permit category for the entire fishing year. For fishing year 2005, the owner of a vessel, or authorized representative, may change its previous 2005 limited access monkfish permit to a Category F permit within 45 days of the effective date of the final rule implementing Amendment 2, provided the vessel has not fished under the monkfish DAS program during the 2005 fishing year.

(*6*) *Category G permit (vessels restricted to fishing south of 38°20'N. lat. as described in § 648.92(b)(9)) that do not qualify for a monkfish limited access Category A, B, C, or D permit.* The vessel landed ≥ 50,000 lb (22,680 kg) tail-weight or 166,000 lb (75,297.6 kg) whole weight of monkfish in the area south of 38°N. lat. during the period March 15 through June 15 in the years 1995 to 1998.

(*7*) *Category H permit (vessels fishing only south of 38°20'N. lat. as described in § 648.92(b)(9)) that do not qualify for a monkfish limited access Category A, B, C, D, or G permit).* The vessel landed ≥ 7,500 lb (3,402 kg) tail-weight or 24,900 lb (11,294.6 kg) whole weight of monkfish in the area south of 38°N. lat. during the period March 15 through June 15 in the years 1995 to 1998.

(B) *Application/renewal restrictions.* No one may apply for an initial limited access monkfish permit for a vessel after November 7, 2000, unless otherwise allowed in this paragraph (a)(9)(i)(B). Vessels applying for an initial limited access Category G or H permit, as described in paragraphs (a)(9)(i)(A)(*6*) and (*7*) of this section must do, so on or before April 30, 2006.

* * * * *

(H) *Vessel baseline specification.* The vessel upgrading baseline specifications in this section are the respective specification (length, GRT, NT, and horsepower) of the vessel that was initially issued a limited access permit as of the date the initial vessel applied for such a permit, unless otherwise specified in this paragraph (a)(9)(i)(H). The owner of a vessel with multiple Federal limited access permits with different vessel baseline specifications for its monkfish limited access permit than the vessel baseline specifications for one or more of its other Federal permits may request that the Regional Administrator revise the monkfish permit vessel baseline specifications to be consistent with that of the vessel's first Federal limited access permit, provided such a request is made prior to May 1, 2006.

* * * * *

(M) *Notification of eligibility for Category G and H permits.* (*1*) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence available to inform them that they meet the qualification criteria described in paragraph (a)(9)(i)(A)(*6*) or (*7*) of this section and that they qualify for a limited access monkfish Category G or H permit. Vessel owners that pre-qualify for a Category G or H permit must apply for the limited access permit for which they pre-qualified prior to May 1, 2006, to meet the qualification requirements.

(*2*) If a vessel owner has not been notified that the vessel is eligible to be issued a limited access monkfish Category G or H permit, and the vessel owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access monkfish Category G or H permit prior to May 1, 2006, by submitting written evidence that the vessel meets the qualification requirements described in paragraph (a)(9)(i)(A)(*6*) or (*7*) of this section.

(N) *Appeal of denial of permit.* (*1*) An applicant denied a limited access monkfish Category G or H permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator erred in concluding that the vessel did not meet the criteria described in paragraph (a)(9)(i)(A)(*6*) or (*7*) of this section. The appeal shall set forth the applicant's belief that the Regional Administrator made an error.

(*2*) * * *

(*3*) *Status of vessels pending appeal.* (*i*) A vessel denied a limited access monkfish Category G or H permit may fish under the monkfish DAS program, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the monkfish DAS program. The Regional Administrator will issue such a letter for the pendency of any appeal, which decision is the final administrative action of the Department of Commerce pending a final decision on the appeal. The letter of authorization must be carried on board the vessel. A vessel with such a letter of authorization shall not exceed the annual allocation of monkfish DAS as specified in § 648.92(b)(1) and must report the use of monkfish DAS according to the provisions of § 648.10(b) or (c), whichever applies. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter shall become invalid 5 days after receipt of the notice of denial. If the appeal is finally approved, any DAS used during pendency of the appeal shall be deducted from the vessel's annual allocation of monkfish DAS for that fishing year.

(*ii*) *Monkfish incidental catch vessels (Category E).* A vessel of the United States that is subject to these regulations and that has not been issues a limited access monkfish permit under paragraph (a)(9)(i)(A) of this section, is eligible for and may be issued a monkfish incidental catch (Category E) permit to fish for, possess, or land monkfish subject to the restrictions in § 648.94(c).

* * * * *

4. In § 648.9, paragraph (c)(2)(i)(C) is revised, and paragraph (c)(2)(i)(D) is added to read as follows:

§ 648.9 VMS requirements.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(C) The vessel has been issued an Atlantic herring permit, and is in port, unless required by other permit requirements for other fisheries to transmit the vessel's location at all times; or

(D) For vessels electing to fish under the Offshore Fishery Program in the SFMA, as specified under § 648.95, and that have been issued a valid monkfish limited access Category F permit, the vessel owner signs out of the VMS program for a minimum period of 30 days by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, provided the vessel does not sign out of the VMS program during the Offshore Fishery Program season specified at § 648.95(d), does not engage in any fisheries for which VMS is required, and the vessel complies with all conditions and requirements of said letter.

* * * * *

5. In § 648.10, paragraph (c)(1) is revised and paragraph (b)(1)(ix) is added to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) * * *

(1) * * *

(ix) A limited access monkfish vessel electing to fish in the Offshore Fishery Program in the SFMA, as provided in § 648.95.

* * * * *

(c) * * *

(1) Less than 1 hour prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish permit (Category C, D, F, G, or H), unless otherwise specified in this paragraph (c)(1), and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the Regional Administrator and providing the following information: Owner and caller name and phone number, vessel's name and permit number, type of trip to be taken, port of departure, and that the vessel is beginning a trip. A DAS begins once the call has been received and a confirmation number is given by the Regional Administrator, or when a vessel leaves port, whichever occurs first, unless otherwise specified in paragraph (c)(6) of this section. Vessels issued a limited access monkfish Category C, D, F, G, or H permit that are allowed to fish as a Category A or B vessel in accordance with the provisions of § 648.92(b)(2)(i), are subject to the call-in notification requirements for limited access monkfish Category A or B vessels specified under this paragraph (c)(1) for those monkfish DAS where there is not a concurrent NE multispecies DAS.

* * * * *

6. In § 648.14, the introductory sentence of paragraph (y) is revised, paragraphs (a)(125), (x)(8), (y)(1)(iii), (y)(3), (y)(7) and (y)(21) are revised, and paragraph (y)(1)(iv) is added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(a)* * *

(125) For vessels issued a limited access NE multispecies permit, or those issued a limited access NE multispecies permit and a limited access monkfish permit (Category C, D, F, G, or H), but are not fishing under the limited access monkfish Category A or B provisions as allowed under § 648.92(b)(2), call into the DAS program prior to 1 hour before leaving port.

* * * * *

(x) * * *

(8) *Monkfish.* All monkfish retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ, unless the preponderance of evidence demonstrates that such fish were harvested by a vessel that fished exclusively in the NAFO Regulatory Area, as authorized under § 648.17.

* * * * *

(y) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel that engages in fishing for monkfish to do any of the following, unless otherwise fishing in accordance with, and exempted under, the provisions of § 648.17:

(1) * * *

(iii) The monkfish were harvested in or from the EEZ by a vessel not issued a Federal monkfish permit that engaged in recreational fishing; or

(iv) The monkfish were harvested from the NAFO Regulatory Area in accordance with the provisions specified under § 648.17.

* * * * *

(3) Sell, barter, trade, or otherwise transfer, or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, any monkfish without having been issued a valid monkfish vessel permit, unless the vessel fishes for monkfish exclusively in state waters, or exclusively in the NAFO Regulatory Area in accordance with the provisions specified under § 648.17.

* * * * *

(7) Fail to comply with the area restrictions applicable to limited access Category G and H vessels specified under § 648.92(b)(9).

* * * * *

(21) Fail to comply with the area declaration requirements specified at §§ 648.93(b)(2) and 648.94(f) when fishing under a scallop, NE multispecies or monkfish DAS exclusively in the NFMA under the less restrictive monkfish possession limits of that area.

* * * * *

7. Section 648.17 is revised to read as follows:

§ 648.17 Exemptions for vessels fishing in the NAFO Regulatory Area.

(a) *Fisheries included under exemption.* (1) *NE Multispecies.* A vessel issued a valid High Seas Fishing Compliance permit under 50 CFR part 300 and that complies with the requirements specified in paragraph (b) of this section, is exempt from NE multispecies permit, mesh size, effort-control, and possession limit restrictions, specified in §§ 648.4, 648.80, 648.82 and 648.86, respectively, while transiting the EEZ with NE multispecies on board the vessel, or landing NE multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area.

(2) *Monkfish.* A vessel issued a valid High Seas Fishing Compliance permit under 50 CFR part 300 and that complies with the requirements specified in paragraph (b) of this section is exempt from monkfish permit, mesh size, effort-control, and possession limit restrictions, specified in §§ 648.4, 648.91, 648.92 and 648.94, respectively, while transiting the EEZ with monkfish on board the vessel, or landing monkfish in U.S. ports that were caught while fishing in the NAFO Regulatory Area.

(b) *General requirements.* (1) The vessel operator has a letter of authorization issued by the Regional Administrator on board the vessel;

(2) For the duration of the trip, the vessel fishes, except for transiting purposes, exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in, or from, the EEZ;

(3) When transiting the EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in § 648.23(b); and

(4) The vessel operator complies with the High Seas Fishing Compliance permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

8. In § 648.80, paragraph (b)(5)(i)(B) is revised to read as follows:

§ 648.80 NE multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(b) * * *

(5) * * *

(i) * * *

(B) All trawl nets must comply with the minimum mesh size specified under § 648.91(c)(1)(i).

* * * * *

9. In § 648.82, paragraph (k)(4)(vi) is revised to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(k) * * *

(4) * * *

(vi) Monkfish Category C, D, F, G and H vessels. A vessel that possesses a valid limited access NE multispecies DAS permit and a valid limited access monkfish Category C, D, F, G or H permit and leases NE multispecies DAS to or from another vessel is subject to the restrictions specified in § 648.92(b)(2).

* * * * *

10. In § 648.91, paragraph (c)(1)(ii) and (iv) are revised, and paragraph (c)(3) is added to read as follows:

§ 648.91 Monkfish regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(c) * * *

(1) * * *

(ii) *Trawl nets while on a monkfish and NE multispecies DAS.* For vessels issued a Category C, D, G or H limited access monkfish permit and fishing with trawl gear under both a monkfish and NE multispecies DAS, the minimum mesh size is that allowed under regulations governing mesh size at § 648.80(a)(3), (a)(4), (b)(2)(i), or (c)(2)(i), depending upon, and consistent with, the NE multispecies regulated mesh area being fished, unless otherwise specified in this paragraph (c)(1)(ii). Trawl vessels participating in the Offshore Fishery Program, as described in § 648.95, and that have been issued a Category F monkfish limited access permit, are subject to the minimum mesh size specified in paragraph (c)(1)(i) of this section.

* * * * *

(iv) *Authorized gear while on a monkfish and scallop DAS.* Vessels issued a Category C, D, G or H limited access monkfish permit and fishing under a monkfish and scallop DAS may only fish with and use a trawl net with a mesh size no smaller than that specified in paragraph (c)(1)(i) of this section.

* * * * *

(3) *SFMA trawl roller gear restriction.* The roller gear diameter on any vessel on a monkfish DAS in the SFMA may not exceed 6 inches (15.2 cm) in diameter.

11. In § 648.92, paragraphs (b)(1)(i), (b)(2), (b)(6), and (b)(8)(i)(B) are revised; paragraphs (b)(1)(iii) and (iv), (b)(9) and (c) are added; and paragraph (b)(5) is removed and reserved to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(1) * * *

(i) *General provision.* All limited access monkfish permit holders shall be allocated monkfish DAS each fishing year to be used in accordance with the restrictions of this paragraph (b), unless modified by paragraph (b)(1)(ii) of this section according to the provisions specified at § 648.96(b)(3). The number of monkfish DAS to be allocated, before accounting for any such modification, is 40 DAS minus the amount calculated in paragraph (b)(1)(iv) of this section, unless the vessel is enrolled in the Offshore Fishery Program in the SFMA, as specified in paragraph (b)(1)(iii) of this section. Limited access NE multispecies and limited access sea scallop permit holders who also possess a valid limited access monkfish permit must use a NE multispecies or sea scallop DAS concurrently with their monkfish DAS, except as provided in paragraph (b)(2) of this section, unless otherwise specified under this part F.

* * * * *

(iii) *Offshore Fishery Program DAS allocation.* A vessel issued a Category F permit, as described in § 648.95, shall be allocated a pro-rated number of DAS as specified at § 648.95(g)(2).

(iv) *Research DAS set-aside.* A total of 500 DAS will be available for cooperative research programs as described in paragraph (c) of this section. These DAS will be deducted from the total number of DAS allocated to all monkfish limited access permit holders, as specified under paragraph (b)(1)(i) of this section. A per vessel deduction will be determined as follows: Allocated DAS minus the quotient of 500 DAS divided by the total number of limited access permits issued in the previous fishing year. For example, if the DAS allocation equals 40 DAS and if there are 750 limited access permits issued in FY 2004, the number of DAS allocated to each vessel in FY 2005 will be 40 DAS minus (500 DAS divided by 750 permits), or 40 DAS minus 0.7 DAS, or 39.3 DAS.

(2) *Category C, D, F, G or H limited access monkfish permit holders.* (i) Unless otherwise specified in paragraph (b)(2)(ii) of this section, each monkfish DAS used by a limited access NE multispecies or scallop DAS vessel holding a Category C, D, F, G or H limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C, D, F, G or H vessel with a limited access NE multispecies DAS permit has an allocation of NE multispecies Category A DAS, specified under § 648.82(d)(1), that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30. Under this circumstance, the vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and the number of its allocated NE multispecies Category A DAS. For such vessels, when the total allocation of NE multispecies Category A DAS has been used, a monkfish DAS may be used without concurrent use of a NE multispecies DAS. (For example, if a monkfish Category D vessel's NE multispecies Category A DAS allocation is 30, and the vessel fished 30 monkfish DAS, 30 NE multispecies Category A DAS would also be used, unless otherwise authorized under § 648.85(b)(6). However, after all 30 NE multispecies Category A DAS are used, the vessel may utilize its remaining 10 monkfish DAS to fish on monkfish, without a NE multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated NE multispecies.)

(ii) *Category C, D, F, G or H vessels that lease NE multispecies DAS.* (A) A monkfish Category C, D, F, G or H vessel that has "monkfish-only" DAS, as specified in paragraph (b)(2)(i) of this section, and that leases NE multispecies DAS from another vessel pursuant to § 648.82(k), is required to fish its available "monkfish-only" DAS in conjunction with its leased NE multispecies DAS, to the extent that the vessel has NE multispecies DAS available.

(B) A monkfish Category C, D, F, G or H vessel that leases DAS to another vessel(s), pursuant to § 648.82(k), is required to forfeit a monkfish DAS for each NE multispecies DAS that the vessel leases, equal in number to the difference between the number of remaining multispecies DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel, which had 40 unused monkfish DAS and 47 allocated multispecies DAS, leased 10 of its multispecies DAS, the lessor would forfeit 3 of its monkfish DAS (40 monkfish DAS - 37 multispecies DAS = 3) because it would have 3 fewer multispecies DAS than monkfish DAS after the lease.

* * * * *

(5) [Reserved]

(6) *Declaring monkfish DAS.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the monkfish DAS program using the notification requirements specified in § 648.10.

* * * * *

(8) * * *

(i) * * *

(B) *Category C, D, F, G and H vessels that possess a limited access NE multispecies permit.* A vessel issued a valid monkfish limited access Category C, D, F, G or H permit that possesses a valid limited access NE multispecies permit and fishing under a monkfish DAS may not fish with, haul, possess, or deploy more than 150 gillnets. A vessel issued a NE multispecies limited access permit and a limited access monkfish permit, and fishing under a monkfish DAS, may fish any combination of monkfish, roundfish, and flatfish gillnets, up to 150 nets total, provided that the number of monkfish, roundfish, and flatfish gillnets is consistent with the limitations of § 648.82. Nets may not be longer than 300 ft (91.4 m), or 50 fathoms, in length.

(9) *Category G and H limited access permit holders.* (i) Vessels issued limited access Category G and H permits shall be restricted to fishing on a monkfish DAS in the area south of 38°20' N. lat.

(ii) Vessels issued valid limited access monkfish Category G or H permit that also possess a limited access multispecies or limited access scallop permit are subject to the same provisions as Category C or D vessels, respectively, unless otherwise stated under this part.

(c) *Monkfish research*--(1) *DAS Set-Aside Program.* (i) NMFS will publish a Request for Proposals (RFP) in the **Federal Register** at least 3 months prior to the start of the upcoming fishing year, consistent with procedures and requirements established by the NOAA Grants Office, to solicit proposals from industry for the upcoming fishing year, based on research priorities identified by the Councils.

(ii) NMFS shall convene a review panel that may include members of the Councils' Monkfish Oversight Committee, the Council's Research Steering Committee, and other technical experts, to review proposals submitted in response to the RFP.

(A) Each panel member shall recommend which research proposals should be authorized to utilize the research DAS set aside in accordance with paragraph (b)(1)(iv) of this section, based on the selection criteria described in the RFP.

(B) The Regional Administrator and the NOAA Grants Office shall consider each panel member's recommendation, provide final approval of the projects and exempt selected vessel(s) from regulations specified in each of the respective FMPs through written notification to the project proponent.

(iii) The grant awards approved under the RFPs shall be for the upcoming fishing year. Proposals to fund research that would start prior to the fishing year are not eligible for consideration. Multi-year grant awards may be approved under an RFP for an upcoming fishing year, so long as the research DAS available under subsequent RFPs are adjusted to account for the approval of multi-year awards. All research trips shall be completed within the fishing year(s) for which the research grant was awarded.

(iv) Research projects shall be conducted in accordance with provisions approved and provided in an Exempted Fishing Permit (EFP) issued by the Regional Administrator, as authorized under § 600.745(b)(2).

(v) If the Regional Administrator determines that the annual allocation of research DAS will not be used in its entirety once all of the grant awards have been approved, the Regional Administrator shall reallocate the unallocated research DAS as exempted DAS to be authorized as described in paragraph (c)(2) of this section.

(iv) For proposals that require other regulatory exemptions that extend beyond the scope of the analysis contained in the Monkfish FMP, subsequent amendments, or framework adjustments, applicants may be required to provide additional analysis of the impacts of the requested exemptions before issuance of an EFP will be considered.

(2) *DAS Exemption Program.* (i) Vessels that seek to conduct monkfish research within the current fishing year, and that were not included in the RFP process during the previous fishing year, may seek exemptions from monkfish DAS for the purpose of conducting exempted fishing activities, as authorized at § 600.745(b), under the following conditions and restrictions:

(A) The request for a monkfish DAS exemption must be submitted along with a complete application for an EFP to the Regional Administrator. The requirements for submitting a complete EFP application are provided in § 600.745(b)(2).

(B) *Exempted DAS must be available for usage.* Exempted DAS shall only be made available by the Regional Administrator if it is determined that the annual set-aside of research DAS will not be used in its entirety, as described in paragraph (c)(1)(v) of this section. If exempted DAS are not available for usage, the applicant may continue to seek an exemption from monkfish DAS, but may be required to conduct an analysis of the impacts associated with the monkfish DAS exemption request before issuance of the EFP application will be considered.

(C) For EFP applications that require other regulatory exemptions that extend beyond the scope of the analysis contained in the Monkfish FMP, subsequent amendments, or framework adjustments, applicants may be required to provide additional analysis of the impacts of the requested exemptions before issuance of an EFP will be considered.

(ii) Monkfish DAS exemption requests shall be reviewed and approved by the Regional Administrator in the order in which they are received.

12. In § 648.93, paragraph (b) is revised to read as follows:

§ 648.93 Monkfish minimum fish sizes.

* * * * *

(b) *Minimum fish size.* The minimum fish size for all vessels is 17 inches (43.2 cm) total length/11 inches (27.9 cm) tail length.

13. In § 648.94, paragraphs (b)(2)(i), (ii) and (iii), (b)(3)(i) and (ii), (b)(5), (b)(6), and (c) are revised, and paragraph (b)(2)(iv) is added to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(b) * * *

(2) * * *

(i) *Category A, C, and G vessels.* Category A, C, and G vessels fishing under the monkfish DAS program in the SFMA may land up to 550 lb (250 kg) tail-weight or 1,826 lb (828 kg) whole weight of monkfish per monkfish DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor for tail-weight to whole weight of 3.32), unless modified pursuant to § 648.96(b)(2)(ii).

(ii) *Category B, D, and H vessels.* Category B, D and H vessels fishing under the monkfish DAS program in the SFMA may land up to 450 lb (204 kg) tail-weight or 1,494 lb (678 kg) whole weight of monkfish per monkfish DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor for tail-weight to whole weight of 3.32), unless modified pursuant to § 648.96(b)(2)(ii).

(iii) *Category F vessels.* Vessels issued a Category F permit are subject the possession and landing restrictions specified at § 648.95(g)(1).

(iv) *Administration of landing limits.* A vessel owner or operator may not exceed the monkfish trip limits as specified in paragraphs (b)(2)(i) through (iii) of this section per monkfish DAS fished, or any part of a monkfish DAS fished.

(3) *Category C, D, F, G and H vessels fishing under the multispecies DAS program.*--(i) *NFMA*--(A) *Category C and D vessels.* There is no monkfish trip limit for a Category C or D vessel that is fishing under a NE multispecies DAS exclusively in the NFMA.

(B) *Category, F, G and H vessels.* Vessels issues a Category F, G or H permit that are fishing under a multispecies DAS in the NFMA are subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

(ii) *SFMA*--(A) *Category C, D, and F vessels.* If any portion of a trip is fished only under NE a multispecies DAS, and not under a monkfish DAS, in the SFMA, a Category C, D, or F vessel may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS if trawl gear is used exclusively during the trip, or 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight per DAS if gear other than trawl gear is used during the trip.

(B) *Category G and H vessels.* Vessels issues a Category G or H permit that are fishing under a multispecies DAS in the SFMA are subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section.

* * * * *

(5) *Category C, D, G, or H scallop vessels declared into the monkfish DAS program without a dredge on board, or not under the net exemption provision.* Category C, D, G or H vessels that have declared into the monkfish DAS program and that do not fish with or have a dredge on board, or that are not fishing with a net under the net exemption provision specified in § 648.51(f), are subject to the same landing limits as specified in paragraphs (b)(1) and (b)(2) of this section, or the landing limit specified in § 648.95(g)(1), if issued a Category F permit. Such vessels are also subject to provisions applicable to Category A and B vessels fishing only under a monkfish DAS, consistent with the provisions of this part.

(6) Vessels not fishing under a NE multispecies, scallop or monkfish DAS. The possession limits for all limited access monkfish vessels when not fishing under a multispecies, scallop, or monkfish DAS are the same as the possession limits for a vessel issued a monkfish incidental catch permit

specified under paragraphs (c)(3) through (c)(6) of this section.

* * * * *

(c) *Vessels issued a monkfish incidental catch permit*--(1) *Vessels fishing under a multispecies DAS*--(i) *NFMA*. Vessels issued a monkfish incidental catch (Category E) permit, or issued a valid limited access Category F, G or H permit, fishing under a multispecies DAS exclusively in the NFMA may land up to 400 lb (181 kg) tail weight or 1,328 lb (602 kg) whole weight of monkfish per DAS, or 50 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, whichever is less. For the purposes of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

(ii) *SFMA*. If any portion of the trip is fished by a vessel issued a monkfish incidental catch (Category E) permit, or issued a valid limited access Category G or H permit, under a multispecies DAS in the SFMA, the vessel may land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(2) *Scallop vessels fishing under a scallop DAS*. A scallop vessel issued a monkfish incidental catch (Category E) permit, or issued a valid limited access Category G or H permit, fishing under a scallop DAS may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(3) *Vessels fishing with large mesh and not fishing under a monkfish, NE multispecies or scallop DAS*--(i) A vessel issued a valid monkfish incidental catch (Category E) permit fishing in the GOM or GB RMAs, or the SNE RMA east of the MA Exemption Area boundary with mesh no smaller than specified at § 648.80(a)(3)(i), (a)(4)(i), and (b)(2)(i), respectively, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board. For the purposes of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

(ii) A vessel issued a valid monkfish incidental catch (Category E) permit fishing in the SNE and MA RMAs west of the MA Exemption Area boundary with mesh no smaller than specified at § 648.104(a)(1) while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, but not to exceed 450 lb (204 kg) tail-weight or 1,494 lb (678 kg) whole weight of monkfish. For the purposes of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

(4) *Vessels fishing with small mesh and not fishing under a monkfish, NE multispecies or scallop DAS*. A vessel issued a valid monkfish incidental catch (Category E) permit fishing with mesh smaller than the mesh size specified by area in paragraph (c)(3) of this section, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land only up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) per trip.

(5) *Small vessels*. A vessel issued a limited access NE multispecies permit and a valid monkfish incidental catch (Category E) permit that is < 30 ft (9.1 m) in length and that elects not to fish under the NE multispecies DAS program may possess, retain, and land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) per trip.

(6) *Vessels fishing with handgear*. A vessel issued a valid monkfish incidental catch (Category E) permit and fishing exclusively with rod and reel or handlines with no other fishing gear on board, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) per trip.

(7) *Vessels fishing with surfclam or ocean quahog dredge gear*. A vessel issued a valid monkfish incidental catch (Category E) permit and a valid surfclam or ocean quahog permit, while fishing exclusively with a hydraulic clam dredge or mahogany quahog dredge, may possess, retain, and land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) per trip.

(8) *General Category Scallop vessels*. A vessel issued a valid monkfish incidental catch (Category E) permit and a valid General Category Scallop permit, while fishing exclusively with scallop dredge as specified in § 648.51(b), may possess, retain, and land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) per trip.

* * * * *

14. Section 648.95 is added to read as follows:

§ 648.95 Offshore Fishery Program in the SFMA.

(a) *General*. Any vessel issued a valid monkfish limited access permit is eligible to apply for a Category F permit in order to fish in the Offshore Fishery Program in the SFMA.

(1) A vessel issued a Category F permit is subject to the specific provisions and conditions of this section while fishing on a monkfish DAS.

(2) When not fishing on a monkfish DAS, a Category F vessel may fish under the regulations applicable to the monkfish incidental catch (Category E) permit, specified under paragraph § 648.94(c) of this section. When fishing on a NE multispecies DAS in the NFMA, a Category F vessel that also possesses a NE multispecies limited access permit is subject to the possession limits applicable to vessels issued an incidental catch permit as described in § 648.94(c)(1)(i).

(3) Limited access Category C or D vessels that apply for and are issued a Category F permit remain subject to the provisions specific to Category C and D vessels, unless otherwise specified under this part.

(b) *Declaration*. A vessel intending to fish in, or fishing in, the Offshore Fishery Program must obtain a monkfish limited access Category F permit and fish under this permit for the entire fishing year, subject to the conditions and restrictions specified under this part. For fishing year 2005, the owner of a vessel, or authorized representative, may change its previous 2005 limited access monkfish permit category to permit Category F within 45 days of the effective date of the final rule implementing Amendment 2, provided the vessel has not fished under the monkfish DAS program during the 2005 fishing year.

(c) *Offshore Fishery Program Area*. The Offshore Fishery Program Area is bounded on the south by 38°00 N. lat., and on the north, west and east by the area coordinates specified in § 648.23(a).

(d) *Season*. October 1 through April 30 each year.

(e) *Restrictions*. (1) Except for the transit provisions provided for in paragraph (f) of this section, a vessel issued a valid Category F permit may only fish for, possess, and land monkfish in or from the Offshore

Fishery Program Area while on a monkfish DAS.

(2) A vessel enrolled in the Offshore Fishery Program is restricted to fishing under its monkfish DAS during the season in paragraph (d) of this section.

(3) *Gear.* A vessel issued a Category F permit that is fishing on a monkfish DAS is subject to the minimum mesh size requirements applicable to limited access monkfish Category A and B vessels, as specified under § 648.91(c)(1)(i) and (iii), as well as the other gear requirements specified in paragraphs (c)(2) and (3) of that section.

(4) *VMS.* A vessel issued a Category F permit must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(f) *Transiting.* A vessel issued a Category F permit and fishing under a monkfish DAS that is transiting to or from the Offshore Fishery Program Area, described in paragraph (c)(1) of this section, shall have all gear stowed and not available for immediate use in accordance with the gear stowage provisions described in § 648.23(b).

(g) *Monkfish possession limits and DAS allocations.* (1) A vessel issued a Category F permit may land up to1,600 lb (726 kg) tail-weight or 5,312 lb (2,409 kg) whole weight of monkfish per monkfish DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor of 3.32 times tail-weight).

(2) The monkfish DAS allocation for vessels issued a Category F permit shall be based on a proration of the trip limit applicable to the vessel's monkfish limited access permit category in relation to the fixed daily possession limit specified in paragraph (g)(1) of this section multiplied by the DAS allocation for limited access monkfish vessels not issued Category F permits, specified under § 648.92(b)(1). For example, if a vessel has a limited access monkfish Category C permit, and the applicable trip limit is 800 lb (363 kg) for this category, and the vessel has an annual allocation of 40 monkfish DAS, then the monkfish DAS allocated to that vessel when issued a Category F permit would be 20 monkfish DAS (800 lb/ 1,600 lb x 40 monkfish DAS = 20 DAS). Any carryover monkfish DAS will be included in the proration calculation.

(3) *Incidental catch limit when fishing under a multispecies DAS in the NFMA.* Vessels issues a Category F permit that are fishing under a multispecies DAS in the NFMA are subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

(h) *DAS usage by NE multispecies or sea scallop limited access permit holders.* A vessel issued a Category F permit that also has been issued either a NE multispecies or sea scallop limited access permit, and is fishing on a monkfish DAS, is subject to the DAS usage requirements specified in § 648.92(b)(2).

15. In § 648.96, paragraph (c)(1)(i) is revised to read as follows:

§ 648.96 Monkfish annual adjustment process and framework specifications.

* * * * *

(c) * * *

(1) * * *

(i) Based on their annual review, the MFMC may develop and recommend, in addition to the target TACs and management measures established under paragraph (b) of this section, other options necessary to achieve the Monkfish FMP's goals and objectives, which may include a preferred option. The MFMC must demonstrate through analysis and documentation that the options it develops are expected to meet the Monkfish FMP goals and objectives. The MFMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MFMC may include any of the management measures in the Monkfish FMP, including, but not limited to: Closed seasons or closed areas; minimum size limits; mesh size limits; net limits; liver-to-monkfish landings ratios; annual monkfish DAS allocations and monitoring; trip or possession limits; blocks of time out of the fishery; gear restrictions; transferability of permits and permit rights or administration of vessel upgrades, vessel replacement, or permit assignment; measures to minimize the impact of the monkfish fishery on protected species; gear requirements or restrictions that minimize bycatch or bycatch mortality; transferable DAS programs; and other frameworkable measures included in §§ 648.55 and 648.90.

* * * * *

16. Section 648.97 is added to read as follows:

§ 648.97 Closed areas.

(a) Oceanographer Canyon Closed Area. No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Oceanographer Canyon Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, while on a monkfish DAS:

OCEANOGRAPHER CANYON CLOSED AREA

Point	N. Lat.	W. Long.
OC1	40°10′	68°12′
OC2	40°24′	68°09′
OC3	40°24′	68°08′
OC4	40°10′	67°59′
OC1	40°10′	68°12′

(b) *Lydonia Canyon Closed Area.* No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Lydonia Canyon Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, while on a monkfish DAS:

OCEANOGRAPHER CANYON CLOSED AREA

Point	N. Lat.	W. Long.
LC1	40°16′	67°34′
LC2	40°16′	67°42′
LC3	40°20′	67°43′
LC4	40°27′	67°40′
LC1	40°27′	67°38′
LC1	40°16′	67°34′

[FR Doc. 05–755 Filed 1–13–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 70, No. 10

Friday, January 14, 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

Office of the Secretary

Privacy Act of 1974; Addition of a New System of Records; USDA/FS–52, Resource Ordering and Status System (ROSS)

AGENCY: Office of the Secretary, USDA.

ACTION: New System of Records; request for comment.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the U.S. Department of Agriculture (USDA) is proposing to add a new Forest Service Privacy Act system of records to its inventory of records systems. USDA invites public comment on this new records system.

DATES: *Comment Date:* Comments must be received, in writing, on or before February 14, 2005.

Effective Date: This system will be adopted without further notice on March 15, 2005 unless modified to respond to comments received from the public and published in a subsequent notice.

ADDRESSES: Send written comments to the Forest Service Privacy Act Officer (Mail Stop 0003), USDA Forest Service, 1400 Independence Avenue, SW., Washington, DC 20250–0003. Comments may also be sent via e-mail to *wo_foia@fs.fed.us,* or via facsimile to (703) 605–5104.

FOR FURTHER INFORMATION CONTACT: Jon Skeels, Senior Project Manager, Forest Service Fire and Aviation Management Staff, Information Systems Project Office, 740 Simms Street, Golden, Colorado 80401, at (303) 236–0630, or via e-mail to *jskeels@fs.fed.us,* or via facsimile to (303) 236–5221.

Additional information concerning the Resource Ordering and Status System may be obtained on the Internet at *http://ross.nwcg.gov/.*

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act (5 U.S.C. 552a), the USDA Forest Service is proposing to add a new system of records entitled USDA/FS–52, Resource Ordering and Status System (ROSS) that will automate an existing manual dispatch process for incident management. The ROSS database will identify, obligate, and report the status of individuals for wildland fire protection and other incident assignments. An estimated 200,000 individual records are expected to be collected in the system and stored in an automated database located at the National Information Technology Center in Kansas City, Missouri. The ROSS database may contain personal information about individuals who participate in wildland fire protection and other incident operations.

The USDA Forest Service is the administrative agency for this system, but it may be used by agencies that are members of the interagency National Wildfire Coordinating Group (NWCG) and its cooperators.

In accordance with the Privacy Act and Office of Management and Budget (OMB) Circular A–130, the USDA has provided a report of this new system of records to the OMB and to the Congress.

A copy of the new system of records is set out at the end of this notice. The USDA invites comments on all portions of this notice. Those who submit comments should be aware that all comments, including names and addresses, when provided, are placed in the record and are available for public inspection. Individuals wishing to inspect comments should call the Forest Service Freedom of Information Act and Privacy Act Office at (703) 605–4913 to make arrangements.

Dated: December 29, 2004.

Ann M. Veneman,

Secretary.

USDA/FS–52

SYSTEM NAME:

Resource Ordering and Status System (ROSS), USDA/FS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The Resource Ordering and Status System (ROSS) database is located at the National Information Technology Center in Kansas City, MO. Hard copies of the information may be retained at the National Interagency Coordination Center, and approximately 450 Geographic Area Coordination Centers, and Dispatch Offices nation-wide from which an individual is dispatched. The addresses for these offices can be requested from Jon Skeels, Senior Project Manager, Forest Service Fire and Aviation Management Staff, Information Systems Project Office, 740 Simms Street, Golden, Colorado 80401, at (303) 236–0630, or via e-mail to *jskeels@fs.fed.us,* or via facsimilie to (303) 236–5221.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals from agencies that are members of the National Wildfire Coordination Group and its cooperators who participate in wildland fire protection and other incident activities. This includes Federal, State and municipal employees, and private individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records includes the following *required* information about individuals: the individual's first and last name, social security number or unique identification number, employment status, home unit, provider, owner, and home dispatch office. The system of records includes the following *optional* information about individuals: the individual's middle name, 24-hour phone, cell phone, fax, home phone, office phone, TDD number, pager, e-mail address, weight, gender, position(s) qualified to perform, position(s) qualified to perform as a trainee, home location, preferred jetport, fitness rating, and fitness rating expiration date. The individual's social security number is not displayed to any user of the system and is retrievable only by the database administrator in Kansas City.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

16 U.S.C. 551; 36 CFR 200.1.

PURPOSE(S):

The database automates the existing manual dispatch process for incident management and wildland protection operations. The ROSS database encompasses all business functions related to resource ordering and has the capability to identify, obligate, and report the status of all individual tactical, logistical, service, and support resources mobilized by agencies that are members of the NWCG and its cooperators.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclose information to other Federal, State, and local agencies that are members of the NWCG and its cooperators who are assisting the agency in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended pursuant to 5 U.S.C. 552a(m).

2. Disclose information to an appropriate agency, whether Federal, State, or local charged with the responsibility of investigating or prosecuting a violation of law, rule, or regulation, or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity.

3. Disclose information to the Department of Justice for the defense of suits against the United States or its officers, or for the institution of suits for the recovery of claims by the United States Department of Agriculture.

4. Disclose information to a Member of Congress from the record of an individual in response to an inquiry from the Member of Congress made at the request of that individual. In such cases, however, the Member's right to a record is no greater than that of the individual.

5. Disclose information to the National Archives and Records Administration and to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Individual data that is used for assignments can be archived from the production system into the system data warehouse. Access to the data is through data exports and reporting mechanisms. Access to personal information shall be blocked except for those specifically authorized to have access.

STORAGE:

Authorized personnel may access this data. Information is stored in a relational database hosted on computer equipment located at the National Information Technology Center in Kansas City, Missouri.

RETRIEVABILITY:

Authorized personnel at dispatch offices may retrieve information in a variety of combinations to fill resource orders or track status; however, only the database administrator in Kansas City can retrieve social security numbers.

SAFEGUARDS:

Access to the records is available only by username and password and only for those individuals with appropriate system roles. Physical access safeguards are that all records containing personal information will be maintained in secured file cabinets and secured computer rooms and/or tape libraries that can be accessed only by authorized personnel. Electronic access to records is controlled through a system of computer access identification and authorizations utilizing passwords. Access to the data is controlled by data base management system software. Any personal data transmitted over a network is encrypted.

RETENTION AND DISPOSAL:

Records are maintained subject to the Federal Records Disposal Act of 1943 (44 U.S.C. 366–380) and the Federal Records Act of 1950, and so designated in the Forest Service Records Management Handbook (FSH) 6209.11. The records are stored in an electronic data warehouse and electronic media for 7 years from the date of last action. Disposal of data will be through secure methods that sanitize the information from all media; hard copies will be shredded or burned.

SYSTEM MANAGER(S) AND ADDRESS:

Fire and Aviation Management (FAM) Director, (Mail Stop 1107), Forest Service, USDA, 1400 Independence Avenue, SW., Washington, DC 20250–0003.

NOTIFICATION PROCEDURES:

Any individual may request information regarding this system by writing to the Director of Fire and Aviation Management, Forest Service, USDA, Washington, DC. Individuals whose data is contained in the ROSS database may view their own personal record by contacting their local dispatch office.

RECORD ACCESS PROCEDURES:

Use the same procedures as for requesting Notification.

CONTESTING RECORD PROCEDURES:

Use the same procedures as for requesting Notification.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from the individual or from other in-service documents or systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–800 Filed 1–13–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–122–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations regarding the issuance of phytosanitary certificates for plants or plant products being exported to foreign countries.

DATES: We will consider all comments that we receive on or before March 15, 2005.

ADDRESSES: You may submit comments by any of the following methods:

• EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.

• Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–122–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–122–1.

• E-mail: Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 04–122–1" on the subject line.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information on regulations regarding the issuance of phytosanitary certificates for plants or plant products being exported to foreign countries, contact Parul Patel, Senior Export Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale MD 20737; (301) 734–8537. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Phytosanitary Export Certification.

OMB Number: 0579–0052.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS), among other things, provides export certification services to assure other countries that the plants and plant products they are receiving from the United States are free of plant pests specified by the receiving country.

It should be noted that our regulations do not require that we engage in export certification activities. We perform this work as a service to exporters who are shipping plants or plant products to countries that require phytosanitary certification as a condition of entry.

To request that we perform a phytosanitary inspection, an exporter must complete and submit an Application for Inspection and Certification of Plants and Plant Products for Export (PPQ Form 572).

After assessing the condition of the plants or plant products intended for export (*i.e.*, after conducting a phytosanitary inspection), an inspector (who may be an APHIS employee or a State or county plant regulatory official) will issue an internationally recognized phytosanitary certificate (PPQ Form 577), a phytosanitary certificate for reexport (PPQ Form 579), or an export certificate for processed plant products (PPQ Form 578).

These forms are critical to our ability to certify plants and plant products for export. Without them, we would be unable to conduct an export certification program.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.661286 hours per response.

Respondents: U.S. growers, shippers, and exporters; State and county plant health protection authorities.

Estimated annual number of respondents: 23,225.

Estimated annual number of responses per respondent: 39.0979.

Estimated annual number of responses: 908,050.

Estimated total annual burden on respondents: 600,481 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 10th day of January 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–802 Filed 1–13–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–124–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the Application for Inspection and Certification of Animal Byproducts.

DATES: We will consider all comments that we receive on or before March 15, 2005.

ADDRESSES: You may submit comments by any of the following methods:

• EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.

• Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–124–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–124–1.

• E-mail: Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 04–124–1" on the subject line.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information on the Application for Inspection and Certification of Animal Byproducts, contact Dr. Terry Morris, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale MD 20737–1231; (301) 734–5259. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Application for Inspection and Certification of Animal Byproducts.

OMB Number: 0579–0008.

Type of Request: Extension of approval of an information collection.

Abstract: U.S. exporters who wish to export certain animal byproducts to other countries must, in some instances, furnish the importing country with certificates that have been issued or endorsed by Veterinary Services (VS) of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture. VS Form 16–24, Application for Inspection and Certification of Animal Byproducts, is one such certificate. The form also serves as a written agreement under which the exporter pays for services we render in connection with documenting the certification statements required by the importing country.

The exporter provides VS with the information requested on VS Form 16–24, including a detailed description of the processing techniques that are used to make the product eligible to enter the importing country. VS uses this information to monitor and certify the processing techniques. After monitoring the processing technique, VS issues or endorses the certificate attesting to the class and quality of the products and that the products have been processed according to the conditions and requirements of the importing country.

Without this certification, the importing country would not accept the product, and the exporter would be unable to conduct business with that country. The use of VS Form 16–24 has no impact on animal disease prevention or eradication activities in the United States. The form was developed to meet the importation requirements of other countries.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.5 hour per response.

Respondents: U.S. exporters of animal byproducts.

Estimated annual number of respondents: 10.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 10.

Estimated total annual burden on respondents: 5 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 10th day of January 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–803 Filed 1–13–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; National Woodland Owner Survey

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the USDA Forest Service is seeking comments from all interested individuals and organizations on a previously approved information collection, the National Woodland Owner Survey, that the Forest Service is seeking to reinstate. This information collection will help the Forest Service and others assess the current state of the nation's forest resources, identify opportunities and constraints of private forest-land owners, and facilitate planning and implementation of forest policies and programs. Information will be collected from private forest-land owners in the United States.

DATES: Comments must be received in writing on or before March 15, 2005 to be assured of consideration. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to National Woodland Owner Survey, Attn: Brett Butler, Northeastern Research Station, Forest Service, USDA, 11 Campus Boulevard, Suite 200, Newtown Square, PA 19073.

Comments also may be submitted via facsimile to (610) 557–4250 or by e-mail to *nwos@fs.fed.us.*

The public may inspect comments received at 11 Campus Boulevard, Suite 200, Room 2040, Newtown Square, PA. Visitors are encouraged to call ahead to (610) 557–4002 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Brett Butler, Northeastern Research Station, (610) 557–4045. Individuals who use telecommunication devices for the deaf (TDD) should call the Federal Information Relay Service (FIRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: National Woodland Owner Survey.

OMB Number: 0596–0078.

Expiration Date of Approval: December 31, 2004.

Type of Request: Reinstatement.

Abstract: The National Woodland Owner Survey (NWOS) will collect data to characterize and increase our understanding of private forest-land owners, the critical link between forests and society, in the United States; to determine the opportunities and constraints confronting private forest-land owners; and to facilitate the planning and implementation of forest policies and programs.

The Forest and Range Land Renewable Resources Planning Act of 1974 and the Forest and Range Land Renewable Resources Act of 1978 provide the Forest Service with the legal authority to conduct the NWOS. These acts assign responsibility for the inventory and assessment of forest and related renewable resources to the Forest Service. Additionally, the importance of an ownership survey in this inventory and assessment process is highlighted in Section 253(c) of the Agricultural Research, Extension, and Education Reform Act of 1998, and the recommendations of the Second Blue Ribbon Panel on the Forest Inventory and Analysis Program.

The Forest Service's Forest Inventory and Analysis (FIA) program has conducted the NWOS on a periodic basis since 1978. The NWOS collects information to help answer questions related to the characteristics of the landholdings and landowners, ownership objectives, the supply of timber and non-timber products, forest management practices, delivery of education and financial assistance, and the concerns/constraints perceived by the landowners. The information collected provides widely cited benchmarks of the private forest-land owners in the United States. These results have been used to assess the sustainability of forest resources at national, regional, and state levels; to implement and assess the success of forest-land owner assistance programs; and to answer a variety of questions with topics ranging from fragmentation to the economics of private timber production.

The respondents will be a statistically selected group of individuals, families, American Indian tribes, partnerships, corporations, nonprofit organizations, clubs, and other private groups that own forest land in the United States. This group will be selected by using public records to collect the names and addresses from a systematic set of points identified as forest land from across the country. The number of forest-land owners to be contacted in each state will be determined by the number of private forest-land owners and the sampling intensity.

Respondents will be asked to answer questions related to (1) The general characteristics of their forest land, (2) their reasons for owning it, (3) how they use and manage their forest land, (4) their concerns related to their forest land, (5) their intentions for the future of their forest land, and (6) demographic information.

As in past information collections, respondents will be asked to answer questions related to the characteristics of their landholdings, their reasons for owning forest-land, the supply of timber and non-timber products, forest management practices, delivery of education and financial assistance, the concerns/constraints perceived by the landowners, their intentions for their forest-land, and general demographics.

The information collection will collect data using a mixed-mode survey technique that will involve a self-administered mail questionnaire and telephone interviews. First, a prenotice letter or postcard will be sent to all potential respondents describing this information collection and why the information is being collected and why their assistance is needed. Second, a questionnaire with a cover letter will be mailed to the potential respondents. The cover letter will reiterate the purpose and importance of this information collection and provide the respondents with legally required information. Third, a reminder will be mailed to thank the respondents and encourage the non-respondents to respond. The last stage of the mail portion of the information collection will be mailing a second questionnaire and cover letter to those individuals who have yet to respond. Telephone interviews will be used for follow-up surveys of the non-respondents to maximize our response rate.

The Forest Service's Forest Inventory and Analysis Program (FIA) will administer the mail portion of this information collection. The telephone interview portion of the information collection will be implemented by the National Agricultural Statistics Service, U.S. Department of Agriculture. Data will be compiled and edited by FIA personnel.

FIA personnel will analyze the collected data. At a minimum, national and regional reports of the data will be distributed through print and electronic media. In addition, the data will be made available to the public. The publicly released data will be formatted to ensure the anonymity of the respondents.

This information collection will generate reliable and up-to-date information on private forest-land owners in the United States. The results of these efforts will provide more reliable information on this important and very dynamic segment of the United States population and facilitate more complete assessments of the country's forest resources and improved planning and implementation of forestry programs.

Estimate of Annual Burden: 15 minutes.

Type of Respondents: Individuals, families, American Indian tribes, partnerships, corporations, nonprofit organizations, clubs, and other private groups that own forest land.

Estimated Annual Number of Respondents: 10,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,500 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Dated: January 3, 2005.

Ann M. Bartuska,

Deputy Chief for Research & Development.

[FR Doc. 05–776 Filed 1–13–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Rocky Mountain Region; Pikes Peak Ranger District, Pike National Forest, El Paso County, CO

AGENCY: Forest Service, USDA.

ACTION: Notice of availability of Draft Gold Camp Road Plan/Environmental Impact Statement.

SUMMARY: The Forest Service has prepared a Draft Plan/Environmental

Impact Statement (EIS), which is available for public review. The Draft Plan/EIS analyzes the potential environmental impacts that may result from various management options for an 8.5-mile segment of a Forest Service road that has been closed for safety reasons since 1988. The objective of the management plan is to best accommodate public use and access to National Forest lands and nearby private in-holdings while maintaining public safety and the historic character of the road. The analysis is intended to accomplish the following: Inform the public of the proposed action and alternatives; address public comment received during the scoping period; disclose the direct, indirect, and cumulative environmental effects of the proposed actions and each of the alternatives; and indicate any irreversible commitment of resources that would result from implementation of the proposed action. The Forest Service's preferred alternative (Alternative E) is to restore and reopen a collapsed railroad tunnel and reopen the closed section of Gold Camp Road to one-way traffic. There would continue to be seasonal closure of the road from November 1 to April 1.

The Forest Service invites the public to comment on the Draft Plan/EIS. All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's National Environmental Policy Act regulations (40 CFR 1506.6(f)). Our practice is to make comments available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If a respondent wishes us to withhold his/her name and/or address, this must be stated prominently at the beginning of the comment.

Comment Period: Comments may be submitted in writing, orally, or through electronic means before March 15, 2005. Electronic comments may be submitted to *http://www.fs.fed.us/r2/psicc/pp* and follow the Gold Camp Road link. Acceptable formats for attachments are MS Word, text, PDF, or RTF. Written comments through the mail should be directed to: Gold Camp Road Project, Pikes Peak Ranger District, 601 S. Weber Street, Colorado Springs, CO 80903. In order to have administrative rights, you must provide substantive comments during this formal comment period. A Final Plan/Environmental Impact Statement will then be prepared and provided to the public for review.

Requesting Further Information: Individuals wishing copies of this Draft Plan/EIS for review should contact: Frank Landis, Supervisory Outdoor Recreation Planner, Pike National Forest, Pikes Peak Ranger District, 601 S. Weber St., Colorado Springs, CO 80903. The Draft Plan/EIS is also available on the Internet at *http://www.fs.fed.us/r2/psicc/projects/gold_camp/* and at the Colorado libraries listed below:

Penrose Public Library, 20 N. Cascade Ave., Colorado Springs, CO 80903, 719–531–6333.

East Library, 5550 N. Union Blvd., Colorado Springs, CO 80918, 719–531–6333.

FOR FURTHER INFORMATION CONTACT: Frank Landis at the address listed above or by telephone at 719–477–4203.

Public Open Houses: Public open houses will be held during the comment period to solicit oral comments from the public. The dates and locations will be:

Date: Tuesday, February 15, 2005.

Time: 4 to 8 p.m.

Place: Cheyenne Mountain High School, 1200 Cresta Road, Colorado Springs, Colorado.

Date: Thursday, February 17, 2005.

Time: 5 to 7 p.m.

Place: City Hall, Bennett Avenue, Cripple Creek, Colorado.

SUPPLEMENTARY INFORMATION: On June 30, 2004, a notice was published in the **Federal Register** (69 FR 39401) announcing that the Forest Service intended to prepare an Environmental Impact Statement addressing the possible Federal action of preparing a plan for Gold Camp Road and inviting comments on the scope of the Environmental Impact Statement. Comments were received from April 12 through August 17, 2004 and were considered and are reflected in the Draft Plan/EIS made available for comment through this notice. This notice is provided pursuant to Forest Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6).

Dated: January 6, 2005.

Robert J. Leaverton,

Forest Supervisor.

[FR Doc. 05–718 Filed 1–13–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Washington, DC, February 8–10, 2005. The purpose of the meeting is to discuss emerging issues in urban and community forestry.

DATES: The meeting will be held February 8–10, 2005.

ADDRESSES: The meeting will be held at the Hotel Monaco, 700 F Street NW., Washington, DC 20004. Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, P.O. Box 1003, Sugarloaf, CA 92386–1003. Individuals may fax their names and proposed agenda items to (909) 585–9527.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Urban and Community Forestry Staff, (909) 585–9268.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members; however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided.

Dated: December 27, 2004.

Robin L. Thompson,

Associate Deputy Chief, S&PF.

[FR Doc. 05–777 Filed 1–13–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Foreign-Trade Zone (FTZ) Application.

Agency Form Number: N/A.

OMB Number: 0625–0139.

Type of Request: Regular Submission.

Estimated Burden: 9,180 hours.

Estimated Number of Applicants: 145.

Est. Avg. Hours Per Application: 20–120 hours (depending on the type of application).

Needs and Uses: The Foreign Trade Zones Application is the vehicle by which individual firms or organizations apply for foreign-trade zone (FTZ) status, for subzone status, or for expansion of an existing zone. The FTZ Act and Regulations require that an application with a description of the proposed project be made to the FTZ Board (19 U.S.C. 81b and 81f; 15 CFR 400.24–26) before a license can be issued or a zone can be expanded. The Act and Regulations require that applications contain detailed information on facilities, financing, operational plans, proposed manufacturing operations, need, and economic impact. Manufacturing activity in zones, which is primarily conducted in subzones, can involve issues related to domestic industry and trade policy impact. Such applications must include specific information on the Customs-tariff related savings that result from zone procedures and the economic consequences of permitting such savings. The FTZ Board needs complete and accurate information on the proposed operation and its economic effects because the Act and Regulations authorize the Board to restrict or prohibit operations that are detrimental to the public interest.

Affected Public: State, local, or tribal governments or not-for-profit institutions applying for foreign trade zone status, for subzone status, or for modification of existing status.

Frequency: On occasion.

Respondent's Obligation: Required to obtain a license, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution, NW., Washington, DC 20230. E-mail: *dHynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent via e-mail to *David_Rotsker@omb.eop.gov* or fax (202) 395–7285, within 30 days of publication of this **Federal Register** notice.

Dated: January 10, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–787 Filed 1–13–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Submission for Office of Management and Budget (OMB) Review; Comment Request

The Department of Commerce (DOC) has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis (BEA), DOC.

Title: Expenditures Incurred by Recipients of Biomedical Research Awards from the National Institutes of Health (NIH).

Type of Request: New information collection.

Burden: 1,176 hours.

Number of Respondents: 105.

Average Hours Per Response: 11.2 hours.

Needs and Uses: The survey to obtain the distribution of expenditures incurred by recipients of biomedical research awards from the National Institutes of Health Research (NIH) will provide information on how the NIH award amounts are expended across several major categories. This information, along with wage and price data from other published sources, will be used to generate the Biomedical Research and Developmental Price Index (BRDPI). The Bureau of Economic Analysis (BEA) of the Department of Commerce develops this index for the National Institutes of Health (NIH) under reimbursable contract. The BRDPI is an index of prices paid for the labor, supplies, equipment, and other inputs required to perform the biomedical research the NIH supports in its intramural laboratories and through its awards to extramural organizations. The BRDPI is a vital tool for planning the NIH research budget and analyzing future NIH programs. A survey of award recipient entities is currently the only means for updating the expenditure categories that are used to prepare the BRDPI.

The information provided by the respondents will be held confidential and be used for exclusively statistical purposes. This pledge of confidentiality is made under the Confidential Information Protection provisions of Title V, Subtitle A, Public Law 107–347. Title V is the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA). Responses will be kept confidential and will not be disclosed in identifiable form to anyone other than employees or agents of BEA without your consent. By law, each employee as well as each agent is subject to a jail term of up to 5 years, a fine of up to $250,000, or both if he or she makes public ANY identifiable information that you report about your business or institution.

A survey questionnaire with a cover letter that includes a brief description of, and rationale for, the survey will be sent to potential respondents by the first week of June of each year. A report of the respondent's expenditures of the NIH award amounts, following the proposed format for expenditure categories attached to the survey's cover letter, will be requested to be returned no later than 60 days after mailing. Survey respondents will be selected on the basis of award levels, which determine the weight of the respondent in the biomedical research and development price index. Potential respondents will include (1) the top 100 organizations in total awards, which account for about 74 percent of total awards; (2) the top 40 organizations that are not primarily in the "Research and Development (R & D) contracts" category, and which account for about 4 percent of total awards; and, (3) the top 10 organizations that are primarily in the "R&D contracts" category, and which account for less than one percent of total awards.

Affected Public: Businesses or other for-profit institutions, and not-for-profit institutions.

Frequency: Annual.

Respondent's Obligations: Voluntary.

Legal Authority: 45 CFR Subpart C, Post-Award Requirements, §§ 74.21 and 74.53; 42 U.S.C. 282; Economy Act (31 U.S.C. 1535 and 1536); 15 U.S.C. 1525; and 15 U.S.C. 1527a.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

You may obtain copies of the above information collection proposal by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 6625, 14th Street and Constitution Avenue, NW., Washington DC 20230, or via the Internet at *dHynek@doc.gov*, ((202) 482–0266).

Send comments on the proposed information collection within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, via the Internet at *pbugg@omb.eop.gov* or by fax (202) 395–7245.

Dated: January 10, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–788 Filed 1–13–05; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, In Part: Certain Corrosion-Resistant Carbon Steel Flat Products From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 14, 2005.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett, George McMahon, or James Terpstra, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4161, (202) 482–1167, or (202) 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1993, the Department of Commerce (the Department) published an antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. *See Antidumping Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products From Japan*, 58 FR 44163 (August 19, 1993). On October 5, 2004, SteelSummit International, Inc. (SteelSummit), an importer of certain corrosion-resistant carbon steel flat products (CORE) from Japan and an interested party in this proceeding, requested that the Department revoke the antidumping duty order on CORE from Japan with respect to nickel-plated steel foil through the initiation of a changed circumstances review.

According to SteelSummit, revocation with respect to nickel-plated steel foil is warranted because there is no longer any domestic interest in the continuation of the order with respect to the specified nickel-plated steel foil. The Department received letters from U.S. Steel Group (U.S. Steel) and International Steel Group (ISG) on November 1, 2004, and November 16, 2004, respectively, attesting to the lack of interest by the domestic industry regarding continuation of the order with respect to the nickel-plated steel foil specified in SteelSummit's changed circumstances request.

In response to SteelSummit's request and based on the information provided by U.S. Steel and ISG, on November 26, 2004, the Department simultaneously initiated a changed circumstances review and issued a notice of preliminary intent to revoke the order, in part (69 FR 68876). The Department provided interested parties an opportunity to comment on our preliminary intent to revoke the order, in part, with respect to nickel-plated steel foil. We did not receive any comments. Therefore, the final results of review are not different from the preliminary results and we are revoking the order, in part, with respect to certain nickel-plated steel foil as described in the "Scope of the Order" section of this notice.

Scope of the Order

The products subject to this order include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090.

Included in the order are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges.

Excluded from the scope of the order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from the scope of the order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio. *See Antidumping Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products From Japan*, 58 FR 44163 (August 19, 1993).

Also excluded from the scope of this order are imports of certain corrosion-resistant carbon steel flat products meeting the following specifications: Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, and finally a layer consisting of silicate. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 62 FR 66848 (December 22, 1997).

Also excluded from the scope of this order are imports of subject merchandise meeting all of the following criteria: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 64 FR 14861 (March 29, 1999).

Also excluded from the scope of this order are: (1) Carbon steel flat products measuring 1.84 mm in thickness and 43.6 mm or 16.1 mm in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys; and (2) carbon steel flat products measuring 0.97 mm in thickness and 20 mm in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for bearing and bushing alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE, 3% to 5% molybdenum disulfide and less than 2% other materials. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 64 FR 57032 (October 22, 1999).

Also excluded from the scope of the order are imports of doctor blades meeting the following specifications: Carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 millimeters (0.006 inches), a width between 31.75 millimeters (1.25 inches) and 50.80 millimeters (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900–990 HV; the carbon steel coil or strip consists of the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to 0.03% of phosphorous; less than or equal to 0.006% of sulfur; other elements representing 0.24%; and the remainder of iron. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 65 FR 53983 (September 6, 2000).

Also excluded from the scope of the order are imports of carbon steel flat products meeting the following specifications: Carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium; less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 66 FR 8778 (February 2, 2001).

Also excluded from the scope of the order are carbon steel flat products meeting the following specifications: (1) Carbon steel flat products measuring 0.975 millimeters in thickness and 8.8 millimeters in width consisting of carbon steel coil (SAE 1012) clad with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9%–11% tin, 9%–11% lead, maximum 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 13%–17% carbon, 13%–17% aromatic polyester, with a balance (approx. 66%–74%) of polytetrafluorethylene (PTFE); and (2) carbon steel flat products measuring 1.02 millimeters in thickness and 10.7 millimeters in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9%–11% tin, 9%–11% lead, less than 0.35% iron, and meeting the requirements of SAE standard 792 for bearing and bushing alloys, the second layer consisting of 45%–55% lead, 3%–5% molybdenum disulfide, with a balance (approx. 40%–52%) of polytetrafluorethylene (PTFE). *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 66 FR 15075 (March 15, 2001).

Also excluded from this order are products meeting the following specifications: Carbon steel coil or strip, measuring 1.93 millimeters or 2.75 millimeters (0.076 inches or 0.108 inches) in thickness, 87.3 millimeters or 99 millimeters (3.437 inches or 3.900 inches) in width, with a low carbon steel back comprised of: Carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 0.3% antimony, 2.5% silicon, 1% maximum total other (including iron), and remainder aluminum. Also excluded from this order are products meeting the following specifications: Carbon steel coil or strip, clad with aluminum, measuring 1.75 millimeters (0.069 inches) in thickness, 89 millimeters or 94 millimeters (3.500 inches or 3.700 inches) in width, with a low carbon steel back comprised of: Carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 2.5% silicon, 0.3% antimony, 1% maximum total other (including iron), and remainder aluminum. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 66 FR 20967 (April 26, 2001).

Also excluded from this order are products meeting the following specifications: Carbon steel coil or strip, measuring a minimum of and including 1.10mm to a maximum of and including 4.90mm in overall thickness, a minimum of and including 76.00mm to a maximum of and including 250.00mm in overall width, with a low carbon steel back comprised of: Carbon under 0.10%, manganese under 0.40%, phosphorous under 0.04%, sulfur under 0.05%, and silicon under 0.05%; clad with aluminum alloy comprised of: Under 2.51% copper, under 15.10% tin, and remainder aluminum as listed on the mill specification sheet. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 67 FR 7356 (February 19, 2002).

Also excluded from this order are products meeting the following specifications: (1) Diffusion annealed, non-alloy nickel-plated carbon products, with a substrate of cold-rolled battery grade sheet ("CRBG") with both sides of the CRBG initially electrolytically plated with pure, unalloyed nickel and subsequently annealed to create a diffusion between the nickel and iron substrate, with the nickel plated coating having a thickness of 0–5 microns per side with one side equaling at least 2 microns; and with the nickel carbon sheet having a thickness of from 0.004" (0.10mm) to 0.030" (0.762mm) and conforming to the following chemical specifications (%): C <= 0.08; Mn <= 0.45; P <= 0.02; S <= 0.02; Al <= 0.15; and Si <= 0.10; and the following physical specifications:

Tensile = 65 KSI maximum; Yield = 32–55 KSI; Elongation = 18% minimum (aim 34%); Hardness = 85–150 Vickers; Grain Type = Equiaxed or Pancake; Grain Size (ASTM) = 7–12; Delta r value = aim less than +/-0.2; Lankford value = <== 1.2.; and (2) next generation diffusion-annealed nickel plate meeting the following specifications: (a) Nickel-graphite plated, diffusion annealed, tin-nickel plated carbon products, with a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed tin-nickel plated carbon steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of mixture of natural nickel and graphite then electrolytically plated on the top side of the strip of the nickel-tin alloy; having a coating thickness: Top side: nickel-graphite, tin-nickel layer <== 1.0 micrometers; tin layer only <== 0.05 micrometers, nickel-graphite layer only <= 0.2 micrometers, and bottom side: Nickel layer <== 1.0 micrometers; (b) nickel-graphite, diffusion annealed, nickel plated carbon products, having a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; with both sides of the cold rolled base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion between the nickel and the iron substrate; with an additional layer of natural nickel-graphite then electrolytically plated on the top side of the strip of the nickel plated steel strip; with the nickel-graphite, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having a coating thickness: top side: nickel-graphite, tin-nickel layer <== 1.0 micrometers; nickel-graphite layer <== 0.5 micrometers; bottom side: nickel layer <== 1.0 micrometers; (c) diffusion annealed nickel-graphite plated products, which are cold-rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; having the bottom side of the base metal first electrolytically plated with natural nickel, and the top side of the strip then plated with a nickel-graphite composition; with the strip then annealed to create a diffusion of the nickel-graphite and the iron substrate on the bottom side; with the nickel-graphite and nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having coating thickness: top side: nickel-graphite layer <== 1.0 micrometers; bottom side: nickel layer <== 1.0 micrometers; (d) nickel-phosphorous plated diffusion annealed nickel plated carbon product, having a natural composition mixture of nickel and phosphorus electrolytically plated to the top side of a diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion of the nickel and iron substrate; another layer of the natural nickel-phosphorous then electrolytically plated on the top side of the nickel plated steel strip; with the nickel-phosphorous, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-phosphorous, nickel layer <== 1.0 micrometers; nickel-phosphorous layer <== 0.1 micrometers; bottom side : nickel layer <== 1.0 micrometers; (e) diffusion annealed, tin-nickel plated products, electrolytically plated with natural nickel to the top side of a diffusion annealed tin-nickel plated cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the cold rolled strip initially electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of natural nickel then electrolytically plated on the top side of the strip of the nickel-tin alloy; sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having coating thickness: Top side: nickel-tin-nickel combination layer <== 1.0 micrometers; tin layer only <== 0.05 micrometers; bottom side: nickel layer <== 1.0 micrometers; and (f) tin mill products for battery containers, tin and nickel plated on a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel; then annealed to create a diffusion of the nickel and iron substrate; then an additional layer of natural tin electrolytically plated on the top side; and again annealed to create a diffusion of the tin and nickel alloys; with the tin-nickel, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-tin layer <== 1 micrometer; tin layer alone <== 0.05 micrometers; bottom side: nickel layer <== 1.0 micrometer. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order,* 67 FR 47768 (July 22, 2002).

Also excluded from this order are products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of phosphate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of phosphate, and finally a layer consisting of silicate. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order,* 67 FR 57208 (September 9, 2002).

Also excluded from this order are products meeting the following specifications: (1) Flat-rolled products (provided for in HTSUS subheading 7210.49.00), other than of high-strength steel, known as "ASE Iron Flash" and either: (A) Having a base layer of zinc-based zinc-iron alloy applied by hot-dipping and a surface layer of iron-zinc alloy applied by electrolytic process, the weight of the coating and plating not over 40 percent by weight of zinc; or (B) two-layer-coated corrosion-resistant steel with a coating composed of (a) a base coating layer of zinc-based zinc-iron alloy by hot-dip galvanizing process, and (b) a surface coating layer of iron-zinc alloy by electro-galvanizing process, having an effective amount of zinc up to 40 percent by weight, and (2) corrosion resistant continuously annealed flat-rolled products, continuous cast, the foregoing with chemical composition (percent by weight): Carbon not over 0.06 percent by weight, manganese 0.20 or more but not over 0.40, phosphorus not over 0.02, sulfur not over 0.023, silicon not over 0.03, aluminum 0.03 or more but not over 0.08, arsenic not over 0.02, copper not over 0.08 and nitrogen 0.003 or more but not over 0.008; and meeting the characteristics described below: (A) Products with one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a two-layer coating composed of a base nickel-iron-diffused coating layer and a surface coating layer of annealed and softened pure nickel, with total coating thickness for both layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with scanning electron microscope (SEM) not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (B) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a four-layer coating composed of a base nickel-iron-diffused coating layer; with an inner middle coating layer of annealed and softened pure nickel, an outer middle surface coating layer of hard nickel and a topmost nickel-phosphorus-plated layer; with combined coating thickness for the four layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (C) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a three-layer coating composed of a base nickel-iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, luster-agent-added nickel which is not heat-treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; or (D) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a three-layer coating composed of a base nickel-iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, pure nickel which is not heat-treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order,* 68 FR 19970 (April 23, 2003).

As a result of this review, also excluded from the scope of this order is merchandise meeting the following specifications:

Property	Specification
Base metal	Aluminum Killed, Continuous Cast, Carbon Steel SAE 1008.
Chemical composition	C: 0.08% max. Si: 0.03% max. Mn: 0.40% max. P: 0.020% max. S: 0.020% max.
Nominal thickness	0.054 millimeters.
Thickness tolerance	Minimum 0.0513 millimeters. Maximum 0.0567 millimeters.
Width	600 millimeters or greater.
Nickel plate	Min. 2.45 microns per side.

Final Results of Review and Revocation of Antidumping Duty Order, in Part

Pursuant to sections 751(d)(1) and 782(h)(2) of the Tariff Act of 1930, as amended (the Act), the Department may revoke an antidumping or countervailing duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review.

In this case, based on the information provided by SteelSummit, and comments from U.S. Steel and ISG, the Department preliminarily found that the continued relief provided by the order with respect to nickel-plated steel foil from Japan is no longer of interest to the domestic industry. We did not receive any comments. Therefore, the Department is revoking the order on CORE from Japan with regard to the products that meet the specifications detailed above.

We will instruct U.S. Customs and Border Protection (CBP) to liquidate without regard to antidumping duties all unliquidated entries of nickel-plated steel foil not subject to final results of an administrative review. The Department will further instruct CBP to refund with interest any estimated antidumping duties collected with respect to unliquidated entries of nickel-plated steel foil entered, or withdrawn from warehouse for consumption on or after the publication date of the final results of this changed circumstances review, in accordance with section 778 of the Act and 19 CFR 351.222(g)(4).

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and section 351.216(e) and 351.222(g) of the Department's regulations.

Dated: January 10, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–148 Filed 1–13–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–829]

Stainless Steel Bar from Italy; Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 14, 2005.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–4987.

Background

On May 27, 2004, the Department of Commerce ("the Department") published in the **Federal Register** the notice of initiation of the administrative review of the antidumping duty order on stainless steel bar from Italy, covering the period March 1, 2003, through February 29, 2004 (69 FR 30282). On November 17, 2004, the Department published a notice of extension of time limit for the preliminary results of this antidumping duty administrative review until February 1, 2005.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930 ("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 antidumping duty order for which a review is requested and issue the final results within 120 days after the date on which the preliminary results are published. However, if the Department finds 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.

Due to the complex verification and affiliation issues in this case, the Department finds that it is not practicable to complete the preliminary results in this administrative review of stainless steel bar from Italy by February 1, 2005. Therefore, the Department is extending the time limit for completion of the preliminary results until March 31, 2005, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 10, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–147 Filed 1–13–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 041119323–4323–01]

Radiation Detection Instrument Evaluations

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: On behalf of the Department of Homeland Security (DHS), the National Institute of Standards and Technology (NIST) is coordinating performance tests, supporting the ANSI N42.32, N42.33, N42.34 and N42.35 standards, of commercially available equipment for the DHS by various National laboratories. The tests are designed to determine the effectiveness of radiation detection instruments that may be used by first responders in a radiological incident. The participating National laboratories are: Oak Ridge National Laboratory (ORNL), Pacific Northwest National Laboratory (PNNL), Los Alamos National Laboratory (LANL) and Lawrence Livermore National Laboratory (LLNL).

DATES: Manufacturers who wish to participate in the program must submit an executed Letter of Understanding by February 14, 2005, 5 p.m. Eastern Standard Time.

ADDRESSES: Letters of Understanding may be obtained from and should be submitted to Dr. Leticia Pibida, National Institute of Standards and Technology, Physics Laboratory, Ionizing Radiation Division, 100 Bureau Drive, Mail Stop 8462, Gaithersburg, MD 20899–8462. Letters of Understanding may be faxed to: Dr. Leticia Pibida at (301) 926–7416.

FOR FURTHER INFORMATION CONTACT: For shipping and further information, you may telephone Dr. Leticia Pibida at (301) 975–5538 or Dr. Michael Unterweger at (301) 975–5536 or e-mail: *leticia.pibida@nist.gov* or *michael.unterweger@nist.gov.*

SUPPLEMENTARY INFORMATION: On behalf of the Department of Homeland Security, the National Institute of Standards and Technology (NIST) is coordinating performance tests of commercially available equipment based on the ANSI N42.32, N42.33, N42.34 and N42.35 standards as well as on the test and evaluation protocols for the Department of Homeland Security (DHS) by various National laboratories. The tests are designed to determine the effectiveness of radiation detection instruments that may be used by first responders in a radiological incident. The participating National laboratories are: Oak Ridge National Laboratory (ORNL), Pacific Northwest National Laboratory (PNNL), Los Alamos National Laboratory (LANL) and Lawrence Livermore National Laboratory (LLNL).

Interested manufacturers should contact NIST at the address given above. NIST will supply a Letter of Understanding, which the manufacturer must execute and send to NIST. NIST will then assign the manufacturer's equipment to the National laboratory conducting the testing for that type of device and will provide the manufacturer with shipping instructions for their equipment. All equipment tested under this program must meet the minimum specifications stated in ANSI Standards N42.32 "Performance Criteria for Alarming Personal Radiation Detectors for Homeland Security," N42.33 "Portable Radiation Detection Instrumentation for Homeland Security," N42.34 "Performance Criteria for Hand-held Instruments for the Detection and Identification of Radionuclides," and N42.35 "Evaluation and Performance of Radiation Detection Portal Monitors for Use in Homeland Security," as detailed below.

The instruments provided will be tested according to the provisions in the standards and will be returned to the manufacturer after the tests by the National laboratory that performed the tests. Manufacturers should be aware that some of the testing protocols may damage or destroy the equipment. At the conclusion of the testing, the equipment will be returned to the Manufacturer, c.o.d., in the condition the equipment is in at the conclusion of the testing. Neither NIST, the Department of Homeland Security, nor any National laboratory will be responsible for the condition of the equipment when returned to the manufacturer. As a condition for participating in this testing program, each manufacturer must agree in advance to hold harmless all of these parties for the condition of the equipment.

The information acquired during the tests will be compiled by the Department of Homeland Security (DHS) and will be copied to the manufacturer for their instruments. A summary of the results of equipment testing will be made publicly available. Manufacturers who do not want the results of the testing of their equipment to be made publicly available should not participate in this program.

Participating manufacturers must provide three units of each instrument model. For portal monitors, two units of each instrument model are required. Manufacturers will pay all shipping costs, but there is no cost to the manufacturer for the testing. For the results to be valid two out of three submitted instruments per model must be operational for all tests. No modifications to the instruments are permitted during the testing process. Only calibrated instruments will be accepted for the testing program.

The types of instruments and preliminary specifications for each type are as follows:

Type A Instruments

Alarming personal radiation devices designed to detect low levels of radiation and alert the wearer with a visible, audible or vibratory alarm. They are not to be electronic dosimeters, radiation survey meters or other instruments designed for health physics use. If submitted for testing under this category, electronic dosimeters, survey meters, and similar health physics instruments will be returned to the manufacturer without testing.

Preliminary Specifications for Type A

- Personal sized (less than 20×10×5 cm and less than 400 g).
- Capable of detecting photon exposure rates from approximately 10 to 3000 micro R/h.
- Capable of detecting photon energies from approximately 10 to 1000 keV.
- Capable of photon exposure rate measurements with ±30% accuracy.
- Audible, visible and/or vibratory alarm less than 2 seconds after detection.
- Optional response to neutrons.
- Mean time to false alarm greater than 1 hour.
- Capable of normal operation over temperature range from −20 °C to +50 °C and humidity from 40% to 93%.
- Unaffected by RF from 20 MHz to 1000 MHz, magnetic fields of 1 mT and electrostatic discharges of 6–8 kV.

Type B Instruments

Portable radiation detection instrumentation equipped with gamma- and x-ray detectors. The instruments shall be able to determine exposure rate and be equipped with alarming capabilities. The survey meters should be submitted either as a Type 1 or a Type 2 instrument according to standard N42.33 specifications. If submitted for testing under this category, electronic dosimeters, and personal radiation devices instruments will be returned to the manufacturer without testing.

Preliminary Specifications for Type B

Type 1: Detection and Interdiction

- Storage space less than 1 ft^3 excluding extendable probes.
- Weight less than 10 pounds (4.55 kg).
- Outer instrument case shall be rigid, shock resistant, splash proof and dust resistant.
- Capable of detecting photon exposure rates from approximately 1 to 1000 micro R/h (that can be achieved with several probes).

Type 2: Hazard Assessment

- Storage space less than 0.12^3 excluding extendable probes.
- Weight less than 6 pounds (2.7 kg).
- Outer instrument case shall be rigid, shockproof, waterproof (blowing rain) and dust proof.
- Capable of detecting photon exposure rates from approximately 100 micro R/h to 1000 R/h (that can be achieved with several probes).

For Both Type 1 and 2

- Displays and alarm indications shall be oriented towards the user.
- The instrument case shall be constructed of materials that provide easy decontamination for radioactive materials and other potential surface contaminants.
- Capable of photon exposure rate measurements with ±30% accuracy.
- Instruments shall allow the user to set exposure rate alarm levels.
- Instruments shall indicate at least the following faults: low battery supply; detector failure; and high exposure rate level.
- Batteries shall provide at least 12 hours of continuous use under standard test conditions, *i.e.*, the response of the instrument shall remain unchanged:
- Response time to increase or decrease in exposure rate display (indication of less than 20% from actual exposure rate value) shall be within 4 seconds.
- Instruments readout shall remain "off-scale" for exposure rates greater than the maximum value of the instrument range
- Capable of normal operation over temperature range from −20 °C to +50 °C and humidity from 40% to 93%.
- Instruments shall be unaffected by RF interference from 20 MHz to 1000 MHz, magnetic fields of 1 mT, and electrostatic discharges of 6–8 kV.

Type C Instruments

Hand-held instruments for the detection and identification of radionuclides. These instruments shall provide gamma exposure or dose rate measurements, radionuclide identification, and be equipped with indication of neutron radiation. If submitted for testing under this category, instruments that are not equipped with gamma-ray and neutron detectors will be returned to the manufacturer without testing.

Preliminary Specifications for Type C

- Equipped with neutron detector.
- Capable of detecting photon energies from approximately 25 to 3000 keV.
- The instrument shall have the ability to transfer data to an external device, such as a computer.
- The instrument shall include: a display that is easily readable over the required temperature range and under different lighting conditions, controls that are user-friendly for routine operation, a menu structure that is simple and easy to be followed intuitively, and a user-definable radionuclide library with access via the restricted mode. The instrument shall have at least two different operating modes, one mode for routine operation and the other as a restricted (password protected) mode. The instrument shall be capable of operation if the user is wearing gloves or if the instrument is enclosed in anti-contamination protection (*e.g.*, plastic bag).
- Instruments shall be designed to prevent water ingress from rain, condensing moisture, or high humidity.
- Batteries shall be such that they provide operation for a minimum of 2 hours of continuous use.
- Capable of normal operation over temperature range from − 20 °C to +50 °C and humidity from 40% to 93%.
- Unaffected by RF from 20 MHz to 1000 MHz, magnetic fields of 1 mT and electrostatic discharges of 6–8 kV.

Type D Instruments

Fixed or Transportable portal monitor systems. These types of monitors include fixed or transportable systems used for detection of radioactive materials concealed in people, packages and vehicles (including rail vehicles). These systems shall be capable of detecting gamma-rays emitted from radioactive sources; neutron detection is optional for all models except for vehicle monitoring. If portal monitors for vehicles are submitted for testing without neutron detection capabilities, instruments will be returned to the manufacturer without testing.

Preliminary Specifications for Type D

- Pedestrian, vehicles, rail vehicles and package monitors equipped with gamma-ray detection are accepted for testing.
- Vehicle monitors shall be equipped with neutron detectors.
- Instruments shall communicate, save and store time history data for later retrieval including background readings prior to and/or after an alarm, alarm information shall include time and date.
- Monitor shall be capable of providing local indication and alarm signals (these signals should be available at a remote station at a distance of at least 50 m).
- Monitors shall continuously indicate its operational or non-operational condition.
- Capable of normal operation over temperature range from − 30 °C to +55 °C and humidity from 10% to 93%.
- Unaffected by RF from 20 MHz to 1000 MHz, magnetic fields of 1 mT and electrostatic discharges of 6–8 kV.

Dated: January 10, 2005.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 05–835 Filed 1–13–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011105C]

Proposed Information Collection; Comment Request; Southeast Region Vessel Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 15, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Robert Sadler, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702; (phone 727–570–5760).

SUPPLEMENTARY INFORMATION:

I. Abstract

Regulations at 50 CFR 622.6 and 640.6 require that all vessels with Federal permits to fish in the Southeast, and all vessels that fish for or possess shrimp in the Gulf, Exclusive Economic Zone (EEZ), display the vessel's official number and, additionally, those vessels with fish traps must display its traps' color codes. The numbers and colors codes must be in a specific size and displayed on the port and starboard sides of the deckhouse or hull and on a weather deck. The display of the identifying number and color-codes aids in fishery law enforcement.

II. Method of Collection

No information is collected.

III. Data

OMB Number: 0648–0358.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations, and individuals or households.
Estimated Number of Respondents: 8,043.
Estimated Time Per Response: 45 minutes (15 minutes for each of three markings) for fishing and shrimp vessels; 30 minutes (10 minutes for each of three markings) for vessels with fish traps.
Estimated Total Annual Burden Hours: 6,133.
Estimated Total Annual Cost to Public: $245,290.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 7, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–837 Filed 1–13–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011105E]

Proposed Information Collection; Comment Request; Foreign Fishing Gear Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 15, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Bob Dickinson, F/SF4, Room 13304, 1315 East-West Highway, Silver Spring, MD 20910–3282 (phone 301–713–2276, ext. 154).

SUPPLEMENTARY INFORMATION:

I. Abstract

The regulations at 50 CFR part 600.503 require that foreign fishing vessels that deploy gear that is not physically and continuously attached to the vessel must mark that gear with a buoy displaying the vessel identification number of the vessel and attach a light visible for two miles on a night with good visibility. The marking of gear aids law enforcement and enables other fishermen to report on gear placed in unauthorized areas.

There currently are no foreign vessels authorized to do fishing that would be subject to this requirement.

II. Method of Collection

No information is collected.

III. Data

OMB Number: 0648–0354.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1.

Estimated Time Per Response: 15 minutes per marking.

Estimated Total Annual Burden Hours: 1.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 7, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–838 Filed 1–13–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011105F]

Proposed Information Collection; Comment Request; Northwest Region Gear Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 15, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Carrie Nordeen, National Marine Fisheries Service (NFMS), 7600 Sand Point Way N.E., Seattle, WA 98115 (or via the Internet at *carrie.nordeen@noaa.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The success of fisheries management programs depends significantly on regulatory compliance. The requirements that fishing gear be marked are essential to facilitate enforcement. The ability to link fishing gear to the vessel owner or operator is crucial to the enforcement of regulations issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The marking of fishing gear is also valuable in actions concerning damage, loss, and civil proceedings. The regulations specify fishing gear must be marked with the vessel's official number, federal permit or tag number, or some other specified form of identification. The regulations further specify how the gear is to be marked (e.g., location and color). Law enforcement personnel rely on this information to assure compliance with fisheries management regulations. Gear that is not properly identified is confiscated. The identifying number on fishing gear is used by NMFS, the U.S. Coast Guard, and other marine agencies in issuing violations, prosecutions, and other enforcement actions. Gear marking helps ensure that a vessel harvests fish only from its own traps/pots/other gear and that traps/pots/other gear are not illegally placed. Gear violations are more readily prosecuted when the gear is marked, allowing for more cost effective enforcement. Cooperating fishermen also use the number to report placement or occurrence of gear in unauthorized areas. Regulation-compliant fishermen ultimately benefit as unauthorized and illegal fishing is deterred and more burdensome regulations are avoided.

II. Method of Collection

The physical marking of fishing buoys is done by the affected public (fishermen in the Pacific Coast Groundfish Fishery) according to regulation. No information is collected.

III. Data

OMB Number: 0648–0352.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 548.
Estimated Time Per Response: 15 minutes per marking (with an average of 12 markings per vessel).
Estimated Total Annual Burden Hours: 1,782.
Estimated Total Annual Cost to Public: $23,166.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 7, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–839 Filed 1–13–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011105D]

Proposed Information Collection; Comment Request; Northwest Region Vessel Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before March 15, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Jamie Goen, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115 (phone 206–526–4646).

SUPPLEMENTARY INFORMATION:

I. Abstract

The success of fisheries management programs depends significantly on regulatory compliance. The vessel identification requirement is essential to facilitate enforcement. The ability to link fishing or other activity to the vessel owner or operator is crucial to enforcement of regulations issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. A vessel's official number is required to be displayed on the port and starboard sides of the deckhouse or hull, and on a weather deck. It identifies each vessel and should be visible at distances at sea and in the air. Vessels that qualify for particular fisheries are readily identified, gear violations are more readily prosecuted, and this allows for more cost-effective enforcement. Cooperating fishermen also use the number to report suspicious activities that they observe. Regulation-compliant fishermen ultimately benefit as unauthorized and illegal fishing is deterred and more burdensome regulations are avoided.

II. Method of Collection

Fishing vessel owners physically mark vessel with identification numbers in three locations per vessel. No information is collected.

III. Data

OMB Number: 0648–0355.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations (fishermen in the Open Access and Limited Entry Pacific Coast Groundfish Fishery).

Estimated Number of Respondents: 1,693.

Estimated Time Per Response: 45 minutes (15 minutes per marking.

Estimated Total Annual Burden Hours: 1,270 hours.

Estimated Total Annual Cost to Public: $59,255 ($35 per vessel).

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 7, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–840 Filed 1–13–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011005C]

Proposed Information Collection; Comment Request; Data Collection on Marine Protected and Managed Areas

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 15, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Lani Watson, Special Projects Office, National Oceanic and Atmospheric Administration, SSMC4, 1305 East West Highway, Room 9431, Silver Spring, MD 20910, or via email at *Lani.Watson@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Executive Order 13158 directs the Department of Commerce and the Department of the Interior to work with partners to strengthen the protection of U.S. ocean and coastal resources by developing a national system of marine protected areas. The Departments of Commerce and the Interior plan to work closely with state, territorial, local, and tribal governments, as well as other stakeholders, to identify and inventory the Nation's existing marine protected areas. Toward this end, the National Oceanic and Atmospheric Administration (NOAA) and the Department of the Interior (DOI) have created a dataform, available on a password protected website, to be used as a survey tool to collect and analyze information on these existing sites. This survey will allow NOAA and DOI to better understand the existing protections for marine resources within marine protected areas in the United States. This information would also support activities on marine protected areas by state and local governments, tribes, and other interested parties. The survey contains directed questions regarding the location, management and enforcement authorities, types of protections and restrictions, and the length of time those protections or restrictions are in place for each marine protected area. Basic information about the resources and activities at the sites will also be collected. It is expected that site managers from each marine protected area will fill out the survey. The collected information will be housed in a searchable database that will be made available to the public via the marine protected area website at mpa.gov. The survey has been in use for the last three years and this notice proposes to extend the data collection time period.

II. Method of Collection

The information will be collected using a dataform, available on a password protected website. This allows users to enter data at their own pace. The survey contains extensive embedded help and glossary files, as well as required Paperwork Reduction Act information.

III. Data

OMB Number: 0648–0449.
Form Number: None.
Type of Review: Regular submission.
Affected Public: State, local, or tribal government.
Estimated Number of Respondents: 1,000.
Estimated Time Per Response: 5 hours.
Estimated Total Annual Burden Hours: 5,000.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 7, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–841 Filed 1–13–05; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011005F]

Proposed Information Collection; Comment Request; Gear-Marking Requirements in Antarctic Waters

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 15, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 66625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Robin Tuttle, F/ST3, Room 12643, SSMC–3, 1315 East-West Highway, Silver Spring, MD 20910–3282 (phone 301–713–2282, ext. 199).

SUPPLEMENTARY INFORMATION:

I. Abstract

U.S. vessels participating in Antarctic fisheries must mark their fishing gear with the vessel's official identification number, Federal permit or tag number, or another approved form of identification. The information on the gear is used for enforcement of fishery regulations.

II. Method of Collection

Identification information is displayed on fishing gear. No information is collected.

III. Data

OMB Number: 0648–0367.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations, and individuals and households.
Estimated Number of Respondents: 3.
Estimated Time Per Response: 5 minutes to mark buoys or floats; 2 minutes to mark traps, pots, or trawl gear.
Estimated Total Annual Burden Hours: 30.
Estimated Total Annual Cost to Public: $900.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 7, 2005.

Gwellnar Banks,

Management Analyst, Office of Chief Information Officer.

[FR Doc. 05–842 Filed 1–13–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011005G]

Proposed Information Collection; Comment Request; Southeast Region Gear Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 15, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Robert Sadler, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702 (phone 727–570–5760).

SUPPLEMENTARY INFORMATION:

I. Abstract

The regulations at 50 CFR 622.6(b) and 640.6 require that each fish or spiny lobster trap or pot be marked with a tag or the vessel permit number, depending on the fishery, and have a buoy attached that meets specified identification requirements. The marking of gear aids law enforcement, helps to ensure that vessels only harvest fish from their own gear, and makes it easier for fishermen to report the use of gear in unauthorized locations.

The regulations at 50 CFR 622.41 require that aquaculture site materials be distinguishable from the natural occurring substrate, depending on the area either through marking or other method. The marking of aquacultured site materials aids determination of the origin of those materials and, thereby, helps ensure compliance with the regulations.

II. Method of Collection

Public disclosure via marking the fishing gear. No information is collected.

III. Data

OMB Number: 0648–0359.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations, and individuals or households.
Estimated Number of Respondents: 1,000.
Estimated Time Per Response: 20 minutes for marking of a Spanish mackerel gillnet float; 7 minutes to tag a trap; and 10 seconds to mark or tag an aquacultured live rock.
Estimated Total Annual Burden Hours: 2,192.
Estimated Total Annual Cost to Public: $15,200.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 7, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–843 Filed 1–13–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011005E]

Proposed Information Collection; Comment Request; Foreign Fishing Vessel Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 15, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Bob Dickinson, F/SF4, Room 13304, 1315 East-West Highway, Silver Spring, MD 20910–3282 (phone 301–713–2276, ext. 154).

SUPPLEMENTARY INFORMATION:

I. Abstract

The regulations at 50 CFR part 600.503 require that foreign fishing vessels display the vessel's international radio call sign on the port and starboard sides of the deckhouse or hull, and on a weatherdeck. The numbers must be of a specific size. The display of the identifying number aids in fishery law enforcement and allows other fishermen to report suspicious activity.

II. Method of Collection

No information is collected.

III. Data

OMB Number: 0648–0356.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 5.
Estimated Time Per Response: 45 minutes (15 minutes for each of three markings).
Estimated Total Annual Burden Hours: 3.75.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection;

they also will become a matter of public record.

Dated: January 7, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–844 Filed 1–13–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011005D]

Proposed Information Collection; Comment Request; Economic Data Collection for the Atlantic Wreckfish Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 15, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jim Waters, Department of Commerce, NOAA, National Marine Fisheries Service, 101 Pivers Island Road, Beaufort, NC 28516–9722, (252–728–8710).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) proposes to collect economic, sociocultural and demographic data through a one-time census about commercial fishing for wreckfish (*Polyprion Americanus*) along the U.S. south Atlantic coast. The wreckfish fishery has been managed with Individual Transferable Quotas (ITQs) since 1992. Few shareholders currently fish for wreckfish, yet they have not sold or leased their shares. This project will address why shareholders chose not to participate in the wreckfish fishery, where and for what species they did fish, and why they did not sell or lease their unused quota to generate revenue even though they did not fish for wreckfish. Equally important is to determine if the process of developing an ITQ system contributed to the rapid increase in fishing effort in the early 1990s. The results of this inquiry could offer important lessons for economists, fishery managers and others researching the appropriateness of applying ITQ systems in other fisheries in the southeast.

II. Method of Collection

Data will be collected through personal interviews with approximately 50 past and current shareholders in the ITQ management system for the wreckfish fishery. Interviews will include coded and open-ended questions to inquire about experiences with the fishery and the ITQ management program. All interviews will be tape-recorded and transcribed. Participation in the study will be voluntary.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time Per Response: 2 hours.

Estimated Total Annual Burden Hours: 100 hours.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 7, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–845 Filed 1–13–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011005B]

Proposed Information Collection; Comment Request; Survey of Intent and Capacity to Harvest and Process Fish and Shellfish (Northwest Region)

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 15, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Becky L. Renko, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115, 206–526–6110.

SUPPLEMENTARY INFORMATION:

I. Abstract

Telephone interviews continue to be necessary to determine the intent and capacity of the various sectors of the domestic fleet to harvest and process Pacific whiting. Each year the Pacific whiting optimum yield is divided between the treaty Indian tribes on the coast of Washington State and the three sectors of the non-tribal commercial fisheries (motherships, catcher/processors, and shore-base processor). If it is determined that a sector will be unable to use all of their allocation before the end of the fishing year, NMFS may reapportion whiting to the other sectors to ensure full utilization of the resource. Therefore, it is necessary to collect information, via telephone and/or email, from the groundfish industry to determine the level of interest in harvesting the unused portion of the Pacific whiting resource and to project the number of participants. This survey continues to be valuable and important in groundfish management.

II. Method of Collection

Telephone and email.

III. Data

OMB Number: 0648–0243.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Business or other for-profit organizations (owners or operators of vessels that catch or process fish in ocean waters 0–200 nautical miles offshore Washington, Oregon, and California).

Estimated Number of Respondents: 40.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 3.33 hours.

Estimated Total Annual Cost to Public: $0 (no capital expenditures required).

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 7, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–846 Filed 1–13–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011105G]

Proposed Information Collection; Comment Request; Coral Reefs Economic Valuation Study

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 15, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Vernon R. Leeworthy, NOS/Special Projects, 1305 East-West Highway, SSMC 4, 9th Floor, Silver Spring, Maryland 20910; or via e-mail at *Bob.Leeworthy@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this data collection is to provide information on the value of Hawaii's coral reef habitats to specific segments of the U.S. population. The study will measure total economic values for Hawaii's coral reefs. This effort is designed to provide defensible information for both resource managers and damage assessments on the value of coral reef habitats and alternative management actions. The project is designed as a phased three-year effort to ensure effective use of all the available information. It will involve the development of extensive knowledge about how reef habitats are perceived, implication of alternative management actions, designing original survey instruments, interviewing of a large number of respondents via an electronically downloadable and submittable pretest (200) and survey (2000), conducting formal statistical analysis of the data, and developing a decision support system for resource managers to use. For total economic value, a nationally oriented survey will be conducted using stated preferences methods.

II. Method of Collection

Data collection will be done in two phases. First, a large-scale pretest of the full survey instrument will be tested for a response of up to 200 usable observations. The pretest data will then be analyzed and the questionnaire revised, as needed. In the second phase, the final survey instrument will be administered to a sample of up to 2000 people. Both the pretest and final surveys are planned as taking an average of 30 minutes per completed interview.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,200.

Estimated Time Per Response: 30 minutes for a pretest, and 30 minutes for a final survey.

Estimated Total Annual Burden Hours: 1,100.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 7, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–847 Filed 1–13–05; 8:45 am]

BILLING CODE 3510–JE–S

COMMODITY FUTURES TRADING COMMISSION

Performance of Certain Functions by National Futures Association With Respect to Those Foreign Firms Acting in the Capacity of a Futures Commission Merchant

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is authorizing the National Futures Association ("NFA") to confirm exemptive relief to certain firms acting in the capacity of a futures commission merchant ("FCM") that are subject to regulation by a foreign futures authority or that are members of a foreign self-regulatory organization ("SRO") in a particular jurisdiction to which an order under Commission Rule 30.10 has been issued, notwithstanding that such firms may be subject, in part, to joint regulation by a second regulator or SRO in another jurisdiction. The Commission previously authorized NFA to confirm exemptive relief solely to firms subject to regulation by a single foreign futures authority or that are members of a foreign SRO. This Order extends the scope of that authority. The Commission also is authorizing NFA to maintain records pertaining to the functions described in this Order and to serve as the official custodian of those Commission records.

EFFECTIVE DATES: February 14, 2005.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Deputy Director, or Andrew V. Chapin, Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430. E-mail: *lpatent@cftc.gov* or *achapin@cftc.gov*.

United States of America, Before the Commodity Futures Trading Commission, Order Authorizing the Performance of Certain Functions by National Futures Association With Respect to Firms Seeking Confirmation of Rule 30.10 Relief.

I. Authority

Section 8a(10) of the Commodity Exchange Act[1] ("Act") provides that the Commission may authorize any person to perform any portion of the registration functions under the Act, notwithstanding any other provision of law, in accordance with rules adopted by such person and submitted to the Commission for approval or, if applicable, for review pursuant to section 17(j) of the Act[2] and subject to the provisions of the Act applicable to registrations granted by the Commission. NFA has confirmed its willingness to perform certain functions now performed by the Commission.[3]

On September 11, 1997, the Commission authorized NFA to receive requests for confirmation of Rule 30.10 relief (described in greater detail in Part II below) on behalf of particular firms, to verify such firms' fitness and compliance with the conditions of the appropriate Rule 30.10 Order, and to grant exemptive relief from registration to qualifying firms pursuant to Rule 30.10.[4] The Commission stated that, after it had examined the foreign jurisdiction's regulatory structure and issued an Order under Rule 30.10, granting general relief based upon the comparability of that structure to the regulatory framework under the Act, the steps needed to determine if relief is appropriate for particular firms are similar to those undertaken in the course of fitness checks performed by NFA with respect to applicants under the Act.[5] The Commission subsequently authorized NFA to revoke the confirmation of Rule 30.10 relief for any firm that fails to comply with the terms and conditions on which relief was confirmed, and to withdraw the confirmation of Rule 30.10 relief from any firm that notifies NFA of its decision to forfeit such relief.[6]

Upon consideration, the Commission has determined to authorize NFA to confirm exemptive relief from FCM registration to certain firms organized in one foreign jurisdiction and engaging in cross-border activities from a branch location in another jurisdiction, and that, as a consequence, may be subject, in part, to regulation by a foreign regulator or SRO that has not been issued an order under Rule 30.10. As discussed below, this function involves the registration or exemption from registration of non-U.S. persons and is related to trading by persons located in the U.S. on non-U.S. markets.

II. Background

In 1987, the Commission adopted a new Part 30 to its regulations to govern the offer and sale to U.S. persons of futures and option contracts entered into on or subject to the rules of a foreign board of trade.[7] These rules were promulgated pursuant to sections 2(a)(1)(A), 4(b) and 4c of the Act, which vest the Commission with exclusive jurisdiction over the offer and sale, in the U.S., of futures and options contracts traded on or subject to the rules of a board of trade, exchange or market located outside of the U.S.[8] Part 30 of the Commission's rules sets forth regulations governing foreign futures[9] and foreign option[10] transactions executed on behalf of foreign futures or foreign options customers.[11] Specifically, Part 30 imposes requirements in the following areas: registration, disclosure, protection of customer funds, recordkeeping, reporting, sales practices and compliance procedures.[12]

Rule 30.10 allows the Commission, among other things, to exempt a foreign firm acting in the capacity of an FCM from compliance with certain rules based upon the firm's compliance with comparable regulatory requirements imposed by the firm's home-country regulator. The Commission has established a process whereby a foreign regulator or SRO can petition on behalf of its regulatees or members, respectively, for such an exemption based upon the comparability of the regulatory structure in the foreign jurisdiction to that under the Act. The specific elements examined in evaluating whether the particular foreign regulatory program provides a basis for permitting substituted compliance for purposes of exemptive relief pursuant to Rule 30.10 are set forth in Appendix A to Part 30

[1] 7 U.S.C. 12a(10) (2004).

[2] 7 U.S.C. 21(j) (2004).

[3] Letter from Robert K. Wilmouth, President, NFA, to Brooksley Born, Chairperson, dated August 27, 1997; Letter from Daniel J. Roth, President, NFA, to Sharon Brown-Hruska, Acting Chairperson, dated December 22, 2004.

[4] 62 FR 47792–47793 (September 11, 1997). The Commission also authorized NFA to serve as the official custodian for records produced pursuant to this undertaking. *Id.*

[5] *Id.* at 47793.

[6] 64 FR 30489 (June 8, 1999).

[7] 52 FR 28980 (August 5, 1987).

[8] Commission rules referred to herein can be found at 17 CFR Ch. I (2004).

[9] "Foreign futures" as defined in Part 30 means "any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade." Commission Rule 30.1(a).

[10] "Foreign option" as defined in Part 30 means "any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an 'option', 'privilege', 'indemnity', 'bid', 'offer', 'put', 'call', 'advance guaranty', or 'decline guaranty', made or to be made on or subject to the rules of any foreign board of trade." Commission Rule 30.1(b).

[11] Pursuant to Rule 30.1(c), "Foreign futures or foreign options customer" means "any person located in the U.S., its territories or possessions who trades in foreign futures or foreign options: *Provided*, That an owner or holder of a proprietary account as defined in paragraph (y) of § 1.3 of [the Commission's rules] shall not be deemed to be a foreign futures or foreign options customer within the meaning of §§ 30.6 and 30.7 of this part."

[12] *See generally* Commission Rules 30.1 through 30.9.

("Appendix A").[13] If the Commission determines that the foreign jurisdiction's regulatory structure offers comparable regulatory oversight, it may issue an order, referred to as a "Rule 30.10 Order," granting general relief subject to certain conditions.[14] Firms seeking confirmation of relief must make certain representations set forth in the Rule 30.10 Order issued to the regulator or SRO from the firm's home country.[15] A foreign firm that has obtained confirmation of relief pursuant to a Rule 30.10 Order generally is exempt from compliance with the Act and Commission rules regarding registration (including the registration of its representatives), minimum capital, recordkeeping, and, in some circumstances, the treatment of customer funds and disclosure, based upon the substituted compliance with the applicable local statutes and regulations. The Commission issued its first Rule 30.10 Order in 1988 and has issued a total of eighteen Orders to foreign regulators and SROs in ten countries.[16]

At the time the Commission adopted Appendix A, firms conducting business in a particular jurisdiction were fully supervised by the regulatory authority in that jurisdiction. Accordingly, the Commission contemplated that, when it issued a Rule 30.10 Order, firms applying for confirmation of relief would substitute compliance with the applicable statutes and regulations in effect in the recipient's jurisdiction in lieu of compliance with the applicable Commission rules. Further, each Rule 30.10 Order provided that the eligibility of any firm applying for confirmation of the relief provided by the order would be subject to, among other things, the condition that the recipient regulator or SRO represent in writing to the Commission that it will monitor such substituted compliance by the firm.

As a result of general trends towards increased global trading, the business model for brokerage firms has progressed from the operation of a firm within the borders of a single country to having a firm organized in one country, but operating one or more other countries through a branch or branches. The firms are referred to herein as cross-border futures brokers ("CBFBs"). CBFBs, by their nature, are subject to regulation in multiple jurisdictions. The multi-jurisdictional regulation of such activity is facilitated my memoranda of understanding entered into by governing regulatory authorities, and changes to the law promoting cross-border activities. In particular, the European Union ("E.U.")[17] has created a unitary market whereby a firm organized and recognized in one country need not obtain separate recognition before conducting brokerage activities in another country. This arrangement, commonly referred to as the "European Passport," is the product of various Directives issued by the Council for the European Union.[18] The primary Directive underlying the European Passport is the Investment Services Directive ("IDS"). The ISD creates an authorization within the European Economic Area ("EEA"), *i.e.*, the European Passport, which enables firms to engage in investment services anywhere in the EEA without separate authorization by the host country. Under the ISD, the home country regulator (the regulator or SRO in the country in which the firm maintains its head office) supervises the CBFB with regard to the prudential aspects of the broker's business, such as minimum capital requirements and the segregation of customer funds, while the host country regulator (the regulator or SRO in the country where the branch is located) is responsible for the remaining aspects of the broker's business, including fitness, sales practices and recordkeeping.[19] Relief pursuant to the European Passport is only available to branches, and not subsidiaries, of E.U. firms. Minimum capital requirements for firms covered by the ISD are set by the Capital Adequacy Directive and are consistent with the Basel Capital Accord.

With respect to Rule 30.10 relief, the Commission may have issued a Rule 30.10 Order to both the host and home country regulator. However, the original Orders and representations made by the CBFB and each regulator did not contemplate a firm receiving confirmation of Rule 30.10 relief under either Order when it was not fully regulated by a single regulator.

In recent years, Commission policy has evolved toward acceptance of Rule 30.10 entities subject to multi-jurisdictional regulation. For example, the Commission has confirmed Rule 30.10 relief to non-U.K. entities operating a branch in the U.K. pursuant to the Rule 30.10 Order issued to FSA. Where each of the two regulators were recipients of Rule 30.10 Orders, the Commission confirmed relief to the firm in question based upon additional representations from the home country

[13] *See* 52 28990, 29001 (August 5, 1987).

[14] These conditions require the regulator or SRO responsible for monitoring the compliance of its regulatees or member firms with the regulatory requirements described in the Rule 30.10 petition to make certain representations regarding the fitness of each firm seeking to receive confirmation of Rule 30.10 relief, the protections to be afforded to U.S. customers, and the exchange of information with the Commission. *See* 62 FR 47792, 47793, n.7 (September 11, 1997).

[15] A firm seeking confirmation of Rule 30.10 relief is generally required to:

(1) Consent to jurisdiction in the U.S. and designate an agent for service of process in the U.S. in accordance with the requirements set forth in Rule 30.5;

(2) Agree to make its books and records available upon the request of any representative of the Commission or the U.S. Department of Justice;

(3) Agree that all futures or regulated option transactions with respect to U.S. customers will be made on or subject to the rules of the applicable exchanges and will be undertaken consistent with rule and codes under which such firm operates;

(4) Represent that no principal of the firm would be disqualified under Section 8a(2) of the Act from registering to do business in the U.S. and notify the Commission promptly of any change in that representation;

(5) Disclose the identity of each U.S. affiliate or subsidiary;

(6) Agree to be subject to NFA arbitration;

(7) Consent to the release of certain financial information;

(8) Segregate customer funds from the firm's proprietary funds, even if the ability to opt out is generally available under local law; and

(9) Undertake to comply with the provisions of law and rules which form the basis for granting the exemption.

62 FR 47792, 47793, n.8. The terms and conditions vary from order to order depending upon the regulatory structure of the firm's home country. *See e.g.*, 68 FR 58583, 58587 (October 10, 2003)(permitting eligible contract participants, as defined in section 1a(12) of the Act, to opt out of the segregation provisions set forth under the U.K. Financial Services Act, as implemented by the Financial Services Authority ("FSA")).

[16] The first Rule 30.10 Order was issued to the Sydney Futures Exchange in Australia. 53 FR 44856 (November 7, 1988). The most recent Rule 30.10 Order was issued to ASX Futures Proprietary Limited, also located in Australia. 68 FR 39006 (July 1, 2003). For a list of all Rule 30.10 Orders issued by the Commission, please refer to the Commission's Web site: *http://www.cftc.gov.*

[17] The E.U. is composed of 25 member states that have agreed to delegate some sovereignty on specific matters of joint interest to European regulatory bodies. For example, the Council for the European Union represents the governments for each member state and enacts legislation in the form of Directives. Each member is obligated to enact local legislation consistent with these Directives.

[18] The Commission relied on the operation of the European Passport when it issued a Rule 30.10 Order to Eurex Deutschland. 67 FR 30785 (May 8, 2002).

[19] On April 21, 2004, the Council for the European Union adopted the Directive on Markets in Financial Instruments ("MIFID") as part of its Financial Services Action Plan. The MIFID will amend the Capital Adequacy Directive and completely replace the ISD, and must be implemented by E.U. member states no later than April 30, 2006. The purpose of the MIFID is to extend the scope of the ISD (and thus the European Passport) in terms of both financial services and instruments covered. The MIFID does not alter the premise underlying the existing ISD that the home country regulator shall be responsible for supervising the prudential aspects of a firm's business, while the host country regulator shall be responsible for ensuring that the services provided by the branch comply with E.U.-wide standards for conduct of business.

(*i.e.*, non-U.K.) regulator and the FSA that the branch's activities would be regulated, in the aggregate, consistent with the terms of the Rule 30.10 Order issued to each regulator, including a representation from each regulator that it would provide the Commission with the information regarding the branch's activities. In the circumstances where the home country regulator was not the recipient of a Rule 30.10 Order, the Commission confirmed relief after undertaking a review of the prudential requirements implemented by the home country regulator and upon receipt of the additional representations regarding the division of responsibilities for the supervision of the firm and information sharing.

III. Procedural Requirements

The Commission believes that the Act's customer protection mandate can be effectively maintained by authorizing NFA to confirm Rule 30.10 relief to an CBFB subject to combined regulation by authorities located in two different jurisdictions under certain, pre-defined circumstances. Specifically, the two regulators or SROs, in the aggregate, must regulate the CBFB consistent with the provisions of Appendix A as outlined in the Rule 30.10 Order issued to each regulator or SRO. Moreover, each regulator or SRO must be willing and able to share relevant information with each other and with the Commission. Accordingly, the Commission is authorizing NFA to confirm Rule 30.10 relief to any CBFB that solicits or accepts orders (and accepts money, securities or property to margin the trades that result or may result therefrom) from U.S foreign futures and options customers and that is fully regulated, in the aggregate, by a host and home country regulator, each of which has received a Rule 30.10 Order from the Commission (hereafter, "modified relief"). For a CBFB to receive confirmation of modified relief, the CBFB: (1) Must apply for confirmation of relief in accordance with the provisions set forth in the host country regulator's or SRO's Rule 30.10 Order; (2) represent that it will comply with the relevant provisions of each Rule 30.10 Order; (3) and agree to provide to each regulator or SRO any information regarding transactions arising from such relief. In addition, each regulator or SRO must confirm that it will monitor the CBFB for compliance with the local laws, rules and regulations governing those aspects of the broker's business subject to regulation in its respective jurisdiction, and state that it will share information with the Commission in accordance with the terms and conditions of the applicable Rule 30.10 Order.

The Commission also is authorizing NFA to confirm modified Rule 30.10 relief to a CBFB that is organized and operating pursuant to the European Passport (as described herein) from a branch location in a jurisdiction whose regulator or SRO has received Rule 30.10 relief, notwithstanding that the Commission has not issued a Rule 30.10 Order issued to the home country regulator. As set forth above, the Commission has determined that, in the aggregate, the regulatory program governing the cross-border activity of any firm operating pursuant to the European Passport from a branch located within a jurisdiction whose regulator or SRO has received Rule 30.10 relief provides a basis for permitting substituted compliance for purposes of exemptive relief pursuant to Rule 30.10. Therefore, the Commission believes that it is appropriate to no longer require a CBFB operating pursuant to the European Passport to petition the Commission for confirmation of relief when NFA already has been authorized to confirm other standardized requests for relief.

The CBFB seeking the alternative modified Rule 30.10 relief under this scenario must: (1) Apply for confirmation of relief in accordance with the provisions set forth in the host country regulator's or SRO's Rule 30.10 Order; (2) represent that it will be operating from a branch located in the host country pursuant to the European Passport, and will comply with the applicable provisions of the host country's Rule 30.10 Order and the applicable laws and regulations of its country of origin, as well as all current and future Directives and other legislation underlying the European Passport; and (3) agree to provide to the host and home country regulator or SRO any information regarding transactions made in accordance with such relief. In addition, both the host and home country regulator, respectively, must confirm that they will monitor the CBFB for compliance with the local laws, rules and regulations governing those aspects of the broker's business subject to regulation in its respective jurisdiction, and state that they will share information with the Commission, either in accordance with the terms and conditions of the applicable Rule 30.10 Order (host country regulator) or pursuant to a separate written undertaking (home country regulator). Prior to confirming modified Rule 30.10 relief under this alternative method, NFA shall consult with Commission staff to ensure that the information-sharing arrangement between the Commission and the home country regulator is sufficient.

The Commission has determined, for the time being, to retain the authority to determine whether Rule 30.10 relief is appropriate in other circumstances, including those where a firm is organized in a country whose home country regulator is the recipient of a Rule 30.10 order and seeks to conduct brokerage activities pursuant to the European Passport through a branch from a location where the host country regulator is not the recipient of a Rule 30.10 order. NFA shall continue to forward to the appropriate Commission staff in accordance with existing procedures those applications not addressed in this or prior Orders granting NFA the authority to act on the Commission's behalf with respect to the confirmation of relief under Rule 30.10.

By prior orders, the Commission, in accordance with section 8a(10) of the Act, has authorized NFA to maintain various other Commission registration records and certified NFA as the official custodian of such records for this agency.[20] Consistent with those orders, the Commission has determined to authorize NFA to maintain and to serve as the official custodian of records for filings made pursuant to the relief set forth herein. This determination is based upon NFA's continued representations regarding the implementation of rules and procedures for maintaining and safeguarding all such records. In maintaining the Commission's records pursuant to this Order, NFA shall be subject to all other requirements and obligations imposed upon it by the Commission in existing and future orders or regulations. In this regard, NFA shall also implement such additional procedures (or modify existing procedures) as are necessary to ensure the security and integrity of the records in NFA's custody and acceptable to the Commission; to facilitate prompt access to those records by Commission and its staff, particularly as described in other Commission orders or rules; to facilitate disclosure of public or nonpublic information in those records when permitted by Commission orders or rules and to keep logs as required by the Commission concerning disclosure of nonpublic information; and otherwise to safeguard the confidentiality of the records.

[20] 49 FR 39593 (October 9, 1984); 50 FR 34885 (August 28, 1995); 51 FR 25929 (July 17, 1986); 54 FR 19594 (May 8, 1989); 54 41133 (October 5, 1989); 58 FR 19657 (April 15, 1993); 62 FR 47792 (September 11, 1997).

IV. Conclusion

The Commission has determined, in accordance with section 8a(10) of the Act, to authorize NFA to grant exemptive relief to any CBFB that solicits or accepts orders (and accepts money, securities or property to margin the trades that result or may result therefrom) from U.S. foreign futures and options customers and that: (1) Is fully regulated, in the aggregate, by a host and home country regulator, each of which has received a Rule 30.10 Order from the Commission; or (2) is organized in a home country and operating pursuant to the European Passport (as described herein) from a branch located in a host country where the regulator or SRO has received a Rule 30.10 Order, notwithstanding that the Commission has not issued a Rule 30.10 Order to the home country regulator. The Commission has determined further to authorize NFA to maintain records pertaining to the functions described in this Order and to serve as the official custodian of those Commission records. The Commission's authorization concerning records is subject to the terms and conditions set forth above.

The Commission notes that confirmation of rule 30.10 relief pursuant to this Order extends solely to conduct by the firm's branch in its capacity as a member or regulatee of the host country regulator from a location in the host country, subject to the Commission's Limited Marketing Orders.[21] As such, the Rule 30.10 relief would not extend to conduct undertaken from any other office or affiliate of the firm involving U.S. customers under the Act, including any office or branch located within the home country.

NFA shall perform this function in accordance with the standards established by the Act and the regulations and Commission orders, including the procedural requirements set forth in Part III of this Order, issued thereunder and shall provide the Commission with such summaries and periodic reports as the Commission may determine are necessary for the effective oversight of this program.

[21] In 1992, the Commission issued an order commonly referred to as the Limited Marketing Order. 57 FR 49644 (November 3, 1992). The Limited Marketing Order permits firms that have received confirmation of Rule 30.10 relief, without prior notice to the Commission, to engage in limited marketing conduct with respect to foreign futures or option contracts within the U.S. through their employees or other representatives, subject to the terms and conditions set forth therein. In 1994, the Commission expanded the category of persons to whom qualified firms may direct limited marketing conduct. 59 FR 42156 (August 17, 1994).

This determined is based upon the Congressional intent expressed in Section 8a(10) of the Act that the Commission have the authority to authorize NFA to perform any portion of the Commission's registration responsibilities under the Act for purposes of carrying out these responsibilities in the most efficient and cost-effective manner and upon NFA's representations concerning the standards and procedures to be followed and the reports to be generated in administering these functions. This Order does not, however, authorize NFA to render "no-action" positions, exemptions or interpretations with respect to applicable disclosure, reporting, recordkeeping and registration requirements. In addition, nothing in this Order shall affect the Commission's authority to review NFA's performance of the Commission functions listed above.

NFA is authorized to perform the functions specified herein until such time as the Commission orders otherwise. Nothing in this Order shall prevent the Commission from exercising the authority described herein. NFA may submit to the Commission for decision any specific matters that NFA has been authorized to perform, and Commission staff will be available to discuss with NFA staff issues relating to the implementation of this Order. Nothing in this Order affects the applicability of previous orders issued by the Commission under Part 30.

V. Cost-Benefit Analysis

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

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, an financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act. This Order is intended to create an expedited process to confirm exemptive relief to a class of qualified foreign brokers that would otherwise be required to seek relief through a more time-consuming procedure.

1. Protection of market participants and the public. The Order does not change the requirements to qualify for relief under Rule 30.10. Accordingly, the Order has not effect on the Commission's ability to protect market participants and the public.

2. Efficiency and competition. The Order should permit a firm engaged in cross-border activities to more quickly secure exemptive relief under Rule 30.10, and thus provides a benefit of greater efficiency.

3. Financial integrity of futures markets and price discovery. The Order does not have any effect, from the standpoint of imposing costs or creating benefits, on the financial integrity of futures markets and price discovery.

4. Sound risk management practices. The Order does not impact the risk management practices of the futures and options industry.

5. Other public interest considerations. The performance of the functions described herein by NFA will significantly reduce the amount of Commission and staff resources dedicated to the Part 30 program.

Upon consideration of these factors, the Commission has determined to issue this Order.

Issued in Washington, DC, on January 11, 2005, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–814 Filed 1–13–05; 8:45 am]

BILLING CODE 8351–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice of Closed Meeting.

SUMMARY: The CNO Executive Panel is to report the findings and recommendations of the Special Access Program Processes Study Group to the Chief of Naval Operations. The meeting will consist of discussions of policy considerations on the Navy's Special Access Programs and how well they are integrated into the overall Navy, DOD, and allied requirements processes.

DATES: The meeting will be held on Friday, January 28, 2005, from 10:30 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Chief of Naval Operations office, Room 4E540, 2000 Navy Pentagon, Washington, DC 20350.

FOR FURTHER INFORMATION CONTACT: Karen Ray, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, 703–681–4907.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order.

Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: January 7, 2005.

I.C. Le Moyne, Jr.,

Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–783 Filed 1–13–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Teaching American History

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice of proposed selection criteria and other application requirements.

SUMMARY: We propose selection criteria and other application requirements under the Teaching American History (TAH) grant program. We may use these criteria and the application requirements for competitions in fiscal year (FY) 2005 and in later years. We take this action to add selection criteria and to provide more specificity with regard to the range of awards and the number of awards a local educational agency (LEA) may receive in each competition.

DATES: We must receive your comments on or before February 14, 2005.

ADDRESSES: Address all comments about this proposed priority and other application requirements to Alex Stein, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W218, FOB6, Washington, DC 20202–6140. If you prefer to send your comments through the Internet, you may send them to us at the following address: *comments@ed.gov*.

You must include the term "Teaching American History" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Alex Stein. Telephone: (202) 205–9085 or via Internet: *Alex.Stein@ed.gov*.

If you use a telecommunications devise 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 these selection criteria and other application requirements. Also, 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 these criteria and other application requirements. 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 these proposed selection criteria and other application requirements in room 4W218, 400 Maryland Avenue, SW., 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 these proposed selection criteria and other application requirements. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

General Information

We will announce the final selection criteria and other application requirements in a notice in the **Federal Register**. We will determine the final selection criteria and other application requirements after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional requirements, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed selection criteria and other application requirements, we invite applications through a notice in the **Federal Register**.

Discussion of Proposed Selection Criteria

Background

In the past, the selection criteria for the TAH program were taken directly from the program statute and the Education Department General Administrative Regulations (EDGAR). Our experience with competitions, peer reviewers, applicants, and funded grantees demonstrates the need to develop selection criteria that more adequately reflect the qualities of successful TAH grantees. These proposed selection criteria would, therefore, provide the applicant with more detail and clarity with regard to the information that is most likely to result in a high-quality application. Through the selection criteria, we are encouraging applicants to describe: (1) The specific history content to be taught under the grant; (2) how the professional development provided by the grant will improve the quality of instruction; (3) how the evaluation will be aligned with the project design; and (4) the importance of the outcomes likely to be attained through the grant. We also encourage applicants to explain their rationale for selecting certain partners so that the reviewers will have a greater understanding of the potential role and contribution of the partner(s) in achieving the objectives of the grant.

We also encourage applicants to ensure that grant activities will focus on building capacity in the LEA receiving the award. Teachers in the LEA receiving the grant should be the primary recipients of the grant services, and the LEA should be actively involved in the administration of the grant.

We are proposing the additional criteria so that, along with providing a description of the goals and objectives of the application, applicants will describe clear and specific means by which they will achieve those goals and objectives.

Proposed Selection Criteria

The Secretary proposes to use the following selection criteria to evaluate applications under this program. The maximum score for all of these criteria is 100 points. In any given year we will announce the maximum possible score for each criterion, either in the application notice published in the **Federal Register** or in the application package.

(1) *Project quality.* The Secretary considers the quality of the proposed project by considering—

(a) The likelihood that the proposed project will develop, implement, and strengthen programs to teach traditional American history as a separate academic subject (not as a component of social studies) within elementary school and secondary school curricula, including the implementation of activities:

(i) To provide professional development and teacher education activities with respect to traditional American history; and

(ii) To improve the quality of instruction in traditional American history.

(b) How specific traditional American history content will be covered by the grant (including the significant issues, episodes, and turning points in the history of the United States; how the words and deeds of individual Americans have determined the course of our Nation; and how the principles of freedom and democracy articulated in the founding documents of this nation have shaped America's struggles and achievements and its social, political, and legal institutions and relations); the format in which the project will deliver the history content; and the quality of the staff and consultants responsible for delivering these content-based professional development activities. The applicant may also attach curriculum vitae for individuals who will provide the content training to the teachers.

(c) How teachers will use the knowledge acquired from project activities to improve the quality of instruction. This description may include plans for reviewing how teachers' lesson planning and classroom teaching are affected by their participation in project activities.

(d) How well the applicant describes a plan that meets the statutory requirement to carry out activities under the grant in partnership with one or more of the following:

(i) An institution of higher education.

(ii) A nonprofit history or humanities organization.

(iii) A library or museum.

(e) The applicant's rationale for selecting the partners and its description of specific activities that the partner(s) will contribute to the grant during each year of the project. The applicant should include a memorandum of understanding or detailed letters of commitment from the partner(s) in an appendix to the application narrative.

(2) *Significance.* The Secretary considers the significance of the proposed project. In determining the significance of the project, the Secretary considers—

(a) The extent to which the proposed project is likely to build the local capacity, and locally implement services, to improve or expand the LEA's ability to provide American history teachers professional development in traditional American history subject content and content-related teaching strategies.

(b) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

Note: In meeting this criterion, the Secretary encourages the applicant to include background and statistical information to explain the project's significance. For example, the applicant could include information on: The extent to which teachers in the LEA are not certified in history or social studies; student achievement data in American history; and rates of student participation in courses such as Advanced Placement American History.

(3) *Quality of the management plan.* The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(b) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(4) *Quality of the project evaluation.* The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers:

(a) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(b) How well the evaluation plans are aligned with the project design explained under the *Project Quality* criterion.

(c) Whether the evaluation includes benchmarks to monitor progress toward specific project objectives, and outcome measures to assess the impact on teaching and learning or other important outcomes for project participants.

(d) Whether the applicant identifies the individual and/or organization that has agreed to serve as evaluator for the project and includes a description of the qualifications of that evaluator.

(e) The extent to which the applicant indicates the following:

(i) What types of data will be collected;

(ii) When various types of data will be collected;

(iii) What methods will be used to collect data;

(iv) What data collection instruments will be developed;

(v) How the data will be analyzed;

(vi) When reports of results and outcomes will be available;

(vii) How the applicant will use the information collected through the evaluation to monitor the progress of the funded project and to provide accountability information about both success at the initial site and effective strategies for replication in other settings; and

(viii) How the applicant will devote an appropriate level of resources to project evaluation.

Discussion of Proposed Funding of Projects

Background

The TAH program currently awards \$350,000–\$1,000,000 total funding for a project period for LEAs with enrollments of fewer than 300,000 students; and \$500,000–\$2,000,000 for LEAs with enrollments above 300,000. The proposed requirements would permit a maximum of \$500,000 for LEAs with enrollments of fewer than 20,000 students; \$350,000–\$1,000,000 for LEAs with enrollments of 20,000–300,000 students; and \$500,000–\$2,000,000 for LEAs with enrollments above 300,000 students. As revised, the award amounts would be more proportionate to the number of teachers likely to be served and the number of students enrolled by the LEA.

Currently there is no limit on the number of grants that may be awarded per LEA. The proposed requirements would permit only one award per LEA per competition. This will enable more LEAs to participate in this program.

Proposed Funding

(1) Total funding for a three-year project period is a maximum or $500,000 for LEAs with enrollments of fewer than 20,000 students; $350,000–$1,000,000 for LEAs with enrollments of 20,000–300,000 students; and $500,000–$2,000,000 for LEAs with enrollments above 300,000 students.

(2) A maximum of one grant will be awarded per LEA per competition.

Executive Order 12866

This notice of proposed selection criteria and other application requirements 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 selection criteria and other application requirements 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 selection criteria and other application requirements, we have determined that the benefits of the proposed selection criteria and other application requirements justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of potential costs and benefits: The potential cost associated with these proposed selection criteria and other application requirements is minimal while the benefits are significant. Grantees may anticipate costs with completing the application process in terms of staff and partner time, copying, and mailing or delivery. The use of E-Application technology reduces mailing and copying costs significantly.

The benefit of the proposed selection criteria is that they will help applicants prepare higher-quality and more comprehensive proposals.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

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 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.*

Program Authority: 20 U.S.C. 6721–6722.

(Catalog of Federal Domestic Assistance Number 84.215X)

Dated: January 11, 2005.

Nina Shokraii Rees,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. E5–145 Filed 1–13–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Alliant Energy Corporate Services, Inc.; Notice of Initiation of Proceeding and Refund Effective Date

January 7, 2005.

On December 20, 2004, the Commission issued an order in Docket Nos. ER99–230–000, *et al.* and ER03–762–000, *et al.* The Commission's order institutes a proceeding in Docket No. EL05–5–000, pursuant to section 206 of the Federal Power Act, concerning the justness and reasonableness of Alliant Energy Corporate Services, Inc.'s market-based rates.

The refund effective date in Docket No. EL05–5–000, established pursuant to section 206(b) of the Federal Power Act will be 60 days following publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E5–143 Filed 1–13–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–145–000]

Florida Gas Transmission Company; Notice of Filing of Annual Report

January 7, 2005.

Take notice that on January 3, 2005, Florida Gas Transmission Company (FGT) tendered for filing pursuant to Section 19.1 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1, schedules detailing certain information related to its cash-out mechanism, fuel resolution mechanism and balancing tools charges for the accounting months October 2003 through September 2004. FGT states that no tariff changes are proposed.

FGT states that it has recorded excess costs of $309,204 during the current settlement period, which when combined with the $2,399,985 net deficiency carried forward from the preceding Settlement Period and interest income of $187,722, result in a cumulative net cost balance of $2,521,467 as of September 30, 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public

Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention and Protest Date: 5 p.m. eastern time on January 18, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–142 Filed 1–13–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR05–6–000]

Magic Valley Pipeline, L.P.; Notice of Petition for Rate Approval

January 7, 2005.

Take notice that on December 27, 2004, Magic Valley Pipeline, L.P. (Magic Valley) filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's Regulations. Magic Valley requests the Commission to approve a maximum monthly reservation charge of $1.0175 per Dth for firm transportation service, and a maximum rate of $0.0335 per Dth for interruptible transportation service under section 311 of the Natural Gas Policy Act.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before the date as indicated below. 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 proceedings. Any person wishing to become a party must file a motion to intervene.

This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free) or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Intervention and Protest Date: January 28, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–141 Filed 1–13–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–146–000]

Northern Border Pipeline Company; Notice of Petition for Limited Waiver of Tariff Provisions

January 7, 2005.

Take notice that on January 3, 2005, Northern Border Pipeline Company (Northern Border) filed a petition for a limited waiver of Subsection 6.1(a)(iii) of Rate Schedule PAL effective December 25, 2004 through December 30, 2004.

Northern Border states that Peoples Energy Wholesale Marketing (PEWM) notified Northern Border that, due to an oversight by PEWM and due to limited staffing during the holiday season, PEWM failed to remove parked quantities of natural gas by the required deadline, thus causing such parked quantities to become the property of Northern Border at no cost, free and clear of any adverse claims.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–137 Filed 1–13–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2150–027]

Puget Sound Energy, Inc.; Notice Granting Intervention and Granting Late Intervention

January 7, 2005.

1. On August 14, 2002, the Commission issued notice of an application for amendment of license, filed by Puget Sound Energy, Inc. (Puget), for the Baker River Project No. 2150. The project is located on the Baker River in Skagit and Whatcom Counties, Washington. The notice established September 13, 2002, as the deadline for filing motions to intervene in the proceeding.

2. Timely motions to intervene were filed by the Skagit System Cooperative, National Marine Fisheries Service, U.S. Department of the Interior, U.S. Department of Agriculture, Washington Department of Fish and Wildlife, City of Seattle, and American Rivers and Washington Trout (jointly). On September 27, 2002, Puget filed an answer opposing the motion filed by American Rivers and Washington Trout, and objecting to certain aspects of some of the other motions. On April 2, 2004, Skagit County, Washington, filed a

motion for late intervention in this proceeding. On April 19, 2004, Puget filed an answer in opposition to the motion.

3. Granting the motions to intervene will not unduly delay or disrupt the proceeding or prejudice other parties to it. Therefore, pursuant to Rule 214, 18 CFR 385.214 (2004), all timely motions to intervene filed in this amendment proceeding are granted, and the motion for late intervention filed by Skagit County is granted, subject to the Commission's rules and regulations.

Magalie R. Salas,

Secretary.

[FR Doc. E5–140 Filed 1–13–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

January 7, 2005.

Take notice that the following applications have been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project Nos:* 1490–038 and 039.

c. *Date Filed:* November 24, 2004.

d. *Applicant:* Brazos River Authority.

e. *Name of Project:* Morris Sheppard Project.

f. *Location:* The project is located on the Possum Kingdom Reservoir on the Brazos River in Palo Pinto County, Texas. This project does not occupy any federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Phillip J. Ford, General Manager/CEO, Brazos River Authority, 4600 Cobbs Drive, P.O. Box 7555, Waco, TX, 76714–7555, (254) 761–3100.

i. *FERC Contacts:* Any questions on this notice should be addressed to Mrs. Jean Potvin at (202) 502–8928, or e-mail address: *jean.potvin@ferc.gov.*

j. *Deadline for Filing Comments and or Motions:* February 7, 2005.

All Documents (Original and Eight Copies) Should be Filed With: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–1490–038 and/or 039) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Request:* Brazos River Authority (Authority) is seeking Commission approval to permit the existing 60-slip facility and the addition of 24 boat slips at The Breakers Marina (P–1490–038). The Authority is also seeking Commission approval to permit the existing 120 slip facility and the addition of 76 boat slips at the Hill Country Harbor Marina (P–1490–039).

l. *Location of the Application:* The filing is available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online support at *FERCOnLineSupport@ferc.gov* or toll free (866) 208 3676 or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–139 Filed 1–13–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–433–000 and ER04–433–001, ER04–432–000 and ER04–432–001]

New England Power Pool Bangor Hydro-Electric Company, *et al.*; Notice of Technical Conference

January 7, 2005.

Take notice that on January 14, 2005, at 1 p.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a technical conference will be held, as requested in a January 5, 2005, motion filed by the New England Transmission Owners and ISO New England Inc. (ISO New England).

The purpose of the technical conference will be to address compliance issues (the form and manner of compliance) relating to the Commission's directive in these proceedings that the New England Transmission Owners either: (i) Amend their Local Tariffs to include the *pro forma* Standard Large Interconnection Procedures (LGIP) and the Standard Large Generator Interconnection Agreement (LGIA); or (ii) transfer to ISO New England, or its successor RTO, control over the significant aspects of the Local Tariff interconnection process.[1] Specific issues to be addressed at the technical conference include:

(1) The nature and timing of a compliance filing proposing to include the *pro forma* LGIP and LGIA in the Local Tariffs, including what burden must be met to demonstrate that any proposed variation meets the

[1] *See* New England Power Pool and Bangor Hydro Electric Company, 109 FERC ¶ 61,155 (2004) (November 8 Order), *reh'g pending.*

Commission's consistent with or superior to test;

(2) The nature and timing of a compliance filing proposing to transfer to ISO New England, or its successor RTO, control over the significant aspects of the Local Tariff interconnection process;

(3) The extent to which any generator seeking to interconnect to a non-Pool Transmission Facility under a Local Tariff may be affected by the form and manner in which the New England Transmission Owners comply with the November 8 Order; and

(4) The extent to which any other market participant may be affected by the form and manner in which the New England Transmission Owners comply with the November 8 Order.

Parties seeking to participate in the technical conference should file a statement of position with the Commission on or before January 12, 2005, including therein any recommendation that party expects to make at the technical conference regarding the above-noted issues. An electronic version of that filing must be e-mailed to Morris Margolis at *morris.margolis@ferc.gov* and Kent Carter at *kent.carter@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E5-138 Filed 1-13-05; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6659-5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed January 3, 2005, through January 7, 2005

Pursuant to 40 CFR 1506.9.

EIS No. 050000, DRAFT EIS, AFS, UT, Ogden Ranger District Travel Plan, To Update the Travel Management Plan, Wasatch-Cache National Plan, Ogden Ranger District, Box Elder, Cache, Morgan, Weber and Rich Counties, UT, Comment Period Ends: February 28, 2005, Contact: Rick Vallejos (801) 625-5112.

EIS No. 050001, FINAL EIS, FHW, NJ, Penns Neck Area Transportation Service Improvements, Phase I Archeological Survey, U.S. 1, Sections 2S and 3J, Funding, West Windsor and Princeton Townships, Mercer County, and Plainsboro Township, Middlesex County, NJ, Wait Period Ends: February 14, 2005, Contact: Young Kim (609) 637-4233.

EIS No. 050002, DRAFT SUPPLEMENT, NPS, WA, Elwha River Ecosystem Restoration Implementation Project, Updated Information, Olympic Peninsula, Challam County, WA. Comment Period Ends: March 15, 2005, Contact: Brian Winter (360) 565-1320.

EIS No. 050003, FINAL EIS, AFS, MT, Gallatin National Forest, Main Boulder Fuels Reduction Project, Implementation, Gallatin National Forest, Big Timber Ranger District, Big Timber, Sweetgrass and Park Counties, MT, Wait Period Ends: February 14, 2005, Contact: Barbara Ping (406) 522-2570.

EIS No. 050004, FINAL EIS, SFW, WA, ID, OR, CA, Caspian Tern (sterna caspia) Management to Reduce Predation of Juvenile Salmonids in the Columbia River Esturary, To Comply with the 2002 Settlement Agreement, Endangered Species Act (ESA), Columbia River, WA, OR, ID and CA, Wait Period Ends: February 14, 2005, Contact: Nanette Seto (503) 231-6164.

EIS No. 050005, DRAFT EIS, BLM, UT, Vernal Field Office Resource Management Plan, To Revise and Integrate the Book Cliff and Diamond Mountain Resource Management Plan, Daggett, Duchesne, Uintah and Grand Counties, UT, Comment Period Ends: April 14, 2005, Contact: Jerry Kenczka (435) 781-4440.

EIS No. 050006, DRAFT EIS, FHW, MO, Interstate 70 Corridor Improvements, Section of Independent Utility #4, from Missouri Route BB Interchange to Eastern Columbia, Funding, Boone County, MO, Comment Period Ends: March 28, 2005, Contact: Don Neumann (573) 636-7104.

EIS No. 050007, DRAFT EIS, FHW, MO, Interstate 70 Corridor Improvements, Section of Independent Utility #7, a 40-Mile Portion of the I-70 Corridor from just West of Route 19 (milepost 174) to Lake St. Louis Boulevard (milepost 214), Montgomery, Warren, St. Charles Counties, MO, Comment Period Ends: March 28, 2005, Contact: Don Neumann (573) 636-7104.

EIS No. 050008, DRAFT SUPPLEMENT, NPS, CA, Merced Wild and Scenic River Revised Comprehensive Management Plan, Amend and Supplement Information, Yosemite National Park, El Portal Administrative Site, Tuolume, Merced, Mono, Mariposa and Madera Counties, CA, Comment Period Ends: March 22, 2005, Contact: Amy Schneckenberner (209) 379-1026.

EIS No. 050009, FINAL SUPPLEMENT, NOA, Monkfish Fishery Management Plan (FMP) Amendment 2, Implementation, Proposes Measures to Address a Wide Range of Management Issues, New England and Mid-Atlantic, Wait Period Ends: February 14, 2005, Contact: Paul Howard (978) 465-0492.

EIS No. 050010, FINAL EIS, BLM, OR, Upper Deschutes Resource Management Plan, Implementation, Deschutes, Klamath, Jefferson and Cook Counties, OR, Wait Period Ends: February 14, 2005, Contact: Mollie Chaudet (541) 416-6700.

Amended Notices

EIS No. 040555, DRAFT EIS, NPS, TX, Big Thicket National Preserve Oil and Gas Management Plan, Implementation, Hardin, Jefferson, Orange, Liberty, Tyler, Jasper and Polk Counties, TX, Comment Period Ends: March 10, 2005, Contact: Linda Dansby (505) 988-6095. Revision of FR Notice Published on 12/10/04: CEQ Comment Period Ending 02/08/2005 has been Extended to 03/10/2005.

Dated: January 11, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05-818 Filed 1-13-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6659-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act, as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564-7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 2, 2004 (69 FR 17403).

Draft EISs

ERP No. D-BLM-J02046-UT Rating EC2, Castle Peak and Eightmile Flat Oil and Gas Expansion Project, Proposal to

Expand Crude Oil and Natural Gas Development and Production Program, Right-of-Way Grant, Duchesne and Uintah Counties, UT.

Summary: EPA expressed environmental concerns about impacts to air quality, including long-range protection of visibility and the lack of analysis of other past, present, and reasonably foreseeable development in the area, and the lack of mitigation measures to protect air and water quality and reduce infestations of invasive non-native plant species.

ERP No. D–FRC–K05059–CA Rating EC2, Upper North Fork Feather River Project (FERC No. 2105), Issuing a New License for Existing 3517.3 megawatt (MW) Hydroelectric Facility, North Fork Feather River, Chester, Plumas County, CA.

Summary: EPA expressed environmental concerns about the analysis of the no-action alternative, and water and air quality impacts, and requested additional information regarding consultation with tribal governments, environmental justice issues, and the analysis of cumulative impacts.

ERP No. D–FRC–K05060–CA Rating EC2, Stanislaus Rivers Projects, Relicensing of Hydroelectric Projects: Spring Gap-Stanislaus FERC No. 2130; Beardsley/Donnells FERC No. 2005; Tulloch FERC No. 2067; and Donnells-Curtis Transmission Line FERC No. 2118, Tuolumne and Calaveras Counties, CA.

Summary: EPA expressed environmental concerns about the analysis of the no-action alternative, and water and air quality impacts; and requested additional information regarding consultation with tribal governments, environmental justice issues, and the analysis of cumulative impacts.

Final EISs

ERP No. F–BLM–L65445–CA King Range National Conservation Area (KRNCA) Resource Management Plan, Implementation, Humboldt and Mendocino Counties, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–COE–E39065–FL Central and Southern Florida Project, Comprehensive Everglades Restoration Plan, Aquifer Storage and Recovery (ASR) Pilot Operation, Aquifer Storage and Recovery Pilot Project, To Test the Feasibility for Utilizing ASR Technology for Water Storage at Seven Well Sites, Right-of-Way and NPDES Permits, Several Counties, FL.

Summary: EPA continues to strongly support the present ASR Pilot Projects as well as the concurrent ASR Regional Study as prerequisites to full implementation of 333 ASR wells approved in the CERP Recommended Plan.

ERP No. F–COE–F32197–MS PROGRAMMATIC EIS—Upper Mississippi River and Illinois Waterway System Navigation Feasibility Study (UMR-IWW), Addressing Navigation Improvement Planning and Ecological Restoration Needs, MS, IL, IA, MN, MO, WI.

Summary: Significant progress has been made in addressing EPA's concerns regarding the implementation of the proposed new management strategies that would influence the ecological future of the Upper Mississippi River System. Specific concerns that were addressed focused on defining purpose and need, adaptive management, and phased project approach, alternatives analysis, institutional arrangements, ecosystem restoration, and mitigation/impact analysis. EPA requested that more detailed information on adaptive management and institutional arrangements be included in the Record of Decision.

Dated: January 11, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–819 Filed 1–13–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7861–5, Docket ID No. OAR–2004–0075]

Notice Announcing Public Meeting of the Clean Air Act Advisory Committee's Task Force on the Performance of the Title V Operating Permits Program and Opportunity To Submit Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Today EPA announces a public meeting of the Clean Air Act Advisory Committee's (CAAAC) Task Force on the Performance of the Title V Operating Permits Program.

DATES: The meeting will be held on February 7, 2005.

ADDRESSES: The meeting will be held in San Francisco at the Marine's Memorial Club and Hotel, 609 Sutter Street, San Francisco, California 94102; telephone number: 415–673–6672. The meeting will start at 8 a.m. and continue until 9 p.m. if necessary. Breaks will be held for lunch and dinner, respectively and as necessary during the day. The EPA solicits interested parties with experience in the title V program to provide testimony to the Task Force on what is working well and/or poorly in this program. Those desiring to testify are asked to notify EPA by January 24, 2005 (contact information follows), so that speaking times may be arranged. In addition, written comments may be submitted as described later in this notice. See this Web site for updated information on the Task Force: *http://www.epa.gov/oar/caaac/titlev.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Ray Vogel, Information Transfer and Implementation Division, Office of Air Quality Planning and Standards, Mail Code C304–04, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone: 919–541–3153; fax: 919–541–5509; and e-mail address: *vogel.ray@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. What Is This Task Force and What Is the Purpose of This Public Meeting?

The EPA created the Task Force in June 2004 in response to a recommendation from the Permitting/Toxics Subcommittee of the CAAAC. The Task Force is made up of 18 representatives from State and local permitting agencies, industry, and environmental and public interest groups. The Task Force will gather information from interested persons on the performance of the title V operating permits program and prepare a report documenting how the title V program is performing and what elements are working well and/or poorly. The report may include suggestions on how to improve the program. The Task Force is gathering information by, among other things, holding a series of three public meetings. The San Francisco meeting is expected to be the last public meeting. Other public meetings were held in Washington, DC, on June 25, 2004, and Chicago, Illinois, on September 14 and 15, 2004.

The purpose of these public meetings is to gather information on the performance of the title V program, specifically on aspects of the program that are working well and those that are working poorly. The Task Force welcomes any information from stakeholders that will help it prepare its report on the performance of the title V program.

For further information on the task force, *see* the May 17, 2004, notice in the **Federal Register** (69 FR 27922) and the CAAAC Web site: *http://www.epa.gov/oar/caaac/titlev.html.*

B. How Do I Participate in This Public Meeting?

Those interested in speaking are asked to contact Ray Vogel by January 24, 2005, by email at *vogel.ray@epa.gov* and give your email and phone number so you may be contacted for a speaking time. Speaking time slots will be 20 minutes each.

The Task Force requests that presenters at the public meeting limit their presentations to no more than 10 minutes and be prepared to answer follow-up questions from members of the Task Force for approximately 10 minutes. If you wish to present more information than can be accommodated in the allotted time, you should put the information in written remarks that supplement your presentation. Speakers are encouraged to bring disks or hard copies of written remarks to submit for the public record at the meeting. The meeting will be recorded, and a transcript will be made and placed in the public docket. An audio recording will also be made and placed on the Web site *http://www.epa.gov/oar/caaac/titlev.html.*

As noted above, the Task Force is most interested in testimony based on your experience, of what is working well, what is not working well, and any recommendations you have for improvements to the title V program. We strongly encourage speakers to support their testimony with actual examples designed to help the task force understand your concern(s) and how any recommended improvements you offer would address these concerns.

C. How Do I Get Copies of the Draft Report of the Task Force and Other Public Information Related to the Task Force's Work?

Audio and written transcripts of the testimony from previous public meetings are available at the CAAAC Web site: *http://www.epa.gov/oar/caaac.* The draft report (which is expected to be available in winter 2005) will also be available on the Web site. These same materials and additional supporting materials will also be available electronically through the EPA e-docket at: *http://www.epa.gov/edocket/.* To submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically, select "search," then key in the appropriate docket ID number. The docket number for this action is OAR–2004–0075.

D. How Do I Submit Comments?

Interested persons may provide written comments for the task force to consider in lieu of or in addition to making a presentation at the public meeting. The docket for the Title V Performance Task Force is open for submittal of comments until March 31, 2005

EDOCKET (Preferred)

The EPA's electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. Please note: EPA's policy is to not edit your comment; therefore, any identifying or contact information provided in the body of a comment will be included in the official public docket. To submit a comment through EDOCKET, go to *http://www.epa.gov/edocket.* Once in the system, select "search," then key in OAR–2004–0075 (the docket ID number for the title V performance task force).

E-Mail

Comments may also be sent by e-mail to: *A-and-R-docket@epa.gov,* attention Docket ID No. OAR–2004–0075. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. The EPA's e-mail system automatically captures your e-mail address and includes it as part of the comment that is placed in the official public docket.

Disk, CD–ROM, or Mail

If you submit a disk or CD–ROM, EPA recommends that you include your name, mailing address, e-mail address, or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment. If you submit mail, please enclose two copies. Send to: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2004–0075.

Hand Delivery or Courier

Deliver comments to: Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. OAR–2004–0075.

Deliveries are accepted only between 8:30 a.m. and 4:30 p.m. Eastern Standard Time, Monday through Friday, excluding Federal holidays.

By Facsimile

Fax your comments to the EPA Docket Center at (202) 566–1741, Attention Docket ID. No. OAR–2004–0075.

List of Subjects

Environmental protection, Clean Air Act, operating permits.

Dated: January 6, 2005.

Gregory A. Green,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 05–821 Filed 1–13–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7861–6]

Notice of Proposed Agreement for Recovery of Past Response Costs Under the Comprehensive, Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as Amended, 42 U.S.C. 9622(h)(1), R&R Foundry Superfund Site, Topeka, KS, Docket No. CERCLA–07–2004–0297

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Agreement for Recovery of Past Response Costs, R&R Foundry Superfund Site, Topeka, Kansas.

SUMMARY: Notice is hereby given that a proposed agreement regarding the R&R Foundry Superfund Site located in Topeka, Kansas, was signed by the United States Environmental Protection Agency (EPA) on December 13, 2004.

DATES: EPA will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed agreement.

ADDRESSES: Comments should be addressed to J. Scott Pemberton, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101, and should refer to: In the Matter of R&R Foundry Superfund Site, Topeka, Kansas, Docket No. CERCLA–07–2004–0297.

The proposed agreement may be examined or obtained in person or by mail from Kathy Robinson, Regional Hearing Clerk, at the office of the United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101, (913) 551–7567.

SUPPLEMENTARY INFORMATION: This proposed Agreement concerns the R&R Foundry Superfund Site, located in Topeka, Kansas, and is made and entered into by the EPA and CSE Technologies, Inc. ("the Settling Party"). This Site occupied 0.553 acres, with nearly 0.138 acres of contaminated soil.

In response to the release of hazardous substances including lead at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. 9604. Approximately 367 tons of lead-contaminated soil were excavated, treated on-site, and disposed off-site. In performing these response actions, EPA incurred response costs at or in connection with the Site.

Pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), the Settling Party is responsible for response costs incurred at or in connection with the Site. The Regional Administrator of EPA, Region VII, or his designee, has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed $500,000, excluding interest.

This Agreement requires the Settling Party to pay to the EPA Hazardous Substance Superfund the principal sum of $80,000 in reimbursement of Past Response Costs, and will resolve the Settling Party's alleged civil liability for these costs. The proposed Agreement also includes a covenant not to sue the Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a).

Dated: December 28, 2004.

James B. Gulliford,

Regional Administrator, United States Environmental Protection Agency, Region VII.

[FR Doc. 05–820 Filed 1–13–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3 p.m. on Tuesday, January 18, 2005, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to section 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider matters relating to the Corporation's corporate, supervisory and personnel activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Ms. Valerie J. Best, Assistant Executive Secretary of the Corporation, at (202) 898–7043.

Dated: January 11, 2005.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 05–922 Filed 1–12–05; 12:43 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provision of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:30 p.m. on Tuesday, January 18, 2005, to consider the following matters:

SUMMARY AGENDA: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of a previous Board of Directors' meeting.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

DISCUSSION AGENDA:

Memorandum and resolution re: Notice and Request for Public Comment Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA).

Memorandum re: Proposed FDIC Strategic Plan, 2005–2010.

Memorandum and resolution re: Examination Activities for Insurance Purposes

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); or (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Ms. Valerie J. Best, Assistant Executive Secretary of the Corporation, at (202) 898–7043.

Dated: January 11, 2005.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 05–923 Filed 1–12–05; 12:43 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 28, 2005.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Joseph Jay Gugger Trust, with Joseph Jay Gugger as trustee, and the Gugger Control Group, which includes, the Joseph J. Gugger Trust, Joseph Jay Gugger as trustee, and the J & M Limited Partnership, Joseph Jay Gugger as General Partner, all of Edwardsville, Illinois, to acquire voting shares of Clover Leaf Financial Corporation, Edwardsville, Illinois, and thereby indirectly acquire Clover Leaf Bank, Edwardsville, Illinois.

Board of Governors of the Federal Reserve System, January 10, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–775 Filed 1–13–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 7, 2005.

A. Federal Reserve Bank of Cleveland (Cindy C. West, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Oak Hill Financial, Inc., Jackson, Ohio; to acquire 100 percent of the voting shares of Lawrence Financial Holdings, Inc., Ironton, Ohio, and thereby indirectly acquire Lawrence Federal Savings Bank, Ironton, Ohio ("Lawrence Bank"). Lawrence Bank will convert to a state chartered bank prior to its acquisition by Oak Hill.

Board of Governors of the Federal Reserve System, January 10, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–774 Filed 1–13–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Trade Commission.

TIME AND DATE: 2 p.m., Monday, January 24, 2005.

PLACE: Federal Trade Commission Building, Room 532, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portion Open to Public:

(1) Oral Argument in the matter of Kentucky Household Goods Carriers Association, Docket 9309.

Portion Close to the Public:

(2) Executive Session to follow Oral Argument in Kentucky Household Goods Carriers Association, Docket 9309.

CONTACT PERSON FOR MORE INFORMATION: Mitch Katz. Office of Public Affairs: (202) 326–2180. Recorded Message: (202) 326–2711.

Donald S. Clark,

Secretary, (202) 326–2514.

[FR Doc. 05–876 Filed 1–11–05; 4:09 pm]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Privacy and Confidentiality.

Time and Date: 8:30 a.m.–4:45 p.m., January 11, 2005; 8:30 a.m.–4:45 p.m., January 12, 2005.

Place: Hubert H. Humphrey Building, Room 705–A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: At this meeting of the Subcommittee on Privacy and Confidentiality will receive information on the implementation of the regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164), promulgated under the Health Insurance Portability and Accountability Act of 1996.

The first day of the meeting will be conducted as a hearing, in which the Subcommittee will gather information about the impact of the regulation on two topics: radio frequency identification (RFID) technology; and, decedent health information. The Subcommittee will invite representatives of affected groups to provide information about how the regulation has affected the level of privacy and confidentiality for protected health information, best practices for implementation of the regulation, and information that might help to identify and resolve barriers to compliance. The format will include one or more invited panels and time for questions and discussion. The Subcommittee will ask the invited witnesses for examples of the effect the regulation has had on individuals and on entities subject to the regulation. The first day will also include a time period during which members of the public may deliver brief (3 minutes or less) oral public comment about the implementation of the regulations. To be included on the agenda, please contact Marietta Squire (301) 458–4524, by e-mail at *mrawlinson@cdc.gov* or postal address at 3311 Toledo Road, Room 2340, Hyattsville, MD 20782 by January 10, 2005.

The second day of the meeting will be conducted as a hearing, in which the Subcommittee will gather information about the impact of the regulation on third party disclosures. The Subcommittee will invite representatives of affected groups to provide information about how the regulation has affected the level of privacy and confidentiality for protected health information, best practices for implementation of the regulation, and information that might help to identify and resolve barriers to compliance. The format will include one or more invited panels and time for questions and discussion. The Subcommittee will ask the invited witnesses for examples of the effect the regulation has had on individuals and on entities subject to the regulation.

Persons wishing to submit written testimony only (which should not exceed five double-spaced typewritten pages) should endeavor to submit it by that date. Unfilled slots for oral testimony will also be filled on the days of the meeting as time permits. Please consult Ms. Squire for further information about these arrangements.

Additional information about the hearing will be provided on the NCVHS Web site at *http://www.ncvhs.hhs.gov* shortly before the hearing date.

Contact Person for More Information: Information about the content of the hearing and matters to be considered may be obtained from Kathleen H. Fyffe, Lead Staff Person for the NCVHS Subcommittee on Privacy and Confidentiality, Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, 440D Humphrey Building, 200 Independence Avenue, SW., Washington DC 20201, telephone (202) 690–7152, e-mail *Kathleen.Fyffe@hhs.gov* or from Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 2413, Presidential Building IV, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone (301) 458–4245.

Information about the committee, including summaries of past meetings and a roster of committee members, is available on the Committee's Web site at *http://www.ncvhs.hhs.gov*.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: January 3, 2005.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, OASPE.

[FR Doc. 05–797 Filed 1–13–05; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security (SSS).

Time and Date: January 13, 2005, 9 a.m.–5 p.m.; January 14, 2005, 8:30 a.m.–3 p.m.

Place: Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 705A, Washington, DC 20201.

Status: Open.

Purpose: On January 13th, the Subcommittee will hear additional stakeholder testimony on e-prescribing, with emphasis on federal-sector activities. On the 14th, the meeting will focus on updates on HIPAA-related activities, including revisions to claims forms and a year-ahead look from the Workgroup for Electronic Data Interchange (WEDI).

Contact Person For More Information: Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Maria Friedman, Health Insurance Specialist, Security and Standards Group, Centers for Medicare and Medicaid Services, MS: C5-24-04, 7500 Security Boulevard, Baltimore, MD 21244–1850, telephone: (410) 786–6333 or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone: (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: January 4, 2005.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 05–798 Filed 1–13–05; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

2nd NVAC Workshop on Strengthening the Supply of Vaccines in the U.S.

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) is hereby giving notice that the National Vaccine Program Office is sponsoring the "2nd NVAC Workshop on Strengthening the Supply of Vaccines in the U.S." The purpose of this workshop is to bring stakeholders together to: Develop a progress report on the recommendations made in 2002; identify both continuing and new factors that may threaten a stable vaccine supply; and outline specific actions that can have a durable effect in resolving impediments to the consistent and reliable availability of approved vaccines. The meeting is open to the public.

DATES: The meeting will be held on January 24–25, 2005.

ADDRESSES: Wyndham City Center: 1143 New Hampshire Avenue, NW., Washington, DC 20037

FOR FURTHER INFORMATION, CONTACT: Ms. Emma English, Program Analyst, National Vaccine Program Office, Department of Health and Human Services, Room 729H Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; (202) 690–5566; *nvac@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Service Act (42 U.S.C. Section 300aa–1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The National Vaccine Advisory Committee was established to provide advice and make recommendations to the Assistant Secretary for Health on matters related to the program's responsibilities.

A tentative agenda will be made available on or about January 10 for review on the NVPO Web site: *http://www.hhs.gov/nvpo.*

Public attendance at the meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Members of the public will have the opportunity to provide comments at the meeting. Preregistration is requested for both public attendance and comment. Any individual who wishes to attend the meeting should contact Ms. English.

Dated: January 6, 2005.

Bruce Gellin,

Director, National Vaccine Program Office, Executive Secretary, National Vaccine Advisory Committee.

[FR Doc. 05–765 Filed 1–13–05; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Aging the authority under Title II, Older Americans Act Amendments of 2000, Public Law 106–501, to execute functions pertaining to the White House Conference on Aging.

This delegation shall be exercised under the Department's existing delegation and policy on regulations consistent with the statutory requirements for conducting the White House Conference on Aging.

I have ratified the actions taken by the Assistant Secretary for Aging or other White House Conference on Aging officials that involve the exercise of this authority prior to the effective date of this delegation.

This delegation was effective on the date of signature.

Dated: December 29, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 05–799 Filed 1–13–05; 8:45 am]

BILLING CODE 4154–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry; Scientific Counselors Board; Teleconference; Notice of Meeting

ACTION: The Program Peer Review Subcommittee of the Board of Scientific Counselors (BSC), National Center for Environmental Health (NCEH)/Agency for Toxic Substances and Disease Registry (ATSDR): Teleconference.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), NCEH/ATSDR announces the following subcommittee meeting:

Name: Program Peer Review Subcommittee (PPRS).

Time and Date: 12:30 p.m.–3 p.m., eastern standard time, February 14, 2005.

Place: The teleconference will originate at the National Center for Environmental Health/Agency for Toxic Substances and Disease Registry in Atlanta, Georgia. Please see **SUPPLEMENTARY INFORMATION** for details on accessing the teleconference.

Status: Open to the public, teleconference access limited only by availability of telephone ports.

Purpose: Under the charge of the Board of Scientific counselors (BSC), NCEH/ATSDR the Program Peer Review Subcommittee establishes and monitors working groups of technical experts that perform program peer reviews of National Center for Environmental Health and the Agency for Toxic Substances and Disease Registry. The Subcommittee, working with the NCEH/ATSDR, Office of Science (OS), will establish a schedule and process for program peer reviews, nominate working group members, review summary reports and recommendations, and report back to the BSC. The OS will establish agency policy for program peer review and directly support each working group by collating program documents, and organizing the working groups review and site visit. Each NCEH/ATSDR program eligible for review will be reviewed every 5 years according to CDC/ATSDR policy.

Matters to be Discussed: The teleconference agenda will include a review of action items from the previous meeting, discussion and updates on the program peer review process and an update on the Hazards Substances Emergency Events Surveillance System.

SUPPLEMENTARY INFORMATION: This conference call is scheduled to begin at 12:30 p.m. eastern standard time. To participate in the teleconference, please dial (877) 315–6535 and enter conference code 383520.

FOR FURTHER INFORMATION CONTACT: Drue Barrett, Ph.D., Executive Secretary, PRRS, NCEH/ATSDR, M/S E–28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 498–0003.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: January 10, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–782 Filed 1–13–05; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health Advisory Board on Radiation and Worker Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Board on Radiation and Worker Health (ABRWH), and Subcommittee for Dose Reconstruction and Site Profile Reviews, National Institute for Occupational Safety and Health (NIOSH).

Subcommittee Meeting Time and Date: 8:30 a.m.–12 p.m., February 7, 2005.

Committee Meeting Times and Dates: 1 p.m.–5 p.m., February 7, 2005. 8 a.m.–4:45 p.m., February 8, 2005. 7 p.m.–8:30 p.m., February 8, 2005. 8:30 a.m.–4:30 p.m., February 9, 2005.

Place: Adam's Mark St. Louis, 4th and Chestnut Street, St. Louis, Missouri 63102, telephone 314–241–7400, fax 314–241–9839.

Status: Open to the public, limited only by the space available. The meeting space accommodates approximately 500 people.

Background: The ABRWH was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President, delegated to the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS, as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS, as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000 the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, and renewed on August 3, 2003.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS on the development of guidelines under Executive Orders 13179; (b) providing advice to the Secretary, HHS on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: Agenda for this meeting will focus on Program Status Reports from NIOSH and the Department of Labor; Site Profile Review of Bethlehem Steel; Task 3 Procedures Review; Site Profile Review of Mallinckrodt (Destrehan Street Facility); Travel Policy; Status Report of SC&A Task Orders and Costs; SEC Petition Evaluation Report—Mallinckrodt to include NIOSH Reports and Recommendations and Petitioners Comments on Report; Subcommittee Report & Board Discussion on First Set of Case Reviews; SEC Petition Evaluation Report—Iowa Army Ammunition Plant (IAAP) to include NIOSH Reports and Recommendations and Petitioners Comments on Report; and Board working sessions. There will be an evening public comment period scheduled for February 8, 2005, and public comment periods on all meeting days.

The Subcommittee for Dose Reconstruction and Site Profile Reviews will convene on February 7, 2005, from 8:30 a.m.–12 p.m. and will focus on review of draft minutes; discussion of Case Sampling Matrix, Summary of First Set of Case Reviews/ Preparation of Recommendation for Full Board and selection of Third Set of Individual Dose Reconstruction Cases for Board Review.

The agenda is subject to change as priorities dictate. In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/533–6825, fax 513/533–6826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: January 10, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–781 Filed 1–13–05; 8:45 am]

BILLING CODE 4163–19–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee (SRSHES)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and

Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee (SRSHES).

Time and Date: 8 a.m.–12:30 p.m., January 25, 2005.

Place: Augusta Towers Hotel & Convention Center, 2651, Perimeter Parkway, Augusta, GA 30909, telephone 706–855–8100, fax 706–860–7334.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, and replaced by MOUs signed in 1996 and 2000, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992, 1996, and in 2000, between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director of CDC and the Administrator of ATSDR pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction, and to serve as a vehicle for communities, American Indian Tribes, and labor to express concerns and provide advice and recommendations to CDC and ATSDR.

Matters To Be Discussed: Agenda items include a presentation on Radiation Epidemiology from the National Center for Environmental Health (NCEH), CDC, and a Subcommittee discussion on the Advanced Technologies and Laboratories International, Inc., final report.

Agenda items are subject to change as priorities dictate.

Inability to confirm attendance of quorum prevented publication 15 days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip Green, Executive Secretary, SRSHES, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 1600 Clifton Road, NE. (E–39), Atlanta, Georgia 30333, telephone (404) 498–1800, fax (404) 498–1811.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: January 10, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–784 Filed 1–13–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of New System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of New System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, called the "Cytology Personnel Record System (CYPERS), HHS/CMS/CMSO, 09–70–0543." The primary purpose of CYPERS is to assure CMS of the accuracy and reliability of gynecologic cytology testing by compliance with the CLIA statutory requirements. This will be accomplished by tracking and monitoring the enrollment, participation, and performance of individual cytotechnologists and physicians participating in CMS approved gynecologic cytology proficiency testing programs.

Information retrieved from this system of records will be used to support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; support constituent requests made to a Congressional representative; and support litigation involving the agency.

We have provided background information about the proposed system in the **SUPPLEMENTARY INFORMATION** section, below. Although the Privacy Act requires only that the "routine use" portion of the system be published for comment, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 23, 2004. In any event, we will not disclose any information under a routine use until forty (40) calendar days after publication. We may defer implementation of this system of records or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Privacy Compliance Data Development (DPCDD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT:

David Escobedo, Finance, Systems and Budget Group, Center for Medicaid and State Operations, Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Room S3–18–11, Baltimore, Maryland 21244–1850, Telephone Number: (410) 786–5401.

Thomas Hamilton, Survey and Certification Group, Center for Medicaid and State Operations, Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Room S2–12–25, Baltimore, Maryland 21244–1850, Telephone Number: (410) 786–9493.

SUPPLEMENTARY INFORMATION:

I. Description of the New System of Records

A. Statutory and Regulatory Basis for System of Records

Section 353(f)(4)(A) of the Public Health Service Act (42 U.S.C. 263a) mandates that the Secretary establish national standards for quality assurance in cytology services designed to assure consistent, valid, and reliable test performance by cytology laboratories. Section 353(f)(4)(B)(iv) requires, "* * * the periodic confirmation and evaluation of the proficiency of individuals involved in screening or interpreting cytological preparations, including announced and unannounced on-site proficiency testing of such individuals, with such testing to take place, to the extent practicable, under normal working conditions, * * *" due to the unique nature of this statutory requirement, authority to initiate this system of records is granted. In addition, the general and specific CLIA regulations for laboratories mandating proficiency testing of cytotechnologists and physicians are found in 42 CFR 493.801–493.807 and 493.855. General and specific CLIA requirements for CMS approval of proficiency testing programs in gynecologic cytology are found at 42 CFR 493.901–493.905 and 493.945.

B. Background

Because of highly publicized articles originating in the Wall Street Journal, and in Washington, DC television exposes, national attention focused on clinical laboratory testing, with specific interest on the testing that occurred in cytology laboratories. Congressional hearings followed.

Many laboratories performing testing on cytology specimens were not regulated and had no limit on the number of gynecologic specimens (Pap smears) that could be examined by an individual in a 24-hour period. Consequently, a number of "Pap Mills" appeared that produced Pap smear results that were erroneous and life threatening.

The failure of laboratories performing cytology testing to provide accurate and reliable patient test results particularly in the area of gynecologic cytology prompted the Congress to enact the Clinical Laboratory Improvement Amendments of 1988 (CLIA).

Certain cytology provisions of the CLIA statute require the Secretary of Health and Human Services to periodically confirm and evaluate the proficiency of individuals involved in screening or interpreting cytological preparations (42 U.S.C. 263a, Section 353(f)(4)(b)(iv)). The Secretary has delegated to the CMS the responsibility to regulate and monitor the accuracy and reliability of results of cytology preparations. The implementing regulations are found at 42 CFR part 493 and apply to all clinical laboratories, performing non-waived testing, including those individuals who examine gynecologic cytology (Pap smears).

To comply with these statutory provisions, a mechanism to monitor the proficiency of individuals who examine gynecologic cytology preparations, a record system must be established. This system, CYPERS, is a national tracking system designed to monitor the enrollment and performance of all cytotechnologists and physicians who must participate in a CMS approved cytology proficiency testing program.

In general, CMS approves proficiency testing (PT) programs offered by private, nonprofit organizations and states that meet the PT program requirements of the CLIA regulations. Laboratories performing certain non-waived testing must enroll and participate in a CMS approved PT program. PT samples are sent to laboratories by the PT programs; the results are unknown to the laboratory staff. After testing, laboratories return their PT sample results to the PT program where they are evaluated and graded for accuracy. The PT program sends the final scores and evaluations to CMS and CMS approved accreditation organizations where monitoring of laboratory performance occurs on a continual basis. In the case of gynecologic cytology PT, the performance of individuals, not laboratories, is monitored using the CYPERS record system.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The CYPERS contains each individual's name, Proficiency Testing Registration Number (a unique identifier), Medical Licensure Number, if employed at more than one laboratory: the names, location, and CLIA number of each laboratory; test scores; and in which testing event the individual has participated. CYPERS will also be able to produce user-defined reports on request by Central Office staff only.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release CYPERS information that can be associated with an individual as provided for under "Section III. Entities Who May Receive Disclosures Under Routine Use." Both identifiable and non-identifiable data may be disclosed under a routine use. Identifiable data includes individual records with CYPERS information and identifiers. Non-identifiable data includes individual records with CYPERS information and masked identifiers or CYPERS information with identifiers stripped out of the file.

CMS will only disclose the minimum personal data necessary to achieve the purpose of the CYPERS. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data are being collected; e.g., monitoring the registration, participation, and outcome of annual cytology proficiency testing events for cytotechnologist and physicians who evaluate gynecologic cytology specimens, assure remedial actions are taken when necessary, and develop the data necessary for CMS to determine the continued or reduced frequency of testing.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. there is a strong probability that the proposed use of the data would, in fact, accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. remove or destroy at the earliest time all individually, identifiable information; and

c. agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities That May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the CYPERS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. CMS proposes to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, or consultants that have been contracted by the agency to assist in the performance of a service related to this system of records and that need to have access to the records in order to perform the activity.

CMS contemplates disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing agency business functions relating to purposes for this system of records.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and requires the contractor to return or destroy all information at the completion of the contract.

2. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

Individuals sometimes request the help of a Member of Congress in resolving some issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which CMS collects the information.

B. Additional Provisions Affecting Routine Use Disclosures

In addition, CMS policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

This System of Records contains Protected Health Information as defined by the Department of Health and Human Services' regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR Parts 160 and 164, 65 FR 82462 as amended by 66 FR 12434). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, DHHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management Of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, DHHS, and CMS policies and standards include but are not limited to: all pertinent NIST publications; the DHHS Automated Information Systems Security Handbook and the CMS Information Security Handbook.

V. Effects of the New System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will monitor the collection and reporting of CYPERS data. CYPERS information is submitted to CMS through standard systems. CMS will use a variety of onsite and offsite edits and audits to increase the accuracy of CYPERS data.

CMS will take precautionary measures (see item IV, above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of individuals whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy because of maintaining this system of records.

Dated: December 23, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0543

SYSTEM NAME:

"Cytology Personnel Record System (CYPERS), HHS/CMS/CMSO, 09–70–0543."

SECURITY CLASSIFICATION:

Level 3, Privacy Act Sensitive.

SYSTEM LOCATION:

HCFA Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850. CMS contractors and agents at various locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual cytotechnologists and physicians participating in CMS approved gynecologic cytology proficiency testing programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system will contain each individual's name, Proficiency Testing Registration Number (a unique identifier), Medical Licensure Number, if employed at more than one laboratory: the names, location, and CLIA number of each laboratory; test scores, and in which testing event the individual has participated. CYPERS will also be able to produce user-defined reports on request by Central Office staff only.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 353(f)(4)(A) of the Public Health Service Act (42 U.S.C. 263a), Section 353(f)(4)(B)(iv), 42 CFR 493.801, 493.803, 493.807, 493.855, 42 CFR 493.901, 493.903, 493.905, and 493.945.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of CYPERS is to assure CMS of the accuracy and reliability of gynecologic cytology testing by compliance with the CLIA statutory requirements. This will be accomplished by tracking and monitoring the enrollment, participation, and performance of individual cytotechnologists and physicians participating in CMS approved gynecologic cytology proficiency testing programs.

Information retrieved from this system of records will be used to support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; support constituent requests made to a Congressional representative; and support litigation involving the agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the CYPERS Registration and Product Ordering System without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, CMS policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). Be advised, this System of Records contains Protected Health Information as defined by the Department of Health and Human Services' (HHS) regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR Parts 160 and 164, 65 FR 8462 as amended by 66 FR 12434). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

1. To agency contractors, or consultants that have been contracted by the agency to assist in the performance of a service related to this system of records and that need to have access to the records in order to perform the activity.

2. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on the magnetic disk sub-system of the Windows 2000 server.

RETRIEVABILITY:

The CYPERS records are retrieved by individual's name, Proficiency Testing Registration Number unique identifier, Medical Licensure Number, test scores, or which testing event the individual has participated. CYPERS will also be able to produce user-defined reports on request by Central Office staff only.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, DHHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management Of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies.

Federal, DHHS, and CMS policies and standards include but are not limited to: all pertinent NIST publications; the DHHS Automated Information Systems Security Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

CMS will retain identifiable CYPERS data for a total period of 10 years.

SYSTEM MANAGER AND ADDRESS:

Director, Finance, Systems and Budget Group, Center for Medicaid and State Operations, Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Room S3–18–11, Baltimore, Maryland 21244–1850, Telephone Number: (410) 786–5401.

Director, Survey and Certification Group, Center for Medicaid and State Operations, Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Room S2–12–25, Baltimore, Maryland 21244–1850, Telephone Number: (410) 786–9493.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager, who will require the system name, the subject individual's name (woman's maiden name, if applicable), address, date of correspondence and control number.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5 (a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

CMS will receive CYPERS data periodically from CMS-approved cytology proficiency testing programs only. This System of Records protects the data transmitted by CMS-approved cytology proficiency testing programs at all stages of collection, manipulation, transmissions, storage, and maintenance, at the PT program and at CMS.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 05–836 Filed 1–13–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Follow-up to the National Survey of Child and Adolescent Well-Being.

OMB No.: 0970–0202.

Description: The Department of Health and Human Services intends to collect data on a subset of children and families who have participated in the National Survey of Child and Adolescent Well-Being (NSCAW). The NSCAW was authorized under Section 427 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The Survey began in November 1999 with a national Sample of 5,501 children ages 0–14 who had been the subject of investigation by Child Protective Services (CPS) during the baseline data collection period, which extended from November 1999 through April 2000. Direct assessments and interviews were conducted with the children themselves, their primary caregivers, their caseworkers, and, for school-aged children, their teachers.

Follow-up data collections were conducted 12 months, 18 months and 36 months post-baseline. The current data collection plan involves only a subset of 1,497 children from the original sample, that is, children who were ages 0–12 months during the baseline period. The original sample design for NSCAW was stratified to include an over-sample or infants; thus, the subset that is the subject of this data collection is a representative sample of infants who were the targets of CPS investigations during the survey's baseline data collection period. This group will be at the beginning of their formal schooling as the next data collection begins, and will allow for the identification of early risk and protective factors, as well as the influence of services and service systems, on their functioning as they enter this critical transition period.

The NSCAW is unique in that it is the only source of nationally representative, firsthand information about the functioning and well-being, service needs and service utilization of children and families who come to the attention of the child welfare system. Information is collected about children's cognitive, social, emotional, behavioral and adaptive functioning, as well as family and community factors that are likely to influence their functioning. Family service needs and service utilization also are addressed in the data collection. The data collection for the follow-up will follow the same format as that used in previous rounds of data collection, and will employ the instruments that have been used with 5- to 7-year-olds in previous rounds. Data from NSCAW are made available to the research community through licensing arrangements from the National Data Archive on Child Abuse and Neglect, housed at Cornell University.

Respondents: Children, who are clients of the child welfare system, their primary caregivers, caseworkers, and teachers.

ANNUAL BURDEN ESTIMATES

Instrument	No. of respondents	No. of responses per respondent	Average burden hours per response	Total burden hours
Child Interview	1,497	1	1.2	1,796
Permanent Caregiver Interview	1,122	1	2.0	2,244
Foster Caregiver Interview	375	1	1.5	563
Caseworker Interview	375	1	1.0	375
Teacher Questionnaire	1,497	1	.75	1,123
Estimated Total Annual Burden Hours:				6,101

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collections described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 10, 2005.

Robert Sargis,

Reports Clearance, Officer.

[FR Doc. 05–826 Filed 1–13–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Grants; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

I. Funding Opportunity Description

The Food and Drug Administration (FDA) is announcing changes to its Office of Orphan Products Development (OPD) grant program for fiscal year (FY) 2006. This announcement supercedes the previous announcement of this program, which was published in the **Federal Register** of August 8, 2003 (68 FR 47340). Please note that there are new submission requests and requirements for this grant program. These include, but are not limited to, a requested letter of intent, a change in funding levels, a change in number of receipt dates, and changes in review criteria.

1. Background

The OPD was created to identify and promote the development of orphan products. Orphan products are drugs, biologics, medical devices, and foods for medical purposes that are indicated for a rare disease or condition (that is, one with a prevalence, not incidence, of fewer than 200,000 people in the United States). Diagnostic tests and vaccines will qualify only if the U.S. population of intended use is fewer than 200,000 people a year.

2. Program Research Goals

The goal of FDA's OPD grant program is to support the clinical development of products for use in rare diseases or conditions where no current therapy exists or where the product will improve the existing therapy. FDA provides grants for clinical studies on safety and/or effectiveness that will either result in, or substantially contribute to, market approval of these products. Applicants must include in the application's "Background and Significance" section an explanation of how the proposed study will either help gain product approval or provide essential data needed for product development. All funded studies are subject to the requirements of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 331 *et seq.*) and regulations issued under it.

II. Award Information

Except for applications for studies of medical foods that do not need premarket approval, FDA will only award grants to support premarket clinical studies to determine safety and effectiveness for approval under section 505, 512, or 515 of the act (21 U.S.C. 355, 360b, or 360e*et seq.*) or safety, purity, and potency for licensing under section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262).

FDA will support the clinical studies covered by this notice under the authority of section 301 of the PHS Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103.

Applicants for Public Health Service (PHS) clinical research grants are encouraged to include minorities and women in study populations so research findings can be of benefit to all people at risk of the disease or condition under study. It is recommended that applicants place special emphasis on including minorities and women in studies of diseases, disorders, and conditions that disproportionately affect them. This policy applies to research subjects of all ages. If women or minorities are excluded or poorly represented in clinical research, the applicant should provide a clear and compelling rationale that shows inclusion is inappropriate.

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

FDA is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national effort designed to reduce morbidity and mortality and to improve quality of life. Applicants may obtain a paper copy of the "Healthy People 2010" objectives, vols. I and II, for $70 ($87.50 foreign) S/N 017–000–00550–9, by writing to the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Telephone orders can be placed to 202–512–2250. The document is also available in CD–ROM format, S/N 017–001–00549–5 for $19 ($23.50 foreign) as well as on the Internet at *http://www.healthypeople.gov/*. (FDA has verified the Web site address, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**). Internet viewers should proceed to "Publications."

1. Award Instrument

Support will be in the form of a grant. All awards will be subject to all policies and requirements that govern the research grant programs of the PHS, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 do not apply to this program. The National Institutes of Health (NIH) modular grant program does not apply to this FDA grant program. All grant awards are subject to applicable requirements for clinical investigations imposed by sections 505, 512, and 515 of the act, section 351 of the PHS Act, and regulations issued under any of these sections.

2. Award Amount

Of the estimated fiscal year (FY 2006) funding ($13.2 million), approximately $9.2 million will fund noncompeting continuation awards, and approximately $4 million will fund 10 to 12 new awards subject to availability of funds. The expected start date for the FY 2006 awards will be June 1, 2006.

Grants will be awarded up to $200,000 or up to $350,000 in total (direct plus indirect) costs per year for up to 3 years. Please note that beginning in FY 2006, the dollar limitation will be total costs, not direct costs as in previous years. Applications for the smaller grants ($200,000) may be for phase 1, 2, or 3 studies. Study proposals for the larger grants ($350,000) must be for studies continuing in phase 2 or 3 of investigation. Phase 1 studies include the initial introduction of an investigational new drug or device into humans, are usually conducted in healthy volunteer subjects, and are designed to determine the metabolic and pharmacological actions of the product in humans, the side effects including those associated with increasing drug doses and, if possible, to gain early evidence on effectiveness. Phase 2 studies include early controlled clinical studies conducted to evaluate the effectiveness of the product for a particular indication in patients with the disease or condition and to determine the common short-term side effects and risks associated with it. Phase 3 studies gather more information about effectiveness and safety that is necessary to evaluate the overall risk-benefit ratio of the product and to provide an acceptable basis for product labeling. Budgets for each year of requested support may not exceed the $200,000 or $350,000 total cost limit, whichever is applicable.

3. Length of Support

The length of support will depend on the nature of the study. For those studies with an expected duration of more than 1 year, a second or third year of noncompetitive continuation of support will depend on the following factors: (1) Performance during the preceding year, (2) compliance with regulatory requirements of the investigational new drug (IND)/ investigational device exemption (IDE), and (3) availability of Federal funds.

4. Funding Plan

The number of studies funded will depend on the quality of the applications received and the availability of Federal funds to support the projects. Resources for this program are limited. Therefore, if two applications propose duplicative or similar studies, FDA may support only the study with the better score. Funds may be requested in the budget to travel to FDA for meetings with OPD or reviewing division staff about the progress of product development.

Before an award will be made, OPD will confirm the active status of the protocol under the IND/IDE. If the protocol is under FDA clinical hold for any reason or if the IND/IDE for the proposed study is not active and in regulatory compliance, no award will be made. Documentation of Assurances with the Office of Human Research Protection (OHRP) (see section IV.4.A of this document) must be on file with the FDA grants management office before an award is made. Any institution receiving Federal funds must have an institutional review board (IRB) of record even if that institution is overseeing research conducted at other performance sites. To avoid funding studies that may not receive, or may experience a delay in receiving, IRB approval, documentation of IRB approval and Federal Wide Assurance (FWA or assurance) for the IRB of record and all performance sites must be on file with the FDA grants management office before an award to fund the study will be made. In addition, if a grant is awarded, grantees will be informed of any additional documentation that should be submitted to FDA's IRB. This grant program does not require the applicant to match or share in the project costs if an award is made.

5. Dun and Bradstreet Number (DUNS)

Beginning October 1, 2003, applicants are required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a 9-digit identification number that uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, call 1–866–705–5711. Be certain that you identify yourself as a Federal grant applicant when you contact Dun and Bradstreet.

6. Central Contractor Registration

In anticipation of the grants.gov electronic application process, applicants are encouraged to register with the Central Contractor Registration (CCR) database. This database is a governmentwide warehouse of commercial and financial information for all organizations conducting business with the Federal Government. Registration with CCR will eventually become a requirement and is consistant with the governmentwide Management Reform to create a citizen-centered web presence and build e-gov infrastructures in and across agencies to establish a "single face to industry." The preferred method for completing a registration is through the World Wide Web at *http://www.ccr.gov*. This Web site provides a CCR handbook with detailed information on data you will need prior to beginning the online registration, as well as steps to walk you through the registration process. You must have a DUNS number to begin your registration. Call Dunn & Bradstreet, Inc., at the number listed in the previous paragraph if you do not have a DUNS number.

In order to access grants.gov an applicant will be required to register with the Credential Provider. Information about this is available at *http://www.grants.gov/CredentialProvider*.

III. Eligibility Information

1. Eligible Applicants

The grants are available to any foreign or domestic, public or private, for-profit or nonprofit entity (including State and local units of government). Federal agencies that are not part of the Department of Health and Human Services (HHS) may apply. Agencies that are part of HHS may not apply. For-profit entities must commit to excluding fees or profit in their request for support to receive grant awards. Organizations that engage in lobbying activities, as described in section 501(c)(4) of the Internal Revenue Code of 1968, are not eligible to receive grant awards. An application that has received two prior disapprovals is not eligible to apply.

2. Cost Sharing or Matching

Cost sharing is not required.

IV. Application and Submission

1. Addresses to Request Application

Application requests, letters of intent, and completed applications should be submitted to Cynthia Polit, Grants Management Specialist, Division of Contracts and Grants Management (HFA–500), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7180, e-mail: *cynthia.polit@fda.gov* or *cpolit@oc.fda.gov*. Applications that are hand-carried or commercially delivered should be addressed to 5630 Fishers Lane, rm. 2105, Rockville, MD 20852. Applications may also be obtained from OPD on the Internet at *http://www.fda.gov/orphan*.

Do not send applications to the Center for Scientific Research (CSR), NIH.

2. Content and Form of Application

A. General Information

The original and two copies of the completed Grant Application Form PHS 398 (Rev. 5/01) or the original and two copies of PHS 5161–1 (Rev. 7/00) for State and local governments, with three copies of the appendices must be submitted to Cynthia Polit (see Addresses to Request Application in section IV.1 of this document). State and local governments may use the PHS 398 (Rev. 5/01) application form in lieu of the PHS 5161–1. Other than evidence of final IRB approval, FWA or assurance, and certification of adequate supply of study product, no material will be accepted after the receipt date. The mailing package and item two of the application face page must be labeled "Response to RFA-FDA-OPD–2006." If an application for the same study was submitted in response to a previous request for application (RFA) but has not yet been funded, an application in response to this notice will be considered a request to withdraw the previous application.

The applicant for a resubmitted application should address the issues presented in the summary statement from the previous review and include a copy of the summary statement itself as part of the resubmitted application.

Applicants must follow guidelines named in the PHS 398 (Rev. 5/01) grant application instructions. An application that has received two prior disapprovals is not eligible to apply.

B. Format for Application

Submission of the application must be on Grant Application Form PHS 398 (Rev. 5/01). Applications from State and local governments may be sent on Form PHS 5161–1 (Rev. 7/00) or Form PHS 398 (Rev. 5/01). All "General Instructions" and "Specific Instructions" in the application kit or on the OPD Web site (see Addresses to Request Application in section IV.1 of this document) must be followed except for the receipt dates and the mailing label address. The face page of the application should reflect the request for applications number RFA–FDA–OPD–2006. The title of the proposed study must include the name of the product and the disease/disorder to be studied and the IND/IDE number. The narrative portion of the application may not exceed 100 pages in length and must be single-spaced, printed on 1 side, in 12-point font, and unbound. The appendices should also not exceed 100 pages in length (separate from the narrative portion of the application).

Applicants have the option of omitting from the application copies (but not from 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.

Applicants should provide as an appendix to the application a summary of any meetings or discussions about the clinical study that have occurred with FDA reviewing division staff.

Data and information included in the application will generally not be publicly available prior to the funding of the application. After funding has been granted, data and information included in the application will be given confidential treatment to the extent permitted by the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (including 21 CFR 20.61, 20.105, and 20.106). By accepting funding, the applicant agrees to allow OPD to publish specific information about the grant.

Information collection requirements requested on Form PHS 398 (Rev. 5/01) have been sent by the PHS to the Office of Management and Budget (OMB) and have been approved and assigned OMB control number 0925–0001. The requirements requested on Form PHS 5161–1 (Rev. 7/00) were approved and assigned OMB control number 0348–0043.

3. Submission Dates and Times

For FY 2006, the application receipt date is April 19, 2005. Please note that there is only one receipt date for FY 2006.

The protocol in the grant application should be submitted to the IND/IDE no later than March 18, 2005.

A letter of intent to submit a grant application is requested and should be sent to Cynthia Polit, Grants Management Specialist (see Addresses to Request Application in section IV.1 of this document) by March 18, 2005.

The letter of intent should include the name of the drug, biologic, device, or food; the disease/condition; a brief summary of the proposed project; and the possible study sites. The letter of intent is not binding on the applicant or the agency. That is, the applicant may choose not to submit an application even if a letter of intent has been submitted previously. Submission of a letter of intent does not change any of the requirements and due dates outlined in this RFA.

Applications will be accepted from 8 a.m. to 4:30 p.m., Monday through Friday until the established receipt date. Applications will be considered received on time if hand delivered to the address noted previously (see Addresses to Request Application in section IV.1 of this document) before the established receipt date, or sent or mailed by the receipt date as shown by a legible U.S. Postal Service dated postmark or a legible dated receipt from a commercial carrier. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. (Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office). Please do not send applications to the CSR at NIH. Any application sent to NIH/CSR that is forwarded to the FDA Grants Management Office and not received in time for orderly processing will be judged nonresponsive and returned to the applicant. Applications must be submitted via U.S. mail or commercial carrier or hand delivered as stated previously. Currently, FDA is unable to receive applications electronically.

4. Funding Restrictions

A. Protection of Human Research Subjects

All institutions engaged in human subject research financially supported by HHS must file an "assurance" of protection for human subjects with the OHRP (45 CFR part 46). Applicants are advised to visit the OHRP Internet site at *http://ohrp.osophs.dhhs.gov/* for guidance on human subjects issues. (FDA has verified the Web site address, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.) The requirement to file an assurance applies to both "awardee" and collaborating "performance site" institutions. Awardee institutions are automatically considered to be "engaged" in human subject research whenever they receive a direct HHS award to support such research, even where all activities involving human subjects are carried out by a subcontractor or collaborator. In such cases, the awardee institution bears the responsibility for protecting human subjects under the award. The awardee institution is also responsible for, among other things, ensuring that all collaborating performance site institutions engaged in the research hold an approved assurance prior to their initiation of the research. No awardee or performance site institution may spend funds on human subject research or enroll subjects without the approved and applicable assurance(s) on file with OHRP. An awardee institution must, therefore, have its own IRB of record and assurance. The IRB of record may be an IRB already being used by one of the "performance sites," but it must specifically be registered as the IRB of record with the OHRP.

Applicants should review the section on human subjects in the application instructions entitled "I. Preparing Your Application, Section C. Specific Instructions, Item 4, Human Subjects" for further information.

The clinical protocol should comply with ICHE6 "Good Clinical Practice Consolidated Guidance" which sets an international ethical and scientific quality standard for designing, conducting, recording, and reporting trials that involve the participation of human subjects. Applicants are encouraged to review the regulations, guidances, and information sheets on Good Clinical Practice cited on the Internet at *http://www.fda.gov/oc/gcp/*.

B. Key Personnel Human Subject Protection Education

The awardee institution is responsible for ensuring that all key personnel receive appropriate training in their human subject protection responsibilities. Key personnel include all principal investigators, coinvestigators, and performance site investigators responsible for the design and conduct of the study. HHS, FDA, and OPD do not prescribe or endorse any specific education programs. Many institutions have already developed educational programs on the protection of research subjects and have made participation in such programs a requirement for their investigators. Other sources of appropriate instruction might include the online tutorials offered by the Office of Human Subjects Research, NIH at *http://ohsr.od.nih.gov* and by OHRP at *http://ohrp.osophs.dhhs.gov/educmat.htm.* (FDA has verified the Web site address, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register.**)

Within 30 days of the award, the principal investigator should provide a letter to the FDA grants management office that includes the names of the key personnel, the title of the human subjects protection education program completed by each named personnel, and a one-sentence description of the program. This letter should be signed by the principal investigator and cosigned by an institution official and sent to the Grants Management Officer.

5. Other Submission Requirements

Informed Consent

Consent forms, assent forms, and any other information given to a subject are part of the grant application and must be provided, even if in a draft form. The applicant is referred to HHS regulations at 45 CFR 46.116 and 21 CFR 50.25 for details regarding the required elements of informed consent.

V. Application Review Information

1. Criteria

A. General Information

FDA grants management and program staff will review all applications sent in response to this notice. To be responsive, an application must be submitted in accordance with the requirements of this notice and must bear the original signatures of both the principal investigator and the applicant institution's/organization's authorized official. Applications found to be nonresponsive will be returned to the applicant without further consideration. Applicants are strongly encouraged to contact FDA to resolve any questions about criteria before submitting their application. Please direct all questions of a technical or scientific nature to the OPD program staff and all questions of an administrative or financial nature to the grants management staff (see Agency Contacts in section VII of this document).

B. Program Review Criteria

(1) Applications must propose clinical trials intended to provide safety and/or efficacy data.

(2) There must be an explanation in the "Background and Significance" section of how the proposed study will either contribute to product approval or provide essential data needed for product development.

(3) The prevalence, not incidence, of the population to be served by the product must be fewer than 200,000 individuals in the United States. The applicant should include, in the "Background and Significance" section, a detailed explanation supplemented by authoritative references in support of the prevalence figure. Diagnostic tests and vaccines will qualify only if the population of intended use is fewer than 200,000 individuals in the United States per year.

(4) The study protocol proposed in the grant application must be under an active IND or IDE (not on clinical hold) to qualify the application for scientific and technical review. Additional IND/IDE information is described as follows:

The proposed clinical protocol should be submitted to the FDA IND/IDE reviewing division a minimum of 30 days before the grant application deadline.

The number assigned to the IND/IDE that includes the proposed study should appear on the face page of the application with the title of the project. The date the subject protocol was submitted to FDA for the IND/IDE review should also be provided.

Protocols that would otherwise be eligible for an exemption from the IND regulations must be conducted under an active IND to be eligible for funding under this FDA grant program.

If the sponsor of the IND/IDE is other than the principal investigator listed on the application, a letter from the sponsor permitting access to the IND/IDE must be submitted in both the IND/IDE and in the grant application. The principal investigator(s) named in the application and in the study protocol must be submitted to the IND/IDE.

Studies of already approved products, evaluating new orphan indications, are also subject to these IND/IDE requirements.

Only medical foods that do not need premarket approval and medical devices that are classified as nonsignificant risk (NSR) are free from these IND/IDE requirements. Applicants studying an NSR device should provide a letter in the application from the FDA Center for Devices and Radiologic Health indicating the device is an NSR device.

(5) The requested budget must be within the limits, either $200,000 in total costs per year for up to 3 years for any phase study, or $350,000 in total costs per year for up to 3 years for phase 2 or 3 studies. Any application received that requests support over the maximum amount allowable for that particular study will be considered nonresponsive.

(6) Evidence that the product to be studied is available to the applicant in the form and quantity needed for the clinical trial must be included in the application. A current letter from the supplier as an appendix will be acceptable. If negotiations with a sponsor to supply the study product are underway but have not been finalized at the time of application, please provide a letter indicating such in the application. Verification of adequate supply of study product will be necessary before an award is made.

(7) The protocol should be submitted in the application. The narrative portion of the application should be no more than 100 pages, single-spaced, printed on 1 side, with 1/2-inch margins, and in unreduced 12-point font. The appendices should also be no more than 100 pages (separate from the narrative portion of the application). The application should not be bound.

C. Scientific/Technical Review Criteria

The ad hoc expert panel will review the application based on the following scientific and technical merit criteria:

(1) The soundness of the rationale for the proposed study;

(2) The quality and appropriateness of the study design, including the design of the monitoring plans;

(3) The statistical justification for the number of patients chosen for the study, based on the proposed outcome measures and the appropriateness of the statistical procedures for analysis of the results;

(4) The adequacy of the evidence that the proposed number of eligible subjects can be recruited in the requested timeframe;

(5) The qualifications of the investigator and support staff, and the resources available to them;

(6) The adequacy of the justification for the request for financial support;

(7) The adequacy of plans for complying with regulations for protection of human subjects and monitoring; and

(8) The ability of the applicant to complete the proposed study within its budget and within time limits stated in this RFA.

2. Review and Selection Process

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application. Consultation with the proper FDA review division may also occur during this phase of the review to determine whether the proposed study will provide acceptable data that could contribute to product approval. Responsive applications will be subject to a second review by a National Advisory Council for concurrence with the recommendations made by the first-level reviewers, and funding decisions will be made by the Commissioner of Food and Drugs or his designee.

A score will be assigned based on the scientific/technical review criteria. The review panel may advise the program staff about the appropriateness of the proposal to the goals of the OPD grant program.

3. Anticipated Announcement and Award

Notification regarding the results of the review is anticipated by May 31, 2006. The expected start date for the FY 2006 awards will be June 1, 2006.

VI. Award Administration Information

1. Award Notices

If receiving an award, applicants will be notified by the FDA Grants Management Office. Awards will either be issued on a Notice of Grant Award (PHS 5152) signed by the FDA Chief Grants Management Officer and be sent to successful applicants by mail or will be transmitted electronically.

2. Administrative Requirements

Applicants must adhere to the requirements of this Notice. Special Terms and Conditions regarding FDA regulatory requirements and adequate progress of the study may be part of the award notice.

3. Reporting

A. Reporting Requirements

The original and two copies of the annual Financial Status Report (FSR) (SF–269) must be sent to FDA's grants management officer within 90 days of the budget period end date of the grant. For continuing grants, an annual program progress report is also required. For such grants, the noncompeting continuation application (PHS 2590) will be considered the annual program progress report. Also, all new and continuing grants must comply with all regulatory requirements necessary to keep the status of their IND/IDE "active" and "in effect," that is, not on "clinical hold." Failure to meet regulatory requirements will be grounds for suspension or termination of the grant.

B. Monitoring Activities

The program project officer will monitor grantees periodically. The monitoring may be in the form of telephone conversations, e-mails, or written correspondence between the project officer/grants management officer and the principal investigator. Information including but not limited to study progress, enrollment, problems, adverse events, changes in protocol, study monitoring activities will be requested. Periodic site visits with officials of the grantee organization may also occur. The results of these monitoring activities will be recorded in the official grant file and will be available to the grantee upon request consistent with applicable disclosure statutes and with FDA disclosure regulations. Also, the grantee organization must comply with all special terms and conditions of the grant, including those which state that future funding of the study will depend on recommendations from the OPD project officer. The scope of the recommendations will confirm that: (1) There has been acceptable progress toward enrollment, based on specific circumstances of the study; (2) there is an adequate supply of the product/device; and (3) there is continued compliance with all FDA regulatory requirements for the trial. The grantee must file a final program progress report, FSR and invention statement within 90 days after the end date of the project period as noted on the notice of grant award.

VII. Agency Contacts

For issues regarding the administrative and financial management aspects of this notice: Cynthia Polit (see Addresses to Request Application in section IV of this document).

For issues regarding the programmatic aspects of this notice: Debra Y. Lewis, Director, Orphan Products Grants Program, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6A–55, Rockville, MD 20857, 301–827–3666, e-mail: *debra.lewis@fda.gov* or *dlewis@oc.fda.gov.*

VIII. Other Information

Clinical Trials Data Bank

The Food and Drug Modernization Act of 1997 requires that certain information be entered into the Clinical Trials Data Bank (CTDB) for federally and privately funded clinical trials conducted under an IND application if a drug is being used to treat a serious or life-threatening disease or condition and if the trial is to test effectiveness (42 U.S.C. 282(j)(3)(A)). Information on noneffectiveness trials for drugs to treat conditions not considered serious or life-threatening may also be entered into this database but such information is not required.

This databank provides patients, family members, healthcare providers, researchers, and members of the public easy access to information on clinical trials for a wide range of diseases and conditions. The U.S. National Library of Medicine has developed this site in collaboration with NIH and FDA. The databank is available to the public through the Internet at *http://clinicaltrials.gov.* (FDA has verified the Web site address, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**).

The CTDB contains the following information: (1) Information about clinical trials, both federally and privately funded, of experimental treatments for patients with serious or life-threatening diseases; (2) a description of the purpose of each experimental drug; (3) the patient eligibility criteria; (4) the location of clinical trial sites; and (5) the point of contact for those wanting to enroll in the trial.

The OPD program staff will provide more information to grantees about entering the required information in the CTDB after awards are made.

Dated: January 6, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–762 Filed 1–13–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–02]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by

HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, room 7266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Heather Ranson, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AGRICULTURE: Ms. Marsha Pruitt, Realty Officer, Department of Agriculture, Reporters Building, 300 7th St., SW., Rm 310B, Washington, DC 20250; (202) 720–4335; COE: Ms. Shirley Middleswarth, Army Corps of Engineers, Civil Division, Directorate of Real Estate, 441 G Street, NW., Washington, DC 20314–1000; (202) 761–7425; COAST GUARD: Commandant (G–SEC), United States Coast Guard, Attn: Teresa Sheinberg, 2100 Second St., SW., Rm 6109, Washington, DC 20593–0001; (202) 267–6142; ENERGY: Mr. Andy Duran, Department of Energy, Office of Engineering & Construction Management, ME–90, 1000 Independence Ave., SW., Washington, DC 20585: (202) 586–4548; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0084; INTERIOR: Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS5512, Washington, DC 20240; (202) 219–0728; NAVY: Mr. Charles C. Cocks, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; VA: Ms. Amelia E. McLellan, Director, Real Property Service, Department of Veterans Affairs, 810 Vermont Avenue, NW., Rm 419, Washington, DC 20420; (202) 565–5398; (These are not toll-free numbers).

Dated: January 6, 2005.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

Title V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 1/14/05

Suitable/Available Properties

Buildings (by State)

California

4 Bldgs.
Work Center
13280 Paskenta Road
Paskenta Co: CA 96074–
Landholding Agency: Agriculture
Property Number: 15200510001
Status: Unutilized
Comment: Ranger residence, residence, barrack, storage, possible asbestos/presence of lead paint, need rehab

Federal Building
1125 I Street
Modesto Co: Stanislaus CA 95354–
Landholding Agency: GSA
Property Number: 54200510002
Status: Surplus
Comment: 23,770 sq. ft., needs upgrade, presence of asbestos/lead paint, listed on Natl Register of Historic Places, Federal tenants occupy a portion of bldg.
GSA Number: 9–G–CA–1576

Colorado

Bldg. 2
VAMC
2121 North Avenue
Grand Junction Co: Mesa CO 81501–
Landholding Agency: VA
Property Number: 97200430001
Status: Unutilized
Comment: 3298 sq. ft., needs major rehab, presence of asbestos/lead paint

Bldg. 3
VAMC
2121 North Avenue
Grand Junction Co: Mesa CO 81501–
Landholding Agency: VA
Property Number: 97200430002
Status: Unutilized
Comment: 7275 sq. ft., needs major rehab, presence of asbestos/lead paint

Florida

Job Corps Center
205 West Third Street
Jacksonville Co: FL 33206–
Landholding Agency: GSA
Property Number: 54200440019
Status: Excess
Comment: 4 bldgs., sq. ft. varies, presence of asbestos/possible lead paint. most recent use—housing/classroom/training/medical/recreation, historic potential
GSA Number : 4–L–FL–0967B

Indiana

Bldg. 105, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230006
Status: Excess
Comment: 310 sq. ft., 1 story stone structure, no sanitary or heating facilities, Natl Register of Historic Places

Bldg. 140, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230007
Status: Excess
Comment: 60 sq. ft., concrete block bldg., most recent use—trash house

Bldg. 7
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810001
Status: Underutilized
Comment: 16,864 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 10
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810002
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 11
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810003
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 18
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810004
Status: Underutilized
Comment: 13,802 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 25
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810005
Status: Unutilized
Comment: 32,892 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 1
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310001
Status: Unutilized
Comment: 20,287 sq. ft., needs extensive repairs, presence of asbestos, most recent use—patient ward

Bldg. 3
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310002
Status: Unutilized
Comment: 20,550 sq. ft., needs extensive repairs, presence of asbestos, most recent use—patient ward

Bldg. 4
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310003
Status: Unutilized
Comment: 20,550 sq. ft., needs extensive repairs, presence of asbestos, most recent use—patient ward

Bldg. 13
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310004
Status: Unutilized
Comment: 8971 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office

Bldg. 19
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310005
Status: Unutilized
Comment: 12,237 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office

Bldg. 20
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310006
Status: Unutilized
Comment: 14,039 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office/storage

Bldg. 42
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310007
Status: Unutilized
Comment: 5025 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office

Bldg. 60
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310008
Status: Unutilized
Comment: 18,126 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office

Bldg. 122
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310009
Status: Unutilized
Comment: 37,135 sq. ft., needs extensive repairs, presence of asbestos, most recent use—dining hall/kitchen

New York

Building 1
Scotia Navy Depot
Scotia Co: Schenectady NY 12302–9460
Landholding Agency: Navy
Property Number: 77200440021
Status: Excess
Comment: 39,554 sq. ft., needs extensive repairs, presence of asbestos/lead paint, most recent use—office

North Carolina

SSA Building
215 W. Third Avenue
Gastonia Co: Gaston NC 28052–
Landholding Agency: GSA
Property Number: 54200440020
Status: Excess
Comment: 8081 sq. ft., presence of asbestos, most recent use—office
GSA Number: 4–G–NC–0745

Federal Building
241 Sunset Avenue
Asheboro Co: Randolph NC 27203–
Landholding Agency: GSA
Property Number: 54200440021
Status: Excess
Comment: 7141 sq. ft., presence of asbestos/possible lead paint, historic preservation covenants, most recent use—office
GSA Number: 4–G–NC–746

Ohio

Bldg. 402
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA
Property Number: 97199920004
Status: Unutilized
Comment: 4 floors, potential utilities, needs major rehab, presence of asbestos/lead paint, historic property

Pennsylvania

Bldg. 3, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Landholding Agency: VA
Property Number: 97199230012
Status: Underutilized
Comment: portion of bldg. (4046 sq. ft.), most recent use—storage, second floor—lacks elevator access

Wisconsin

Bldg. 8
VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 97199010056
Status: Underutilized

Comment: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab.

Land (by State)

Alabama

VA Medical Center
VAMC
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 97199010053
Status: Underutilized
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped.

California

Land
4150 Clement Street
San Francisco Co: San Francisco CA 94121–
Landholding Agency: VA
Property Number: 97199240001
Status: Underutilized
Comment: 4 acres; landslide area.

Iowa

40.66 acres
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138–
Landholding Agency: VA
Property Number: 97199740002
Status: Unutilized
Comment: golf course, easement requirements

Texas

Land
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 97199010079
Status: Underutilized
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities.

Wisconsin

VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 97199010054
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities.

Suitable/Unavailable Properties

Buildings (by State)

Montana

VA MT Healthcare
210 S. Winchester
Miles City Co: Custer MT 59301–
Landholding Agency: VA
Property Number: 97200030001
Status: Underutilized
Comment: 18 buildings, total sq. ft. = 123,851, presence of asbestos, most recent use—clinic/office/food production

Ohio

Bldg. 116
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA
Property Number: 97199920002
Status: Unutilized
Comment: 3 floors, potential utilities, needs major rehab, presence of asbestos/lead paint, historic property

Wisconsin

Bldg. 2
VA Medical Center
5000 West National Ave.
Milwaukee WI 53295–
Landholding Agency: VA
Property Number: 97199830002
Status: Underutilized
Comment: 133,730 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage

Land (by State)

Iowa

38 acres
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138–
Landholding Agency: VA
Property Number: 97199740001
Status: Unutilized
Comment: golf course

Michigan

VA Medical Center
5500 Armstrong Road
Battle Creek Co: Calhoun MI 49016–
Landholding Agency: VA
Property Number: 97199010015
Status: Underutilized
Comment: 20 acres, used as exercise trails and storage areas, potential utilities

New York

VA Medical Center
Fort Hill Avenue
Canandaigua Co: Ontario NY 14424–
Landholding Agency: VA
Property Number: 97199010017
Status: Underutilized Comment: 27.5 acres, used for school ballfield and parking, existing utilities easements, portion leased.

Pennsylvania

VA Medical Center
New Castle Road
Butler Co: Butler PA 16001–
Landholding Agency: VA
Property Number: 97199010016
Status: Underutilized
Comment: Approx. 9.29 acres, used for patient recreation, potential utilities.

Land No. 645
VA. Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206–
Location: Between Campania and Wiltsie Streets.
Landholding Agency: VA
Property Number: 97199010080
Status: Unutilized
Comment: 90.3 acres, heavily wooded, property includes dump area and numerous site storm drain outfalls.

Land—34.16 acres
VA Medical Center
1400 Black Horse Hill Road
Coatesville Co: Chester PA 19320–
Landholding Agency: VA
Property Number: 97199340001
Status: Underutilized
Comment: 34.16 acres, open field, most recent use—recreation/buffer

Unsuitable Properties

Buildings (by State)

Alabama

Bldg. 7
VA Medical Center
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 97199730001
Status: Underutilized
Reason: Secured Area

Bldg. 8
VA Medical Center
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 97199730002
Status: Underutilized
Reason: Secured Area

California

Bldgs. 20, 25
Naval Base Point Loma
San Diego Co: CA
Landholding Agency: Agency: Navy
Property Number: 77200440016
Status: Unutilized
Reason: Extensive deterioration

Idaho

Bldgs. CF604, CF680
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200440034
Status: Excess
Reason: Secured Area

Illinois

Bldgs. 016, T129
FERMILAB
Batavia Co: DuPage IL 60510–
Landholding Agency: Energy
Property Number: 41200440035
Status: Excess
Reason: Extensive deterioration

Indiana

Bldg. 21, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230001
Status: Excess
Reason: Extensive deterioration

Bldg. 22, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230002
Status: Excess
Reason: Extensive deterioration

Bldg. 62, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230003
Status: Excess
Reason: Extensive deterioration

Massachusetts

Westview Street Wells
Lexington MA 02173–
Landholding Agency: VA
Property Number: 97199920001
Status: Unutilized
Reason: Extensive deterioration

Michigan

Portion/Station Frankfort
100 Coast Guard Road
Frankfort Co: MI 49635–
Landholding Agency: GSA
Property Number: 54200440018
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–U–MI–582A

Mississippi

Bldg. 6, Boiler Plant
Biloxi VA Medical Center
Gulfport Co: Harrison MS 39531–
Landolding Agency: VA
Property Number: 97199410001
Status: Unutilized
Reason: Floodway

Bldg. 67
Biloxi VA Medical Center
Gulfport Co: Harrison MS 39531–
Landolding Agency: VA
Property Number: 97199410008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 68
Biloxi VA Medical Center
Gulfport Co: Harrison MS 39531–
Landolding Agency: VA
Property Number: 97199410009
Status: Unutilized
Reason: Extensive deterioration

Missouri

Bldg. 3
VA Medical Center
Jefferson Barracks Division
St. Louis MO 63125–
Landolding Agency: VA
Property Number: 97200340001
Status: Underutilized
Reason: Secured Area

Bldg. 4
VA Medical Center
Jefferson Barracks Division
St. Louis MO
Landolding Agency: VA
Property Number: 97200340002
Status: Underutilized
Reason: Secured Area

Bldg. 27
VA Medical Center
Jefferson Barracks Division
St. Louis MO 63125–
Landolding Agency: VA
Property Number: 97200340003
Status: Underutilized
Reason: Secured Area

Bldg. 28
VA Medical Center
Jefferson Barracks Division
St. Louis MO 63125–
Landolding Agency: VA
Property Number: 97200340004
Status: Underutilized
Reason: Secured Area

Bldg. 29
VA Medical Center
Jefferson Barracks Division
St. Louis MO 63125–
Landolding Agency: VA
Property Number: 97200340005
Status: Underutilized
Reason: Secured Area

Bldg. 50
VA Medical Center
Jefferson Barracks Division
St. Louis MO 63125–
Landolding Agency: VA
Property Number: 97200340006
Status: Underutilized
Reason: Secured Area

Nevada

241 Bldgs.
Tonopah Test Range
Tonopah Co: Nye NV 89049–
Landolding Agency: Energy
Property Number: 41200440036
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material
Secured Area

North Carolina

Ranger Residence
Jordan Lake Project
Apex Co: Chatham NC
Landholding Agency: COE
Property Number: 31200440013
Status: Unutilized
Reason: Extensive deterioration

Two Tower Sites
Marine Corps Air Station
Cherry Point Co: NC
Landholding Agency: Navy
Property Number: 77200440017
Status: Underutilized
Reason: Secured Area

Bldg. 9
VA Medical Center
1100 Tunnel Road
Asheville Co: Buncombe NC 28805–
Landolding Agency: VA
Property Number: 97199010008
Status: Unutilized
Reason: Extensive deterioration

Ohio

Bldg. 105
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landolding Agency: VA
Property Number: 97199920005
Status: Unutilized
Reason: Extensive deterioration

Pennsylvania

Guard Shack
U.S. Coast Guard Group
Marine Safety Office
Philadelphia Co: PA 19147–
Landolding Agency: Coast Guard
Property Number: 88200440001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

South Carolina

Bldgs. 1000 thru 1021
Naval Weapons Station
Goose Creek Co: Berkeley SC 29445–
Landolding Agency: Navy
Property Number: 77200440018
Status: Unutilized
Reason: Secured Area

Virginia

E. Beale House
Tract 01–132
Appomattox Co: VA 24522–
Landholding Agency: Interior
Property Number: 61200440003
Status: Excess
Reason: Extensive deterioration

Ferguson House
Tract 01–124
Appomattox Co: VA 24522–
Landholding Agency: Interior
Property Number: 61200440004
Status: Excess
Reason: Extensive deterioration

Bldg. 3041A
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77200440019
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 3215
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77200440020
Status: Excess
Reasons: Secured Area, Extensive deterioration

Land (by State)

Alabama

Portions/Tract B263
Demopolis Hwy 43
Greene Co: AL
Landholding Agency: GSA
Property Number: 54200510001
Status: Excess
Reason: landlocked
GSA Number: 4–D–AL–0564J

Arizona

2.56 acres
Chauncy Ranch
Phoenix Co: Maricopa AZ 85054–
Landholding Agency: GSA
Property Number: 61200430050
Status: Excess
Reason: Floodway
GSA Number: 9–I–AZ–833

58 acres
VA Medical Center
500 Highway 89 North
Prescott Co: Yavapai AZ 86313–
Landholding Agency: VA
Property Number: 97190630001
Status: Unutilized
Reason: Floodway

20 acres
VA Medical Center
500 Highway 89 North
Prescott Co: Yavapai AZ 86313–
Landholding Agency: VA
Property Number: 97190630002
Status: Underutilized
Reason: Floodway

Florida

Wildlife Sanctuary, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 97199230004
Status: Underutilized
Reason: Inaccessible

Minnesota

3.85 acres (Area #2)
VA Medical Center

4801 8th Street
St. Cloud Co: Stearns MN 56303–
Landholding Agency: VA
Property Number: 97199740004
Status: Unutilized
Reason: landlocked

7.48 acres (Area #1)
VA Medical Center
4801 8th Street
St. Cloud Co: Stearns MN 56303–
Landholding Agency: VA
Property Number: 97199740005
Status: Underutilized
Reason: Secured Area

Montana

Sewage Lagoons/40 acres
VA Center
Ft. Harrison MT 59639–
Landholding Agency: VA
Property Number: 97200340007
Status: Excess
Reason: Floodway

New York

Tract 1
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 97199010011
Status: Unutilized
Reason: Secured Area

Tract 2
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 97199010012
Status: Underutilized
Reason: Secured Area

Tract 3
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 97199010013
Status: Underutilized
Reason: Secured Area

Tract 4
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 97199010014
Status: Unutilized
Reason: Secured Area

[FR Doc. E5–63 Filed 1–13–05; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Central Utah Project Completion Act

AGENCIES: Department of the Interior, Office of the Assistant Secretary—Water and Science (Interior); Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission); and Central Utah Water Conservancy District (CUWCD).

ACTION: Notice of Availability of the Record of Decision on the Utah Lake Drainage Basin Water Delivery System Final Environmental Impact Statement documenting the Department of the Interior's approval to proceed with the construction of the Proposed Action Alternative.

SUMMARY: On December 22, 2004, R. Thomas Weimer, Acting Assistant Secretary—Water and Science, Department of the Interior, signed the Record of Decision (ROD) which documents the selection of the Proposed Action Alternative as presented in the Utah Lake Drainage Basin Water Delivery System (Utah Lake System) Final Environmental Impact Statement (ULS FEIS), INT FES 04–41, filed September 30, 2004. The ROD also approves the initiation of construction of the Utah Lake System, in accordance with statutory and contractual obligations. The following features will be constructed as part of the Proposed Action: (1) Sixth Water Hydropower Plant, Substation, and Transmission Facilities, (2) Upper Diamond Fork Hydropower Plant and Underground Transmission Facilities, (3) Spanish Fork Canyon Pipeline, (4) Spanish Fork—Santaquin Pipeline, (5) Santaquin—Mona Reservoir Pipeline, (6) Mapleton—Springville Lateral Pipeline, and (7) Spanish Fork—Provo Reservoir Canal Pipeline. The ROD acknowledged that value engineering studies would be conducted that could result in minor modifications to the physical facilities to further reduce environmental impacts and reduce construction costs.

The Proposed Action specifically fulfills project needs to: (1) Complete the Bonneville Unit by delivering 101,900 acre-feet on an average annual basis from Strawberry Reservoir to the Wasatch Front Area and project water from other sources to meet some of the municipal and industrial (M&I) demand in the Wasatch Front Area; (2) implement water conservation measures; (3) address all remaining environmental commitments associated with the Bonneville Unit; and (4) maximize current and future M&I water supplies associated with the Bonneville Unit.

Interior, the Mitigation Commission, and CUWCD serve as the Joint Lead Agencies for the ULS. During preparation of the ULS FEIS, the Joint Lead Agencies formally consulted with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act (16 U.S.C.A. sections 1531 to 1544, as amended). The Joint-Lead Agencies will also obtain an exemption from Section 404 requirements provided by Section 404(r) of the Clean Water Act by including a Section 404(b)(1) analysis within the ULS FEIS.

In addition to this notification, notices will be published in local newspapers.

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this notice can be obtained from Mr. Reed Murray at (801) 379–1237, or *rmurray@uc.usbr.gov*.

Dated: January 7, 2005.

Ronald Johnston,

Program Director, Department of the Interior.

[FR Doc. 05–785 Filed 1–13–05; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Environmental Impact Statement for Caspian Tern Management To Reduce Predation of Juvenile Salmonids in the Columbia River Estuary

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the Final Environmental Impact Statement (Final EIS) for Caspian Tern (Sterna caspia) Management to Reduce Predation of Juvenile Salmonids in the Columbia River Estuary is available for review and comment. This Final EIS was prepared pursuant to the National Environmental Policy Act of 1969, as amended (NEPA) with the U.S. Army Corps of Engineers (Corps) and National Marine Fisheries Service (NOAA Fisheries) as cooperating agencies. This Final EIS describes the three Federal Agencies' proposal for the redistribution of the Caspian tern colony from East Sand Island, Columbia River estuary to various sites located throughout the Pacific Coast/Western region. The purposes of the proposed action are to reduce tern predation on juvenile Columbia River salmonids and eliminate the vulnerability of the regional tern population associated with having the majority of the population (70 percent) breeding in one location.

DATES: A Record of Decision may be signed no sooner than 30 days after publication of this notice (40 CFR 1506.10 (b) (2)).

FOR FURTHER INFORMATION CONTACT: For more information or to request a copy of the Final EIS, contact Nanette Seto or Tara Zimmerman, Migratory Birds and Habitat Programs, 911 NE. 11th Avenue, Portland, OR, 97232, telephone (503) 231–6164, facsimile (503) 231–2019.

SUPPLEMENTARY INFORMATION: Copies of the Final EIS will be available for viewing and downloading online at:

1. *http://migratorybirds.pacific.fws.gov/CATE.htm*,
2. *http://www.nwp.usace.army.mil/pm/e/*, and
3. *http://nwr.noaa.gov*.

Printed documents will also be available for review at the following libraries:

1. North Olympic Library System, Port Angeles Branch, Port Angeles, WA,
2. North Olympic Library System, Sequim Branch, Sequim, WA,
3. Astoria Public Library, Astoria, OR,
4. Multnomah County Central Library, Portland, OR,
5. Eugene Public Library, Eugene, OR,
6. Lake County Library, Lakeview, OR,
7. San Francisco Public Library, San Francisco, CA, and
8. Oakland Main Public Library, Oakland, CA

Copies of the Final EIS may be obtained by writing to U.S. Fish and Wildlife Service, Migratory Birds and Habitat Programs, Attn: Nanette Seto, 911 NE. 11th Avenue, Portland, OR, 97232, or *cateeis@fws.gov*.

Background

Recent increases in the number of Caspian terns nesting in the Columbia River estuary, Oregon, have led to concerns over their potential impact on the recovery of threatened and endangered Columbia River salmon. In 2000, Seattle Audubon, National Audubon, American Bird Conservancy, and Defenders of Wildlife filed a lawsuit against the Corps alleging that compliance with NEPA for a proposed action of relocating the large colony of Caspian terns from Rice Island to East Sand Island was insufficient, and against the Service in objection to the potential take of eggs as a means to prevent nesting on Rice Island. In 2002, all parties reached a settlement agreement. The settlement agreement stipulates that the Service, Corps, and NOAA Fisheries prepare an EIS to address Caspian tern management in the Columbia River estuary and juvenile salmonid predation.

The three cooperating agencies analyzed four alternatives for future Caspian tern management in the Columbia River estuary; of these, Alternative C has been identified as the preferred alternative.

Alternative C has not been modified from the Draft EIS which was released on July 23, 2004 for public review. This alternative proposes management actions that would reduce tern predation on juvenile salmonids in the Columbia River estuary by redistributing a portion of the tern colony on East Sand Island throughout the Pacific Coast/Western region. This would be achieved by reducing the tern nesting site on East Sand Island to approximately 1 to 1.5 acres and managing sites in Washington, Oregon, and California specifically for displaced Caspian terns. Future management sites include Dungeness National Wildlife Refuge, Washington; Summer, Crump, and Fern Ridge lakes, Oregon; and Brooks Island, Hayward Regional Shoreline, and Don Edwards San Francisco Bay National Wildlife Refuge in San Francisco Bay, California. We expect a colony size of approximately 2,500 to 3,125 nesting pairs to remain on East Sand Island.

The Corps would continue efforts, such as hazing (*e.g.*, disturbance to terns prior to the nesting season), to prevent Caspian tern nesting on upper estuary islands (*e.g.*, Rice Island, Miller Sands Spit, Pillar Rock Island) of the Columbia River estuary to prevent high tern predation rates of juvenile salmonids and comply with the 1999 Corps Columbia River Channel Operation and Maintenance Program Biological Opinion. The Service would issue an egg take permit to the Corps for upper estuary islands (not including East Sand Island) if the efforts to prevent tern nesting at these sites fail. Additionally, the Corps would resume dredged material (*e.g.*, sand) disposal on the downstream end of Rice Island, on the former Caspian tern nesting site.

Public comments were requested, considered, and incorporated throughout the planning process in numerous ways. Public outreach has included open houses, planning updates, **Federal Register** notices, and a project website. Two previous notices were published in the **Federal Register** concerning this EIS (68 FR 16826, April 7, 2003 and 69 FR 44053, July 23, 2004). During the Draft EIS comment period (July 23, 2004 to September 21, 2004), the Service received a total of 37 comments (e-mails, letters, faxes, or postcards). All substantive issues raised in the comments have been addressed through revisions incorporated into the Final EIS text or in responses to comments contained in Appendix J of the Final EIS.

Dated: December 3, 2004.

David J. Wesley,

Regional Director, U.S. Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 05–4 Filed 1–13–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Third Extension to Tribal-State Compact.

SUMMARY: This notice publishes the Third Extension of the Tribal-State Compact between the Pyramid Lake Paiute Indian Tribe and the State of Nevada. The Compact is extended until January 5, 2006.

EFFECTIVE DATE: January 14, 2005.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands.

On January 6, 1998, the Assistant Secretary-Indian Affairs, Department of the Interior, through his delegated authority, approved the Compact between the Pyramid Lake Paiute Tribe and the State of Nevada, which was executed on August 4, 1997. The Compact is extended until January 5, 2006.

Dated: December 22, 2004.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–813 Filed 1–13–05; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–056–1610DQ011H; HAG–04–0240]

Notice of Availability of the Proposed Upper Deschutes Resource Management Plan and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) of 1976, the National Environmental Policy Act (NEPA) of 1969, the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan (PRMP) and Final Environmental Impact Statement (FEIS) for the Upper Deschutes portion of the Deschutes Resource Area of the Prineville District. This Notice of Availability also serves as a notice of realty action in accordance with 43 CFR 2920.4 to be made available for non-competitive lease under Section 302(b) of FLPMA for military use by the Oregon Military Department and National Guard.

DATES: BLM Planning Regulations (43 CFR 1610.5–2) state that any person who participated in the planning process, and has an interest that may be adversely affected, may protest. The protest must be filed within 30 days of the date that the Environmental Protection Agency publishes its notice in the **Federal Register**. Instructions for filing of protests are described in the "Dear Interested Party" letter of the Upper Deschutes PRMP/FEIS and included in the **SUPPLEMENTARY INFORMATION** section of this Notice.

FOR FURTHER INFORMATION CONTACT: Mollie Chaudet, Project Manager, Bureau of Land Management, 3050 N.E. Third St., Prineville, Oregon, 97754, telephone (541–416–6872), fax (541–416–6798), or e-mail (*upper_deschutes_RMP@or.blm.gov*).

SUPPLEMENTARY INFORMATION: This planning activity encompasses approximately 400,000 acres of public land in the Deschutes Resource Area, Prineville District, and is located primarily in Deschutes, Crook, and Jefferson Counties in central Oregon. The BLM has worked and will continue to work closely with all interested parties to identify management decisions that are best suited to the needs of the public. Final decisions will revise the portion of the Brothers La-Pine Resource Management Plan (1989) included in the Upper Deschutes planning area boundary, and will modify the boundary of the Two Rivers RMP. Some management direction will be clarified for the Middle Deschutes and Lower Crooked River Wild and Scenic River Plans. The Upper Deschutes Resource Management Plan will also incorporate strategies and direction provided by the National and Central Oregon Fire Management Plan.

This land use plan focuses on the principles of multiple use management and sustained yield as prescribed by Section 202 of the FLPMA. The PRMP/FEIS considers and analyzes seven alternatives. These alternatives were developed based on a unique collaborative process. The Deschutes Provincial Advisory Committee chartered a working group including tribal, federal, state and local governments, private citizens, and interest groups. The working group reached consensus on the range of alternatives, reviewed public comments on the Draft EIS, and reached consensus on changes to the Draft Preferred Alternative.

The alternatives detailed in the PRMP/FEIS provide for a wide array of land use allocations and management direction as well as variable levels of resource protection, commodity production, and authorized land and resource uses. Alternative 7, the BLM preferred alternative (as modified by public comment on the Draft RMP/EIS,) is the basis for the goals, objectives, and guidelines included in the Proposed RMP. The PRMP provides a balance of land and resource uses across the planning area and provides the framework for making present and future decisions for authorizing activities, such as grazing and mineral uses, considering the significant population growth anticipated in the area over the next 10–20 years.

The plan will also allocate lands within the planning area for the long-term training use of the Oregon Military Department and National Guard. The lands identified for military use within the Upper Deschutes RMP are proposed for non-competitive lease under Section 302(b) of FLPMA. The legal description of the lands proposed for lease are identified within the PRMP/FEIS.

Copies of the Upper Deschutes PRMP/FEIS have been sent to affected Federal, State, and local government agencies and to interested parties. The PRMP/FEIS is available for public inspection at the Prineville District Office in Prineville, Oregon, during regular business hours (7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays). Copies are also available at the Deschutes, Jefferson, and Crook County Libraries. Interested persons may also review the PRMP/FEIS on the Internet at: *http://www.or.blm.gov/Prineville/Deschutes_RMP/Home.htm*. Comments on the Draft RMP/EIS received from the public and internal BLM review comments were incorporated into the proposed plan where appropriate. Comments resulted in clarifications, technical corrections, changes to the alternatives, and changes to the analysis.

Instructions for filing a protest with the Director of the BLM regarding the PRMP/FEIS may be found at 43 CFR 1610.5. A protest may only raise those issues that were submitted for the record during the planning process. E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–452–5112 and e-mails to *Brenda_Hudgens-Williams@blm.gov*. Please direct the follow-up letter to the appropriate address provided below. To be considered complete, your protest must contain (at a minimum) the following information:

(1) Name, mailing address, telephone number, and the affected interest of the person filing the protest(s).

(2) A statement of the part or parts of the proposed plan being protested. To the extent possible, reference specific pages, paragraphs, and sections of the document.

(3) A copy of all your documents addressing the issue or issues which were discussed with the BLM for the record.

(4) A concise statement explaining why the proposed decision is believed to be incorrect. This is a critical part of your protest. Document all relevant facts, as much as possible. A protest merely expressing disagreement with the State Director's proposed decision without providing any supporting data will not be considered a valid protest.

All protests must be in writing and mailed to the following address:

Regular Mail: Director, WO–210/LS–1075, Bureau of Land Management, Attn: Brenda Hudgens-Williams, Department of the Interior, P.O. Box 66538, Washington, DC 20240.

Overnight Mail: Director, WO–210/LS–1075, Bureau of Land Management, Attn: Brenda Hudgens-Williams, Department of the Interior, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

To be considered timely, your protest must be postmarked no later than the last day of the protest period. Though not a requirement, we suggest you send your protest by certified mail, return receipt requested. You are also encouraged, but not required, to forward a copy of your protest to the Project Manager at the address listed under **FOR FURTHER INFORMATION** above. This may allow us to resolve the protest through clarification of intent or alternative dispute resolution methods.

Please note that protests, including names and street addresses, are available for public review and/or release under the Freedom of Information Act (FOIA). Individual respondents may request confidentiality. Respondents who wish to withhold their name and/or street address from public review or from disclosure under FOIA must state this prominently at the beginning of the written comment. Such request will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives of official organizations or businesses, will be made available for public inspection in their entirety.

The Director will promptly render a decision on the protest. This decision will be in writing and will be sent to the protesting party by certified mail, return receipt requested. The decision of the Director shall be the final decision of the Department of the Interior.

Elaine M. Brong,

Oregon State Director.

[FR Doc. 05–732 Filed 1–13–05; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT080–1610–DH]

Notice of Availability of a Draft Resource Management Plan Revision and Environmental Impact Statement (EIS) for the Vernal Field Office Planning Area, in Daggett, Duchesne, and Uintah Counties, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969, the Federal Land Policy and Management Act of 1976 (FLPMA), and regulatory requirements, a Draft RMP Revision/EIS has been prepared for the Vernal Field Office planning area and is available for a 90 day public review and comment period. The Draft RMP Revision/EIS may be viewed and downloaded in PDF format at the project Web site at *http://www.vernalrmp.com.* Copies of the Draft RMP Revision/EIS will also be available for distribution and review during the comment period at the BLM Vernal Field Office, at the address shown below.

DATES: Written comments on the Draft RMP Revision/EIS will be accepted for 90 days following publication of the EPA Notice of Availability. Future public meetings and any other public involvement activities will be announced at least 15 days in advance through public notices, local media news releases, mailings, and the project Web site at: *http://www.vernalrmp.com.*

ADDRESSES: Written comments should be sent to: Vernal Field Office RMP Comments—Attention Dave Moore, Vernal Field Office, Bureau of Land Management, 170 South 500 East, Vernal, Utah 84078. Comments may also be made electronically at: *http://www.vernalrmp.com.* Comments, including names and addresses of respondents, will be available for public review at the BLM Vernal Field Office, 170 South 500 East, Vernal, Utah during normal business hours (8 a.m. to 4:30 p.m., except weekends and holidays). All submissions from organizations or businesses will be made available for public inspection in their entirety. Individuals may request confidentiality with respect to their name, address, and phone number. If you wish to have your name or street address withheld from public review, or from disclosure under the Freedom of Information Act, the first line of the comment should start with the words "CONFIDENTIALITY REQUESTED" in uppercase letters in order for BLM to comply with your request. Such requests will be honored to the extent allowed by law. Comment contents will not be kept confidential.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to the planning project mailing list, visit the Web site shown above. You may also contact Dave Moore, Supervisory Planning Coordinator, Bureau of Land Management, Vernal Field Office, 170 South 500 East, Vernal, Utah 84078, telephone: (435) 781–4400, or e-mail through the Web site: *http://www.vernalrmp.com.*

SUPPLEMENTARY INFORMATION: The planning area includes all of the public land and federal mineral ownership managed by the Vernal Field Office in Daggett, Duchesne, and Uintah Counties, in northeast Utah, and about 3,000 acres in Grand County. The planning area encompasses public lands currently managed under the Book Cliffs and Diamond Mountain Resource Management Plans (RMP). This area includes approximately 1.8 million acres of BLM administered surface lands and 2.1 million acres of federal mineral lands under federal, state, private, and Ute Tribal surface in the three county areas.

The Draft RMP Revision/EIS addresses alternatives, management guidance, monitoring, and impact analysis of the alternatives. The alternatives present differing management balances between the various resources and uses. This planning effort will revise the Book Cliffs (1985) and Diamond Mountain (1994) RMPs. Once approved, the Record of Decision (ROD) for the Vernal Field Office RMP Revision will supercede all existing management plans for the planning area. SWCA Environmental Consultants in Salt Lake City, Utah is assisting the BLM in the planning process and in the preparation of the document. In order to receive full consideration, comments should focus on specific management actions being considered and the adequacy of analysis. Responses to the comments will be published as part of the Final RMP Revision/EIS. The Draft RMP Revision/EIS contains four alternatives (including the No Action Alternative). Major issues considered are: management of oil and gas resources, special designation areas, wildlife, special status plants and animals, regional air quality, and recreation.

Dated: November 3, 2004.

Gene R. Terland,

Associate State Director.

[FR Doc. 05–730 Filed 1–13–05; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–1020–XX–028H; HAG 05–0046]

2005 Meeting Notices for the John Day/Snake Resource Advisory Council

AGENCY: Bureau of Land Management (BLM), Vale District, Interior.

SUMMARY: The John Day/Snake Resource Advisory Council will meet on Wednesday, March 23, 2005 8 a.m. to 4

p.m. at the Geiser Grand Hotel, 1996 Main Street, Baker City, OR 97814.

The meeting may include such topics as, Forest Service Weeds Plan, subcommittee updates on OHV, Noxious Weeds step-down plans, 2005 Annual Work Plan, Workforce Planning impacts on Forest Service and BLM offices, and other matters as may reasonably come before the board.

On Thursday, March 24 there may be a field trip to Virtue Flat to watch Sage Grouse.

The John Day/Snake Resource Advisory Council will meet on Wednesday, June 15, 2005, 8 a.m. to 4 p.m. at the Quality Inn, 700 Port Drive Clarkston, WA.

The meeting may include such topics as, OHV, Noxious Weeds, Planning, Sage Grouse, and other matters as may reasonably come before the board.

On Thursday, June 16, 2005 there may be a field trip to Hells Canyon to discuss noxious weeds, Sage Grouse, OHV roads and trails, and other matters as identified.

The John Day/Snake Resource Advisory Council will meet on Wednesday, September 21, 2005, 8 a.m. to 4 p.m. at the Oxford Suites, 2400 SW Court Place, Pendleton, OR 97801.

The meeting may include such topics as, Forest Service Weeds Plan, subcommittee updates on OHV, Noxious Weeds, Planning, Sage Grouse, and other matters as may reasonably come before the board.

On Thursday, September 22, 2005 there may be a field trip that could include a tour of the Umatilla National Forest office in Pendleton, OR, a wind energy tour in Walla Walla, WA, or an anaerobic digestion site tour.

All meetings are open to the public. For a copy of the information to be distributed to the Council members, please submit a written request to the Vale District Office 10 days prior to the meeting. Public comment is scheduled for 11 a.m. to 11:15 a.m., Pacific Time (PT) on March 23, June 15, and September 21, 2005.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the John Day/Snake Resource Advisory Council may be obtained from Debra Lyons, Public Affairs, Vale District Office, 100 Oregon Street, Vale, OR 97918 (541) 473–3144, or e-mail *Debra_Lyons@or.blm.gov*.

Dated: January 10, 2005.

Larry Frazier,

Associate District Manager.

[FR Doc. 05–786 Filed 1–13–05; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–05–1420–BJ]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plat of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Steve Toth, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800, telephone (406) 896–5121 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the U.S. Forest Service and was necessary to delineate Forest Service lands. The lands we surveyed are:

Black Hills Meridian, South Dakota

T. 1 S., R. 14 E.

The plat, in 1 sheet, representing the dependent resurvey of a portion of the Black Hills Base Line, through Range 14 East, a portion of the subdivisional lines, and the adjusted original meanders of the former right bank of the South Fork of the Cheyenne River, through sections 5, 7, and 8, and the subdivision of section 5, and the survey of a certain division of accretion line and the meanders of the present right bank of the South Fork of the Cheyenne River, through portions of sections 5 and 7, and through section 8, Township 1 South, Range 14 East, Black Hills Meridian, South Dakota, was accepted December 9, 2004.

We will place copies of the plat, in 1 sheet, and related field notes we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on this plat, in 1 sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file this plat, in 1 sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Dated: January 10, 2005.

Steven G. Schey,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 05–830 Filed 1–13–05; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before January 1, 2005. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by the United States Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, the National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by January 31, 2005.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ALASKA

Kenai Peninsula Borough-Census Area

Holm, Victor, Homestead, Address Restricted, Kasilof, 05000032

ILLINOIS

Cook County

Georgian Hotel, 422 Davis St., Evanston, 04001534

This resource was incorrectly reported on the list dated 12/11/04 as pending for listing but is pending for a determination of eligibility.

KANSAS

Comanche County

Chief Theater, (Theaters and Opera Houses of Kansas MPS), 122 E. Main St., Coldwater, 05000010

MICHIGAN

Wayne County

Palmer Park Apartment Buildings Historic District (Boundary Increase), Approx. bounded by Covington Dr., Pontchartrain Blvd., Woodward Ave., and W. McNichols Rd., Detroit, 05000014

MISSOURI

St. Louis Independent City

Crunden—Martin Manufacturing Company, 104 Cedar,760 S. 2nd St., 757 S. 2nd St., St. Louis (Independent City), 05000013
De Hodiamont Car House Historic District, Bounded by N. Skinker Pkwy, Horton Place, Wabash RR tracks, St. Louis (Independent City), 05000012

MONTANA

Granite County

Morgan—Case Homestead, Dirt Rd. S of confluence of Hogback Creek and Rock Creek, Phillipsburg, 05000011

NEW YORK

Broome County

Jones, Gen. Edward F., House, 9 Asbury Court, Binghamton, 05000020

Jefferson County

First Baptist Church and Cook Memorial Building, 511 State St., Carthage, 05000016

Niagara County

Town of Niagara District School No. 2, 9670 Lockport Rd., Niagara Falls, 05000021

Orange County

Colden Family Cemetery, Off of Maple Ave., Montgomery, 05000017
Montgomery Water Works Building, 239 Ward St., Montgomery, 05000019

Tompkins County

Ithaca Downtown Historic District, E. and W. State, N. & S. Cayuga, N. Aurora, N. Tioga Sts., Ithaca, 05000018

Ulster County

Palen, Frank A., House, 74–76 St. James St., Kingston, 05000015

OHIO

Ashtabula County

Rock Creek School, 2987 High St., Rock Creek, 05000023

Butler County

Sigma Alpha Epsilon Chapter House of Miami University, 310 Tallawanda Rd., Oxford, 05000022

Cuyahoga County

Halle's Shaker Square, 13000 Shaker Blvd., Cleveland, 05000029

Franklin County

Franklinton Apartments of State and May, 494–504 State St., 74–82 S. May Ave., Columbus, 05000027
Franklinton Apartments at Broad and Hawkes, 949–957 W. Broad St., 13–23 Hawkes Ave., Columbus, 05000028

Jackson County

Scioto Grange No. 1234, 255 Cove Rd., Jackson, 05000030

Lake County

Mentor Village School, 7482 Center St., Mentor, 05000026

Lorain County

Gould Block, 608–630 Broadway Ave., Lorain, 05000031

Miami County

McKinley School, 240 S. Main St., West Milton, 05000025

Stark County

St. Edward Hotel, 400 Market Ave. N, Canton, 05000024

SOUTH DAKOTA

Aurora County

Sweep Hotel, South Main, Plankinton, 05000033

Beadle County

Drake, Hattie O. and Henry, Octagon House, 605 Third St. SW., Huron, 05000035

Faulk County

Faulkton American Legion Hall, 107 Eighth Ave. N., Faulkton, 05000034

Lawrence County

Johnson Ranch, 221 Upper Valley Rd., Spearfish, 05000036

[FR Doc. 05–764 Filed 1–13–05; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–432 (Second Review)]

Drafting Machines From Japan

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in October 2004 to determine whether revocation of the antidumping duty order on drafting machines from Japan would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On December 27, 2004, the Department of Commerce published notice that it was revoking the order effective November 24, 2004 because "the only domestic interested party withdrew its interest in this sunset review" (69 FR 77183). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject review is terminated.

EFFECTIVE DATES: November 24, 2004.

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 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 (*http://www.usitc.gov*).

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: January 10, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-808 Filed 1–13–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–506]

In the Matter of Certain Optical Disk Controller Chips and Chipsets and Products Containing Same, Including DVD Players and PC Optical Storage Devices; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation as To Claims 2–6, 8–10, and 11 of U.S. Patent No. 6,466,736 and Claims 2–4, 6, 9, 11, 12, 15–18, 20, 22–34, and 35 of U.S. Patent No. 6,546,440

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") terminating the investigation as to certain patent claims.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 14, 2004, based on a complaint filed on behalf of Zoran Corporation and Oak Technology, Inc. both of Sunnyvale, CA (collectively "complainants)." 69 FR 19876. The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain optical disk controller chips and chipsets and products containing same, including DVD players and PC optical storage devices, by reason of infringement of claims 1–12 of U.S. Patent No. 6,466,736 (the '736 patent), claims 1–3 of U.S. Patent No. 6,584,527, and claims 1–35 of U.S. Patent No. 6,546,440 (the '440 patent). The notice of investigation identified 12 respondents. On June 7, 2004, the ALJ issued an ID (Order No. 5) terminating the investigation as to two respondents on the basis of a consent order and settlement agreement. On June 22, 2004, the ALJ issued an ID (Order No. 7) granting complainants' motion to amend the complaint and notice of investigation to add nine additional respondents. Those IDs were not reviewed by the Commission.

On December 22, 2004, complainants moved pursuant to Commission rule 210.21(a) to terminate the investigation in part by withdrawal of the infringement allegations as to claims 2–6, 8–10, and 11 of the '736 patent and claims 2–4, 6, 9, 11, 12, 15–18, 20, 22–34, and 35 of the '440 patent. No responses to the motion were filed.

On December 22, 2004, the presiding administrative law judge issued an ID (Order No. 33) granting the motion.

No petitions for review of the ID were filed.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: January 11, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–806 Filed 1–13–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–339 and 340B–D, F, G, and I (Second Review)]

Solid Urea From Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in October 2004 to determine whether revocation of the antidumping duty orders on solid urea from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On December 29, 2004, the Department of Commerce published notice that it was revoking the orders effective November 17, 2004 because "the domestic interested parties did not participate in these sunset reviews" (69 FR 77993). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject reviews are terminated.

EFFECTIVE DATES: November 17, 2004.

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 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 (*http://www.usitc.gov*).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: January 10, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–807 Filed 1–13–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Request for Information Concerning Labor Rights in Oman and Its Laws Governing Exploitative Child Labor

AGENCIES: Office of the Secretary, Labor; Office of the United States Trade Representative and Department of State.

ACTION: Request for comments from the public.

SUMMARY: This notice is a request for comments from the public to assist the Secretary of Labor, the United States Trade Representative, and the Secretary of State in preparing reports regarding labor rights in Oman and describing the extent to which it has in effect laws governing exploitative child labor. The Trade Act of 2002 requires reports on these issues and others when the President intends to use trade promotion authority procedures in connection with legislation approving and implementing a trade agreement. The President assigned the functions of preparing reports regarding labor rights and the existence of laws governing exploitative child labor to the Secretary of Labor, in consultation with the Secretary of State and the United States Trade Representative. The Secretary of Labor further assigned these functions to the Secretary of State and the United States Trade Representative, to be carried out by the Secretary of Labor, the Secretary of State and the United States Trade Representative.

DATES: Public comments should be received no later than 5 p.m. February 28, 2005.

ADDRESSES: Persons submitting comments are strongly advised to make such submissions by electronic mail to the following address: *FRFTAOman@dol.gov*. Submissions by facsimile may be sent to: Betsy White, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, at (202) 693–4851.

FOR FURTHER INFORMATION CONTACT: For procedural questions regarding the submissions, please contact Betsy White, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, at (202) 693–4919, facsimile (202) 693–4851. These are not toll-free numbers. Substantive questions concerning the labor rights report and/or the report on Oman's laws governing exploitative child labor should be addressed to Jorge Perez-Lopez, Office of International Economic Affairs, Bureau of

International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–4883, facsimile (202) 693–4851.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 2004, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative (USTR) notified the Congress of the President's intent to enter into free trade negotiations with Oman. The notification letters to the Senate and the House of Representatives can be found on the USTR Web site at *http://www.ustr.gov/assets/Document_Library/Letters_to_Congress/2004/asset_upload_file22_6743.pdf* and *http://www.ustr.gov/assets/Document_Library/Letters_to_Congress/2004/asset_upload_file752_6742.pdf,* respectively. In December, USTR announced its intention to hold a public hearing on January 14, 2005, for the interagency Trade Policy Staff Committee (TPSC) to receive written comments and oral testimony from the public to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations (69 FR 70498) (Dec. 6, 2004). USTR intends to launch the negotiations in March 2005.

The Trade Act of 2002 (Pub. L. 107–210) (the Trade Act) sets forth special procedures (Trade Promotion Authority) for approval and implementation of Agreements subject to meeting conditions and requirements in Division B of the Trade Act, "Bipartisan Trade Promotion Authority." Section 2102(a)–(c) of the Trade Act includes negotiating objectives and a listing of priorities for the President to promote in order to "address and maintain United States competitiveness in the global economy" in pursuing future trade agreements. The President assigned several of the functions in section 2102(c) to the Secretary of Labor. (E.O. 13277). These include the functions set forth in section 2102(c)(8), which requires that the President "in connection with any trade negotiations entered into under this Act, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating," and the function in section 2102(c)(9), which requires that the President "with respect to any trade agreement which the President seeks to implement under trade authorities procedures, submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor."

II. Information Sought

Interested parties are invited to submit written information as specified below to be taken into account in drafting the required reports. Materials submitted should be confined to the specific topics of the reports. In particular, agencies are seeking written submissions on the following topics:

1. Labor laws of Oman, including laws governing exploitative child labor, and that country's implementation and enforcement of its labor laws and regulations;
2. The situation in Oman with respect to core labor standards;
3. Steps taken by Oman to comply with International Labor Organization Convention No. 182 on the worst forms of child labor; and
4. The nature and extent, if any, of exploitative child labor in Oman.

Section 2113(6) of the Trade Act defines "core labor standards" as:

(A) The right of association;

(B) The right to organize and bargain collectively;

(C) A prohibition on the use of any form of forced or compulsory labor;

(D) A minimum age for the employment of children; and

(E) Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

III. Requirements for Submissions

This document is a request for facts or opinions submitted in response to a general solicitation of comments from the public. To ensure prompt and full consideration of submissions, we strongly recommend that interested persons submit comments by electronic mail to the following e-mail address: *FRFTAOman@dol.gov.* Persons making submissions by e-mail should use the following subject line: "Oman: Labor Rights and Child Labor Reports." Documents should be submitted in WordPerfect, MSWord, or text (.TXT) format. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. Written comments will be placed in a file open to public inspection at the Department of Labor, Room S–5317, 200 Constitution Avenue, NW., Washington, DC 20210, and in the USTR Reading Room in Room 3 of the annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file at the Department of Labor may be made by contacting Betsy White at (202) 693–4919. An appointment to review the file at USTR may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m.–12 noon and 1–4 p.m., Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

Signed at Washington, DC, this 10th of January 2005.

Arnold Levine,

Deputy Under Secretary for International Affairs.

[FR Doc. 05–810 Filed 1–13–05; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Request for Information Concerning Labor Rights in the United Arab Emirates and Its Laws Governing Exploitative Child Labor

AGENCIES: Office of the Secretary, Labor; Office of the United States Trade Representative and Department of State.

ACTION: Request for comments from the public.

SUMMARY: This notice is a request for comments from the public to assist the Secretary of Labor, the United States Trade Representative, and the Secretary of State in preparing reports regarding labor rights in the United Arab Emirates and describing the extent to which it has in effect laws governing exploitative child labor. The Trade Act of 2002 requires reports on these issues and others when the President intends to use trade promotion authority procedures in connection with legislation approving and implementing a trade agreement. The President assigned the functions of preparing reports regarding labor rights and the existence of laws governing exploitative child labor to the Secretary of Labor, in consultation with the Secretary of State and the United States Trade Representative. The Secretary of Labor further assigned these functions to the Secretary of State and the United States Trade Representative, to be carried out by the Secretary of Labor, the Secretary of State and the United States Trade Representative.

DATES: Public comments should be received no later than 5 p.m. February 28, 2005.

ADDRESSES: Persons submitting comments are strongly advised to make such submissions by electronic mail to the following address: *FRFTAUAE@dol.gov*. Submissions by facsimile may be sent to: Betsy White, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, at (202) 693–4851.

FOR FURTHER INFORMATION CONTACT: For procedural questions regarding the submissions, please contact Betsy White, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, at (202) 693–4919, facsimile (202) 693–4851. These are not toll-free numbers. Substantive questions concerning the labor rights report and/or the report on the United Arab Emirates' laws governing exploitative child labor should be addressed to Jorge Perez-Lopez, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, telephone (202) 693–4883, facsimile (202) 693–4851.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 2004, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative (USTR) notified the Congress of the President's intent to enter into free trade negotiations with the United Arab Emirates (UAE). The notification letters to the Senate and the House of Representatives can be found on the USTR Web site at *http://www.ustr.gov/assets/Document_Library/Letters_to_Congress/2004/asset_upload_file848_6741.pdf* and *http://www.ustr.gov/assets/Document_Library/Letters_to_Congress/2004/asset_upload_file847_6740.pdf*, respectively. In December, USTR announced its intention to hold a public hearing on January 12, 2005, for the interagency Trade Policy Staff Committee (TPSC) to receive written comments and oral testimony from the public to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations (69 FR 70500) (Dec. 6, 2004). USTR intends to launch the negotiations in March 2005.

The Trade Act of 2002 (Pub.L. 107–210) (the Trade Act) sets forth special procedures (Trade Promotion Authority) for approval and implementation of Agreements subject to meeting conditions and requirements in Division B of the Trade Act, "Bipartisan Trade Promotion Authority." Section 2102(a)–(c) of the Trade Act includes negotiating objectives and a listing of priorities for the President to promote in order to "address and maintain United States competitiveness in the global economy" in pursuing future trade agreements. The President assigned several of the functions in section 2102(c) to the Secretary of Labor. (E.O. 13277). These include the functions set forth in section 2102(c)(8), which requires that the President "in connection with any trade negotiations entered into under this Act, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating," and the function in section 2102(c)(9), which requires that the President "with respect to any trade agreement which the President seeks to implement under trade authorities procedures, submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor."

II. Information Sought

Interested parties are invited to submit written information as specified below to be taken into account in drafting the required reports. Materials submitted should be confined to the specific topics of the reports. In particular, agencies are seeking written submissions on the following topics:

1. Labor laws of the UAE, including laws governing exploitative child labor, and that country's implementation and enforcement of its labor laws and regulations;
2. The situation in the UAE with respect to core labor standards;
3. Steps taken by the UAE to comply with International Labor Organization Convention No. 182 on the worst forms of child labor; and
4. The nature and extent, if any, of exploitative child labor in the UAE.

Section 2113(6) of the Trade Act defines "core labor standards" as:

(A) The right of association;

(B) The right to organize and bargain collectively;

(C) A prohibition on the use of any form of forced or compulsory labor;

(D) A minimum age for the employment of children; and

(E) Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

III. Requirements for Submissions

This document is a request for facts or opinions submitted in response to a general solicitation of comments from the public. To ensure prompt and full consideration of submissions, we strongly recommend that interested persons submit comments by electronic mail to the following e-mail address: *FRFTAUAE@dol.gov*. Persons making submissions by e-mail should use the following subject line: "UAE: Labor Rights and Child Labor Reports." Documents should be submitted in WordPerfect, MSWord, or text (.TXT) format. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. Written comments will be placed in a file open to public inspection at the Department of Labor, Room S–5317, 200 Constitution Avenue, NW., Washington, DC 20210, and in the USTR Reading Room in Room 3 of the annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file at the Department of Labor may be made by contacting Betsy White at (202) 693–4919. An appointment to review the file at USTR may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m.–12 noon and 1–4 p.m., Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

Signed at Washington, DC, this 10th of January 2005.

Arnold Levine,

Deputy Under Secretary for International Affairs.

[FR Doc. 05–804 Filed 1–13–05; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Hampshire
NH030004 (Jun. 13, 2003)
New Jersey
NJ030004 (Jun. 13, 2003)
NJ030005 (Jun. 13, 2003)
NJ030007 (Jun. 13, 2003)
Rhode Island
RI030001 (Jun. 13, 2003)

Volume II

None

Volume III

Kentucky
KY030004 (Jun. 13, 2003)
KY030007 (Jun. 13, 2003)
KY030025 (Jun. 13, 2003)
KY030027 (Jun. 13, 2003)
KY030029 (Jun. 13, 2003)

Volume IV

Ohio
OH030001 (Jun. 13, 2003)
OH030002 (Jun. 13, 2003)
OH030003 (Jun. 13, 2003)
OH030005 (Jun. 13, 2003)
OH030009 (Jun. 13, 2003)
OH030012 (Jun. 13, 2003)
OH030013 (Jun. 13, 2003)
OH030014 (Jun. 13, 2003)
OH030020 (Jun. 13, 2003)
OH030026 (Jun. 13, 2003)
OH030029 (Jun. 13, 2003)
OH030032 (Jun. 13, 2003)
OH030033 (Jun. 13, 2003)
OH030034 (Jun. 13, 2003)
OH030035 (Jun. 13, 2003)
OH030036 (Jun. 13, 2003)

Volume V

Texas
TX030028 (Jun. 13, 2003)
TX030030 (Jun. 13, 2003)
TX030031 (Jun. 13, 2003)
TX030043 (Jun. 13, 2003)
TX030045 (Jun. 13, 2003)

Volume VI

Colorado
CO030001 (Jun. 13, 2003)
CO030002 (Jun. 13, 2003)
CO030003 (Jun. 13, 2003)
CO030004 (Jun. 13, 2003)
CO030005 (Jun. 13, 2003)
CO030006 (Jun. 13, 2003)
CO030007 (Jun. 13, 2003)
CO030008 (Jun. 13, 2003)
CO030009 (Jun. 13, 2003)
CO030010 (Jun. 13, 2003)
CO030011 (Jun. 13, 2003)
Idaho
ID030015 (Jun. 13, 2003)
ID030016 (Jun. 13, 2003)
ID030018 (Jun. 13, 2003)
ID030019 (Jun. 13, 2003)
Oregon
OR030001 (Jun. 13, 2003)
OR030002 (Jun. 13, 2003)
OR030007 (Jun. 13, 2003)
Washington
WA030001 (Jun. 13, 2003)
WA030002 (Jun. 13, 2003)
WA030009 (Jun. 13, 2003)

Volume VII

California
CA030001 (Jun. 13, 2003)
CA030002 (Jun. 13, 2003)
CA030009 (Jun. 13, 2003)
CA030013 (Jun. 13, 2003)
CA030019 (Jun. 13, 2003)
CA030023 (Jun. 13, 2003)
CA030025 (Jun. 13, 2003)
CA030027 (Jun. 13, 2003)
CA030028 (Jun. 13, 2003)
CA030029 (Jun. 13, 2003)
CA030030 (Jun. 13, 2003)
CA030031 (Jun. 13, 2003)
CA030033 (Jun. 13, 2003)
CA030035 (Jun. 13, 2003)
CA030036 (Jun. 13, 2003)
CA030037 (Jun. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov)of* the National

Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Document, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 6th day of January, 2005.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 05–577 Filed 1–13–05; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the Quarterly Census of Employment and Wages Program. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before March 15, 2005.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Quarterly Census of Employment and Wages (QCEW) program, a Federal/State cooperative effort, produces monthly employment and quarterly wage information. It is a by-product of quarterly reports submitted to State Workforce Agencies (SWAs) by employers subject to State Unemployment Insurance (UI) laws. The collection of these data is authorized by 29 U.S.C. 1, 2. The QCEW data, which are compiled for each calendar quarter, provide a comprehensive business name and address file with employment and wage information for employers subject to State UI laws. Similar data for Federal Government employers covered by the Unemployment Compensation for Federal Employees program also are included. These data are submitted to the BLS by all 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. The BLS summarizes these data to produce totals for all counties, Metropolitan Statistical Areas, the States, and the nation. The QCEW program provides a virtual census of nonagricultural employees and their wages, with about 55 percent of the workers in agriculture covered as well.

The QCEW program is a comprehensive and accurate source of data on the number of establishments, monthly employment, and quarterly wages, by industry, at the six-digit North American Industry Classification System (NAICS) level, and at the national, State, Metropolitan Statistical Area, and county levels. The QCEW series has broad economic significance in measuring labor trends and major industry developments, in time series analyses of establishments, employment, and wages by size of establishment.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- 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 submissions of responses.

III. Current Action

Office of Management and Budget clearance is being sought for the Quarterly Census of Employment and Wages (QCEW) program.

The QCEW program is the only Federal statistical program that provides information on establishments, wages, tax contributions and the number of employees subject to State UI laws and the Unemployment Compensation for Federal Employees program. The consequences of not collecting QCEW data would be grave to the Federal statistical community. The BLS would not have a sampling frame for its establishment surveys; it would not be able to publish as accurate current estimates of employment for the U.S., States, and metropolitan areas; and it would not be able to publish quarterly census totals of local establishment counts, employment and wages. The Bureau of Economic Analysis would not be able to publish as accurate personal income data in a timely manner for the U.S., States, and local areas. Finally, the Employment Training Administration would not have the information it needs to administer the Unemployment Insurance Program.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Quarterly Census of Employment and Wages (QCEW) Program.

OMB Number: 1220–0012.

Affected Public: State Government.

Total Respondents: 53.

Frequency: Quarterly.

Total Responses: 212.

Average Time Per Response: 5,180 hours.

Estimated Total Burden Hours: 1,098,240 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 7th day of January 2005.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 05–805 Filed 1–13–05; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–002)]

NASA Search for Earth-Like Planets 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 forthcoming meeting of the NASA Search for Earth-Like Planets Strategic Roadmap Committee.

DATES: Tuesday, February 15, 2005, 8 a.m. to 5 p.m., Wednesday, February 16, 2005, 8 a.m. to 5 p.m., Mountain Standard Time.

ADDRESSES: Westward Look Hotel, 245 E. Ina Road, Tucson, AZ 85704.

FOR FURTHER INFORMATION CONTACT: Dr. Eric Smith, Science Mission Directorate, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2439.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. Attendees will be requested to sign a register.

The agenda for the meeting includes the following topics:

—Overview of strategic roadmap process and products.
—Relationship to capabilities roadmaps.
—Legacy roadmap.
—Key science questions and future missions.
—Roadmap plan, next steps, and assignments.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: January 7, 2005.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–763 Filed 1–13–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 05–003]

Alternative Fuel Vehicle Acquisitions; Notice of Availability

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of NASA's annual report on its alternative fuel vehicle (AFV) acquisitions for fiscal year 2004.

SUMMARY: Under the Energy Policy Act of 1992 (42 U.S.C. 13211–13219) as amended by the Energy Conservation Reauthorization Act of 1998 (Pub. L. 105–388), and Executive Order 13149 (April 2000), "Greening the Government Through Federal Fleet and Transportation Efficiency," NASA's annual AFV reports are available on the following NASA Web site: *www.hq.nasa.gov/office/codej/codejlg/afv.htm.*

ADDRESSES: Logistics Management Division, NASA Headquarters, 300 E Street SW., Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: William Gookin, (202) 358–2306, or *william.e.gookin@nasa.gov.*

Jeffrey E. Sutton,

Assistant Administrator for Infrastructure, Management and Headquarters Operations.

[FR Doc. 05–848 Filed 1–13–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On December 7, 2003, the National Science Foundation published a notice in the **Federal Register** of a Waste Management permit application received. A Waste Management permit was issued on January 7, 2005 to the following applicant: Steve Brooks, Pole to Pole; Permit No.: 2005 WM–005.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 05–815 Filed 1–13–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[NUREG–1600]

NRC Enforcement Policy; Extension of Enforcement Discretion of Interim Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: revision.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its General Statement of Policy and Procedure for NRC Enforcement Actions (NUREG–1600) (Enforcement Policy or Policy) to extend the interim enforcement policy regarding enforcement discretion for certain issues involving fire protection programs at operating nuclear power plants.

DATES: This revision is effective January 14, 2005. Comments on this revision to the Enforcement Policy may be submitted on or before February 14, 2005.

ADDRESSES: Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, Room O1F21, 11555 Rockville Pike, Rockville, MD. You may also e-mail comments to *nrcrep@nrc.gov.*

The NRC maintains the current Enforcement Policy on its Web site at *http://www.nrc.gov*, select "What We Do, Enforcement," then "Enforcement Policy."

FOR FURTHER INFORMATION CONTACT: Sunil Weerakkody, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–2870, e-mail (*SDW1@nrc.gov*) or Renée Pedersen, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–2742, e-mail (*RMP@nrc.gov*).

SUPPLEMENTARY INFORMATION: On June 16, 2004, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.48 (69 FR 33536). This rule became effective on July 16, 2004, and allows licensees to adopt 10 CFR 50.48(c), a voluntary risk-informed, performance-based alternative to current fire protection requirements. The NRC concurrently revised its Enforcement Policy (69 FR 33684) to provide interim enforcement discretion during a "transition" period. The interim enforcement discretion policy includes provisions to address (1) noncompliances identified during the licensee's transition process and, (2) existing identified noncompliances.

In accordance with the current Enforcement Policy, for noncompliances identified as part of the transition to 10 CFR 50.48(c), the enforcement discretion period begins upon the receipt of a letter of intent from the licensee stating its intention to adopt 10 CFR 50.48(c) and it would remain in effect for up to two years. Furthermore, when the licensee submits a license amendment request to complete the transition to 10 CFR 50.48(c), the enforcement discretion will continue until the NRC completes its review of the license amendment request.

The second element of the interim enforcement discretion policy provides enforcement discretion for licensees who wish to take advantage of the new rule to resolve existing noncompliances. One of the criteria that must be met to exercise this discretion is that the licensee must submit a letter of intent to adopt 10 CFR 50.48(c) within 6 months of the effective date of the final rule. Therefore, the current deadline for the letter of intent to allow discretion for existing noncompliances is January 16, 2005.

As a result, if a licensee submits a letter of intent on or before January 16, 2005, (in order to meet the second discretion element) the enforcement discretion for noncompliances identified during the licensee's transition process (the first discretion element) would remain in effect until January 15, 2007.

By letter dated July 7, 2004, the Nuclear Energy Institute (NEI) (ADAMS Accession ML042010132) requested that NRC extend the deadline for the letter of intent from January 16, 2005, to December 31, 2005. According to the NEI letter, the primary basis for this request is to accommodate the licensee planning and budgeting for transition to 10 CFR 50.48(c).

The NRC considered NEI's request in light of possible safety implications, the NRC's regulatory philosophy to provide incentives for licensees to move to risk-informed, performance-based fire protection requirements, and the NRC's need to put long standing fire protection issues on a closure path.

When the NRC issued the interim enforcement discretion policy, the NRC chose to limit the time allowed to submit a letter of intent to 6 months for existing noncompliances because the NRC wanted to prevent undue delays in either restoring compliance to 10 CFR 50.48(b) or establishing compliance to 10 CFR 50.48(c). The NRC did not consider the challenges imposed on the licensees in budgeting and planning. After receiving NEI's request to extend the time allowed for the letter of intent by one year, the NRC reevaluated potential safety concerns associated with a one year extension to existing noncompliances. The NRC concludes that granting NEI's request does not adversely affect public health and safety because:

- Enforcement discretion does not apply to the risk-significant issues, which under the Reactor Oversight Process would be evaluated as Red;
- Enforcement discretion does not apply to issues that would be categorized as Severity Level I;
- The licensee is required to adopt compensatory measures until compliance is either restored to 10 CFR 50.48(b) or achieved per 10 CFR 50.48(c), and
- Licensees potentially would be identifying and addressing improvements to existing programs.

In addition to allowing licensees time for budgeting and planning to adopt 10 CFR 50.48(c), this extension will also allow licensees to consider the draft Regulatory Guide (RG) and the probabilistic risk assessment (PRA) and fire modeling tools in their decision. This RG and the PRA were issued for public comment in October 2004. The fire modeling tools will be issued for public comment in Summer 2005.

Paperwork Reduction Act

This policy statement does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150–0136. The approved information collection requirements contained in this policy statement appear in Section VII.C.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, collection of information unless it displays a currently valid OMB control number.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC had determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Accordingly, the proposed revision to the NRC Enforcement Policy reads as follows:

General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

Interim Enforcement Policies

* * * * *

Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48)

* * * * *

B. Existing Identified Noncompliances

* * * * *

In addition, licensees may have existing identified noncompliances that could reasonably be corrected under 10 CFR 50.48(c). For these noncompliances, the NRC is providing enforcement discretion for the implementation of corrective actions until the licensee has transitioned to 10 CFR 50.48(c) provided that the noncompliances meet all of the following criteria:

(1) The licensee has entered the noncompliance into its corrective action program and implemented appropriate compensatory measures,

(2) The noncompliance is not associated with a finding that the Reactor Oversight Process Significance Determination Process would evaluate

as Red, or it would not be categorized at Severity Level I,

(3) The licensee submits a letter of intent by December 31, 2005, stating its intent to transition to 10 CFR 50.48(c).

After December 31, 2005, as addressed in (3) above, this enforcement discretion for implementation of corrective actions for existing identified noncompliances will not be available and the requirements of 10 CFR 50.48(b) (and any other requirements in fire protection license conditions) will be enforced in accordance with normal enforcement practices.

Dated at Rockville, MD, this 11th day of January, 2005.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 05–887 Filed 1–13–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY: Nuclear Regulatory Commission.

DATE: Week of January 17, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

ADDITIONAL MATTERS TO BE CONSIDERED:

Week of January 17, 2005

Tuesday, January 18, 2005

9:55 a.m. Affirmation Session (Public Meeting) (Tentative).

a. System Energy Resources Inc. (Early Site Permit for Grand Gulf Nuclear Site), Docket Number 52–009, Appeal by National Association for the Advancement of Colored People—Claiborne County, Mississippi Branch, Nuclear Information Service, Public Citizen, and Mississippi Chapter of the Sierra Club from LBP–04–19. (Tentative).

b. Louisiana Energy Services, L.P. (National Enrichment Facility) (Tentative).

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at (301) 415–7080, TDD: (301) 415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: January 11, 2005.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 05–890 Filed 1–12–05; 9:32 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Final Information Quality Bulletin for Peer Review

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Final bulletin.

SUMMARY: On December 16, 2004, the Office of Management and Budget (OMB), in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review to the heads of departments and agencies (available at *http://www.whitehouse.gov/omb/memoranda/fy2005/m05-03.html*). This new guidance is designed to realize the benefits of meaningful peer review of the most important science disseminated by the Federal Government. It is part of an ongoing effort to improve the quality, objectivity, utility, and integrity of information disseminated by the Federal Government to the public. This final bulletin has benefited from an extensive stakeholder process. OMB originally requested comment on its "Proposed Bulletin on Peer Review and Information Quality," published in the **Federal Register** on September 15, 2003. OMB received 187 public comments during the comment period (available at *http://www.whitehouse.gov/omb/inforeg/2003iq/iq_list.html*). In addition, to improve the draft Bulletin, OMB encouraged federal agencies to sponsor a public workshop at the National Academy of Sciences (NAS). The NAS workshop (November 18, 2003, at the National Academies in Washington, DC) attracted several hundred participants, including leaders in the scientific community (available at *http://www7.nationalacademies.org/stl/STL_Peer_Review_Agenda.html*). OMB also participated in outreach activities with major scientific organizations and societies that had expressed specific interest in the draft Bulletin. A formal interagency review of the draft Bulletin, resulting in detailed comments from numerous Federal departments and agencies, was undertaken in collaboration with the White House Office of Science and Technology Policy. In light of the substantial interest in the Bulletin, including a wide range of constructive criticisms of the initial draft, OMB decided to issue a revised draft for further comment. This revised draft was published in the **Federal Register** on April 28, 2004, and solicited a second round of public comment. The revised draft stimulated a much smaller number of comments (57) (available at: *http://www.whitehouse.gov/omb/inforeg/peer2004/list_peer2004.html*). OMB's response to the additional criticisms, suggestions, and refinements offered for consideration is available at: *http://www.whitehouse.gov/omb/inforeg/peer2004/peer_response.pdf.* The final Bulletin includes refinements that strike a balance among the diverse perspectives expressed during the comment period. Part I of the SUPPLEMENTARY INFORMATION below provides background. Part II provides the text of the final Bulletin.

DATES: The requirements of this Bulletin, with the exception of those in Section V (Peer Review Planning), apply to information disseminated on or after June 16, 2005. However, they do not apply to information for which an agency has already provided a draft report and an associated charge to peer reviewers. The requirements in Section V regarding "highly influential scientific assessments" are effective June 16, 2005. The requirements in Section V regarding "influential scientific information" are effective December 16, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Margo Schwab, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., New Executive Office Building, Room 10201, Washington, DC 20503. Telephone (202) 395–5647 or email: *OMB_peer_review@omb.eop.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

This Bulletin establishes that important scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government. We published a proposed Bulletin on September 15, 2003. Based on public comments, we published a revised proposal for additional comment on April 28, 2004. We are now finalizing the April version, with minor revisions responsive to the public's comments.

The purpose of the Bulletin is to enhance the quality and credibility of the government's scientific information. We recognize that different types of peer review are appropriate for different types of information. Under this Bulletin, agencies are granted broad discretion to weigh the benefits and costs of using a particular peer review mechanism for a specific information product. The selection of an appropriate peer review mechanism for scientific information is left to the agency's discretion. Various types of information are exempted from the requirements of this Bulletin, including time-sensitive health and safety determinations, in order to ensure that peer review does not unduly delay the release of urgent findings.

This Bulletin also applies stricter minimum requirements for the peer review of highly influential scientific assessments, which are a subset of influential scientific information. A scientific assessment is an evaluation of a body of scientific or technical knowledge that typically synthesizes multiple factual inputs, data, models, assumptions, and/or applies best professional judgment to bridge uncertainties in the available information. To ensure that the Bulletin is not too costly or rigid, these requirements for more intensive peer review apply only to the more important scientific assessments disseminated by the Federal government.

Even for these highly influential scientific assessments, the Bulletin leaves significant discretion to the agency formulating the peer review plan. In general, an agency conducting a peer review of a highly influential scientific assessment must ensure that the peer review process is transparent by making available to the public the written charge to the peer reviewers, the peer reviewers' names, the peer reviewers' report(s), and the agency's response to the peer reviewers' report(s). The agency selecting peer reviewers must ensure that the reviewers possess the necessary expertise. In addition, the agency must address reviewers' potential conflicts of interest (including those stemming from ties to regulated businesses and other stakeholders) and independence from the agency. This Bulletin requires agencies to adopt or adapt the committee selection policies employed by the National Academy of Sciences (NAS) [1] when selecting peer reviewers who are not government employees. Those that are government employees are subject to federal ethics requirements. The use of a transparent process, coupled with the selection of qualified and independent peer reviewers, should improve the quality of government science while promoting public confidence in the integrity of the government's scientific products.

Peer Review

Peer review is one of the important procedures used to ensure that the quality of published information meets the standards of the scientific and technical community. It is a form of deliberation involving an exchange of judgments about the appropriateness of methods and the strength of the author's inferences.[2] Peer review involves the review of a draft product for quality by specialists in the field who were not involved in producing the draft.

The peer reviewer's report is an evaluation or critique that is used by the authors of the draft to improve the product. Peer review typically evaluates the clarity of hypotheses, the validity of the research design, the quality of data collection procedures, the robustness of the methods employed, the appropriateness of the methods for the hypotheses being tested, the extent to which the conclusions follow from the analysis, and the strengths and limitations of the overall product.

Peer review has diverse purposes. Editors of scientific journals use reviewer comments to help determine whether a draft scientific article is of sufficient quality, importance, and interest to a field of study to justify publication. Research funding organizations often use peer review to evaluate research proposals. In addition, some Federal agencies make use of peer review to obtain evaluations of draft information that contains important scientific determinations.

Peer review should not be confused with public comment and other stakeholder processes. The selection of participants in a peer review is based on expertise, with due consideration of independence and conflict of interest. Furthermore, notice-and-comment procedures for agency rulemaking do not provide an adequate substitute for peer review, as some experts—especially those most knowledgeable in a field—may not file public comments with Federal agencies.

The critique provided by a peer review often suggests ways to clarify assumptions, findings, and conclusions. For instance, peer reviews can filter out biases and identify oversights, omissions, and inconsistencies.[3] Peer review also may encourage authors to more fully acknowledge limitations and uncertainties. In some cases, reviewers might recommend major changes to the draft, such as refinement of hypotheses, reconsideration of research design, modifications of data collection or analysis methods, or alternative conclusions. However, peer review does not always lead to specific modifications in the draft product. In some cases, a draft is in excellent shape prior to being submitted for review. In others, the authors do not concur with changes suggested by one or more reviewers.

Peer review may take a variety of forms, depending upon the nature and importance of the product. For example, the reviewers may represent one scientific discipline or a variety of disciplines; the number of reviewers may range from a few to more than a dozen; the names of each reviewer may be disclosed publicly or may remain anonymous (*e.g.*, to encourage candor); the reviewers may be blinded to the authors of the report or the names of the authors may be disclosed to the reviewers; the reviewers may prepare individual reports or a panel of reviewers may be constituted to produce a collaborative report; panels may do their work electronically or they may meet together in person to discuss and prepare their evaluations; and reviewers may be compensated for their work or they may donate their time as a

[1] National Academy of Sciences, "Policy and Procedures on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports," May 2003: Available at: *http://www.nationalacademies.org/coi/index.html*.

[2] Carnegie Commission on Science, Technology, and Government, *Risk and the Environment: Improving Regulatory Decision Making*, Carnegie Commission, New York, 1993: 75.

[3] William W. Lowrance, *Modern Science and Human Values*, Oxford University Press, New York, NY 1985: 85.

contribution to science or public service.

For large, complex reports, different reviewers may be assigned to different chapters or topics. Such reports may be reviewed in stages, sometimes with confidential reviews that precede a public process of panel review. As part of government-sponsored peer review, there may be opportunity for written and/or oral public comments on the draft product.

The results of peer review are often only one of the criteria used to make decisions about journal publication, grant funding, and information dissemination. For instance, the editors of scientific journals (rather than the peer reviewers) make final decisions about a manuscript's appropriateness for publication based on a variety of considerations. In research-funding decisions, the reports of peer reviewers often play an important role, but the final decisions about funding are often made by accountable officials based on a variety of considerations. Similarly, when a government agency sponsors peer review of its own draft documents, the peer review reports are an important factor in information dissemination decisions but rarely are the sole consideration. Agencies are not expected to cede their discretion with regard to dissemination or use of information to peer reviewers; accountable agency officials must make the final decisions.

The Need for Stronger Peer Review Policies

There are a multiplicity of science advisory procedures used at Federal agencies and across the wide variety of scientific products prepared by agencies.[4] In response to congressional inquiry, the U.S. General Accounting Office (now the Government Accountability Office) documented the variability in both the definition and implementation of peer review across agencies.[5] The Carnegie Commission on Science, Technology and Government[6] has highlighted the importance of "internal" scientific advice (within the agency) and "external" advice (through scientific advisory boards and other mechanisms).

A wide variety of authorities have argued that peer review practices at federal agencies need to be strengthened.[7] Some arguments focus on specific types of scientific products (*e.g.*, assessments of health, safety and environmental hazards).[8] The Congressional/Presidential Commission on Risk Assessment and Risk Management suggests that "peer review of economic and social science information should have as high a priority as peer review of health, ecological, and engineering information."[9]

Some agencies have formal peer review policies, while others do not. Even agencies that have such policies do not always follow them prior to the release of important scientific products.

Prior to the development of this Bulletin, there were no government-wide standards concerning when peer review is required and, if required, what type of peer review processes are appropriate. No formal interagency mechanism existed to foster cross-agency sharing of experiences with peer review practices and policies. Despite the importance of peer review for the credibility of agency scientific products, the public lacked a consistent way to determine when an important scientific information product is being developed by an agency, the type of peer review planned for that product, or whether there would be an opportunity to provide comments and data to the reviewers.

This Bulletin establishes minimum standards for when peer review is required for scientific information and the types of peer review that should be considered by agencies in different circumstances. It also establishes a transparent process for public disclosure of peer review planning, including a Web-accessible description of the peer review plan that the agency has developed for each of its forthcoming influential scientific disseminations.

Legal Authority for the Bulletin

This Bulletin is issued under the Information Quality Act and OMB's general authorities to oversee the quality of agency information, analyses, and regulatory actions. In the Information Quality Act, Congress directed OMB to issue guidelines to "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility and integrity of information" disseminated by Federal agencies. Public Law No. 106–554, § 515(a). The Information Quality Act was developed as a supplement to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, which requires OMB, among other things, to "develop and oversee the implementation of policies, principles, standards, and guidelines to * * * apply to Federal agency dissemination of public information." In addition, Executive Order 12866, 58 FR 51,735 (Oct. 4, 1993), establishes that OIRA is "the repository of expertise concerning regulatory issues," and it directs OMB to provide guidance to the agencies on regulatory planning. E.O. 12866, § 2(b). The Order also requires that "[e]ach agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, or other information." E.O. 12866, § 1(b)(7). Finally, OMB has authority in certain circumstances to manage the agencies under the purview of the President's Constitutional authority to supervise the unitary Executive Branch. All of these authorities support this Bulletin.

The Requirements of This Bulletin

This Bulletin addresses peer review of scientific information disseminations that contain findings or conclusions that represent the official position of one or more agencies of the Federal government.

Section I: Definitions

Section I provides definitions that are central to this Bulletin. Several terms are identical to or based on those used in OMB's government-wide information quality guidelines, 67 FR 8452 (Feb. 22, 2002), and the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

[4] Sheila Jasanoff, *The Fifth Branch: Science Advisors as Policy Makers*, Harvard University Press, Boston, 1990.

[5] U.S. General Accounting Office, *Federal Research: Peer Review Practices at Federal Agencies Vary*, GAO/RCED–99–99, Washington, DC, 1999.

[6] Carnegie Commission on Science, Technology, and Government, *Risk and the Environment: Improving Regulatory Decision Making*, Carnegie Commission, New York, 1993: 90.

[7] National Academy of Sciences, *Peer Review in the Department of Energy—Office of Science and Technology*, Interim Report, National Academy Press, Washington, DC, 1997; National Academy of Sciences, *Peer Review in Environmental Technology Development: The Department of Energy—Office of Science and Technology*, National Academy Press, Washington, DC, 1998; National Academy of Sciences, *Strengthening Science at the U.S. Environmental Protection Agency: Research-Management and Peer-Review Practices*, National Academy Press, Washington, DC, 2000; U.S. General Accounting Office, *EPA's Science Advisory Board Panels: Improved Policies and Procedures Needed to Ensure Independence and Balance*, GAO–01–536, Washington, DC, 2001; U.S. Environmental Protection Agency, Office of Inspector General, *Pilot Study: Science in Support of Rulemaking 2003*–P–00003, Washington, DC, 2002; Carnegie Commission on Science, Technology, and Government, *In the National Interest: The Federal Government in the Reform of K–12 Math and Science Education*, Carnegie Commission, New York, 1991; U.S. General Accounting Office, *Endangered Species Program: Information on How Funds Are Allocated and What Activities are Emphasized*, GAO–02–581, Washington, DC, 2002.

[8] National Research Council, *Science and Judgment in Risk Assessment*, National Academy Press, Washington, DC, 1994.

[9] Presidential/Congressional Commission on Risk Assessment and Risk Management, Risk Commission Report, Volume 2, *Risk Assessment and Risk Management in Regulatory Decision-Making*, 1997:103.

The term "Administrator" means the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget (OIRA).

The term "agency" has the same meaning as in the Paperwork Reduction Act, 44 U.S.C. 3502(1).

The term "Information Quality Act" means Section 515 of Public Law 106–554 (Pub. L. No. 106–554, § 515, 114 Stat. 2763, 2763A–153–154 (2000)).

The term "dissemination" means agency initiated or sponsored distribution of information to the public. Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra-or inter-agency use or sharing of government information; or responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, the Government Performance and Results Act, or similar laws. This definition also excludes distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas and adjudicative processes. In the context of this Bulletin, the definition of "dissemination" modifies the definition in OMB's government-wide information quality guidelines to address the need for peer review prior to official dissemination of the information product. Accordingly, under this Bulletin, "dissemination" also excludes information distributed for peer review in compliance with this Bulletin or shared confidentially with scientific colleagues, provided that the distributing agency includes an appropriate and clear disclaimer on the information, as explained more fully below. Finally, the Bulletin does not directly cover information supplied to the government by third parties (*e.g.*, studies by private consultants, companies and private, non-profit organizations, or research institutions such as universities). However, if an agency plans to disseminate information supplied by a third party (*e.g.*, using this information as the basis for an agency's factual determination that a particular behavior causes a disease), the requirements of the Bulletin apply, if the dissemination is "influential".

In cases where a draft report or other information is released by an agency solely for purposes of peer review, a question may arise as to whether the draft report constitutes an official "dissemination" under information-quality guidelines. Section I instructs agencies to make this clear by presenting the following disclaimer in the report:

> This information is distributed solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. It has not been formally disseminated by [the agency]. It does not represent and should not be construed to represent any agency determination or policy.

In cases where the information is highly relevant to specific policy or regulatory deliberations, this disclaimer shall appear on each page of a draft report. Agencies also shall discourage state, local, international and private organizations from using information in draft reports that are undergoing peer review. Draft influential scientific information presented at scientific meetings or shared confidentially with colleagues for scientific input prior to peer review shall include the disclaimer: "The Findings and Conclusions in This Report (Presentation) Have Not Been Formally Disseminated by [The Agency] and Should Not Be Construed to Represent Any Agency Determination or Policy."

An information product is not covered by the Bulletin unless it represents an official view of one or more departments or agencies of the Federal government. Accordingly, for the purposes of this Bulletin, "dissemination" excludes research produced by government-funded scientists (*e.g.*, those supported extramurally or intramurally by Federal agencies or those working in state or local governments with Federal support) if that information is not represented as the views of a department or agency (*i.e.*, they are not official government disseminations). For influential scientific information that does not have the imprimatur of the Federal government, scientists employed by the Federal government are required to include in their information product a clear disclaimer that "the findings and conclusions in this report are those of the author(s) and do not necessarily represent the views of the funding agency." A similar disclaimer is advised for non-government employees who publish government-funded research.

For the purposes of the peer review Bulletin, the term "scientific information" means factual inputs, data, models, analyses, technical information, or scientific assessments related to such disciplines as the behavioral and social sciences, public health and medical sciences, life and earth sciences, engineering, or physical sciences. This includes any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that an agency disseminates from a Web page, but does not include the provision of hyperlinks on a Web page to information that others disseminate. This definition excludes opinions, where the agency's presentation makes clear that an individual's opinion, rather than a statement of fact or of the agency's findings and conclusions, is being offered.

The term "influential scientific information" means scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions. In the term "influential scientific information," the term "influential" should be interpreted consistently with OMB's government-wide information quality guidelines and the information quality guidelines of the agency. Information dissemination can have a significant economic impact even if it is not part of a rulemaking. For instance, the economic viability of a technology can be influenced by the government's characterization of its attributes. Alternatively, the Federal government's assessment of risk can directly or indirectly influence the response actions of state and local agencies or international bodies.

One type of scientific information is a scientific assessment. For the purposes of this Bulletin, the term "scientific assessment" means an evaluation of a body of scientific or technical knowledge, which typically synthesizes multiple factual inputs, data, models, assumptions, and/or applies best professional judgment to bridge uncertainties in the available information. These assessments include, but are not limited to, state-of-science reports; technology assessments; weight-of-evidence analyses; meta-analyses; health, safety, or ecological risk assessments; toxicological characterizations of substances; integrated assessment models; hazard determinations; or exposure assessments. Such assessments often draw upon knowledge from multiple disciplines. Typically, the data and models used in scientific assessments have already been subject to some form of peer review (*e.g.*, refereed journal peer review or peer review under Section II of this Bulletin).

Section II: Peer Review of Influential Scientific Information

Section II requires each agency to subject "influential" scientific information to peer review prior to dissemination. For dissemination of influential scientific information, Section II provides agencies broad discretion in determining what type of peer review is appropriate and what procedures should be employed to select appropriate reviewers. Agencies are directed to chose a peer review mechanism that is adequate, giving due consideration to the novelty and complexity of the science to be reviewed, the relevance of the information to decision making, the extent of prior peer reviews, and the expected benefits and costs of additional review.

The National Academy of Public Administration suggests that the intensity of peer review should be commensurate with the significance of the information being disseminated and the likely implications for policy decisions.[10] Furthermore, agencies need to consider tradeoffs between depth of peer review and timeliness.[11] More rigorous peer review is necessary for information that is based on novel methods or presents complex challenges for interpretation. Furthermore, the need for rigorous peer review is greater when the information contains precedent-setting methods or models, presents conclusions that are likely to change prevailing practices, or is likely to affect policy decisions that have a significant impact.

This tradeoff can be considered in a benefit-cost framework. The costs of peer review include both the direct costs of the peer review activity and those stemming from potential delay in government and private actions that can result from peer review. The benefits of peer review are equally clear: the insights offered by peer reviewers may lead to policy with more benefits and/or fewer costs. In addition to contributing to strong science, peer review, if performed fairly and rigorously, can build consensus among stakeholders and reduce the temptation for courts and legislators to second-guess or overturn agency actions.[12] While it will not always be easy for agencies to quantify the benefits and costs of peer review, agencies are encouraged to approach peer review from a benefit-cost perspective.

Regardless of the peer review mechanism chosen, agencies should strive to ensure that their peer review practices are characterized by both scientific integrity and process integrity. "Scientific integrity," in the context of peer review, refers to such issues as "expertise and balance of the panel members; the identification of the scientific issues and clarity of the charge to the panel; the quality, focus and depth of the discussion of the issues by the panel; the rationale and supportability of the panel's findings; and the accuracy and clarity of the panel report." "Process integrity" includes such issues as "transparency and openness, avoidance of real or perceived conflicts of interest, a workable process for public comment and involvement," and adherence to defined procedures.[13]

When deciding what type of peer review mechanism is appropriate for a specific information product, agencies will need to consider at least the following issues: Individual versus panel review; timing; scope of the review; selection of reviewers; disclosure and attribution; public participation; disposition of reviewer comments; and adequacy of prior peer review.

Individual Versus Panel Review

Letter reviews by several experts generally will be more expeditious than convening a panel of experts. Individual letter reviews are more appropriate when a draft document covers only one discipline or when premature disclosure of a sensitive report to a public panel could cause harm to government or private interests. When time and resources warrant, panels are preferable, as they tend to be more deliberative than individual letter reviews and the reviewers can learn from each other. There are also multi-stage processes in which confidential letter reviews are conducted prior to release of a draft document for public notice and comment, followed by a formal panel review. These more rigorous and expensive processes are particularly valuable for highly complex, multidisciplinary, and more important documents, especially those that are novel or precedent-setting.

Timing of Peer Review

As a general rule, it is most useful to consult with peers early in the process of producing information. For example, in the context of risk assessments, it is valuable to have the choice of input data and the specification of the model reviewed by peers before the agency invests time and resources in implementing the model and interpreting the results. "Early" peer review occurs in time to "focus attention on data inadequacies in time for corrections.

When an information product is a critical component of rule-making, it is important to obtain peer review before the agency announces its regulatory options so that any technical corrections can be made before the agency becomes invested in a specific approach or the positions of interest groups have hardened. If review occurs too late, it is unlikely to contribute to the course of a rulemaking. Furthermore, investing in a more rigorous peer review early in the process "may provide net benefit by reducing the prospect of challenges to a regulation that later may trigger time consuming and resource-draining litigation."[14]

Scope of the Review

The "charge" contains the instructions to the peer reviewers regarding the objective of the peer review and the specific advice sought. The importance of the information, which shapes the goal of the peer review, influences the charge. For instance, the goal of the review might be to determine the utility of a body of literature for drawing certain conclusions about the feasibility of a technology or the safety of a product. In this context, an agency might ask reviewers to determine the relevance of conclusions drawn in one context for other contexts (*e.g.*, different exposure conditions or patient populations).

The charge to the reviewers should be determined in advance of the selection of the reviewers. In drafting the charge, it is important to remember the strengths and limitations of peer review. Peer review is most powerful when the charge is specific and steers the reviewers to specific technical questions while also directing reviewers to offer a broad evaluation of the overall product.

Uncertainty is inherent in science, and in many cases individual studies do not produce conclusive evidence. Thus, when an agency generates a scientific

[10] National Academy of Public Administration, Setting Priorities, Getting Results: A New Direction for EPA, National Academy Press, Washington, DC, 1995:23.

[11] Presidential/Congressional Commission on Risk Assessment and Risk Management, Risk Commission Report, 1997.

[12] Mark R. Powell, *Science at EPA: Information in the Regulatory Process*, Resources for the Future, Washington, DC, 1999: 148, 176; Sheila Jasanoff, *The Fifth Branch: Science Advisors as Policy Makers*, Harvard University Press, Boston, 1990: 242.

[13] ILSI Risk Sciences Institute, "Policies and Procedures: Model Peer Review Center of Excellence," 2002: 4. Available at *http://rsi.ilsi.org/file/Policies&Procedures.pdf*.

[14] Fred Anderson, Mary Ann Chirba Martin, E Donald Elliott, Cynthia Farina, Ernest Gellhorn, John D. Graham, C. Boyden Gray, Jeffrey Holmstead, Ronald M. Levin, Lars Noah, Katherine Rhyne, Jonathan Baert Wiener, "Regulatory Improvement Legislation: Risk Assessment, Cost-Benefit Analysis, and Judicial Review," *Duke Environmental Law and Policy Forum*, Fall 2000, vol. XI (1): 132.

assessment, it is presenting its scientific judgment about the accumulated evidence rather than scientific fact.[15] Specialists attempt to reach a consensus by weighing the accumulated evidence. Peer reviewers can make an important contribution by distinguishing scientific facts from professional judgments. Furthermore, where appropriate, reviewers should be asked to provide advice on the reasonableness of judgments made from the scientific evidence. However, the charge should make clear that the reviewers are not to provide advice on the policy (*e.g.*, the amount of uncertainty that is acceptable or the amount of precaution that should be embedded in an analysis). Such considerations are the purview of the government.[16]

The charge should ask that peer reviewers ensure that scientific uncertainties are clearly identified and characterized. Since not all uncertainties have an equal effect on the conclusions drawn, reviewers should be asked to ensure that the potential implications of the uncertainties for the technical conclusions drawn are clear. In addition, peer reviewers might be asked to consider value-of-information analyses that identify whether more research is likely to decrease key uncertainties.[17] Value-of-information analysis was suggested for this purpose in the report of the Presidential/Congressional Commission on Risk Assessment and Risk Management.[18] A description of additional research that would appreciably influence the conclusions of the assessment can help an agency assess and target subsequent efforts.

Selection of Reviewers

Expertise. The most important factor in selecting reviewers is expertise: ensuring that the selected reviewer has the knowledge, experience, and skills necessary to perform the review. Agencies shall ensure that, in cases where the document being reviewed spans a variety of scientific disciplines or areas of technical expertise, reviewers who represent the necessary spectrum of knowledge are chosen. For instance, expertise in applied mathematics and statistics is essential in the review of models, thereby allowing an audit of calculations and claims of significance and robustness based on the numeric data.[19] For some reviews, evaluation of biological plausibility is as important as statistical modeling. Agencies shall consider requesting that the public, including scientific and professional societies, nominate potential reviewers.

Balance. While expertise is the primary consideration, reviewers should also be selected to represent a diversity of scientific perspectives relevant to the subject. On most controversial issues, there exists a range of respected scientific viewpoints regarding interpretation of the available literature. Inviting reviewers with competing views on the science may lead to a sharper, more focused peer review. Indeed, as a final layer of review, some organizations (*e.g.*, the National Academy of Sciences) specifically recruit reviewers with strong opinions to test the scientific strength and balance of their reports. The NAS policy on committee composition and balance[20] highlights important considerations associated with perspective, bias, and objectivity.

Independence. In its narrowest sense, independence in a reviewer means that the reviewer was not involved in producing the draft document to be reviewed. However, for peer review of some documents, a broader view of independence is necessary to assure credibility of the process. Reviewers are generally not employed by the agency or office producing the document. As the National Academy of Sciences has stated, "external experts often can be more open, frank, and challenging to the status quo than internal reviewers, who may feel constrained by organizational concerns."[21] The Carnegie Commission on Science, Technology, and Government notes that "external science advisory boards serve a critically important function in providing regulatory agencies with expert advice on a range of issues."[22] However, the choice of reviewers requires a case-by-case analysis. Reviewers employed by other Federal and state agencies may possess unique or indispensable expertise.

A related issue is whether government-funded scientists in universities and consulting firms have sufficient independence from the federal agencies that support their work to be appropriate peer reviewers for those agencies.[23] This concern can be mitigated in situations where the scientist initiates the hypothesis to be tested or the method to be developed, which effectively creates a buffer between the scientist and the agency. When an agency awards grants through a competitive process that includes peer review, the agency's potential to influence the scientist's research is limited. As such, when a scientist is awarded a government research grant through an investigator-initiated, peer-reviewed competition, there generally should be no question as to that scientist's ability to offer independent scientific advice to the agency on other projects. This contrasts, for example, to a situation in which a scientist has a consulting or contractual arrangement with the agency or office sponsoring a peer review. Likewise, when the agency and a researcher work together (*e.g.*, through a cooperative agreement) to design or implement a study, there is less independence from the agency. Furthermore, if a scientist has repeatedly served as a reviewer for the same agency, some may question whether that scientist is sufficiently independent from the agency to be employed as a peer reviewer on agency-sponsored projects.

As the foregoing suggests, independence poses a complex set of questions that must be considered by agencies when peer reviewers are selected. In general, agencies shall make an effort to rotate peer review responsibilities across the available pool of qualified reviewers, recognizing that in some cases repeated service by the same reviewer is needed because of essential expertise.

Some agencies have built entire organizations to provide independent scientific advice while other agencies tend to employ ad hoc scientific panels on specific issues. Respect for the independence of reviewers may be enhanced if an agency collects names of potential reviewers (based on considerations of expertise and reputation for objectivity) from the

[15] Mark R. Powell, *Science at EPA: Information in the Regulatory Process*, Resources for the Future, Washington, DC, 1999: 139.

[16] Ibid.

[17] Granger Morgan and Max Henrion, "The Value of Knowing How Little You Know," *Uncertainty: A Guide to Dealing with Uncertainty in Quantitative Risk and Policy Analysis*, Cambridge University Press, 1990: 307.

[18] Presidential/Congressional Commission on Risk Assessment and Risk Management, Risk Commission Report, 1997, Volume 1: 39, Volume 2: 91.

[19] William W. Lowrance, *Modern Science and Human Values*, Oxford University Press, New York, NY 1985: 86.

[20] National Academy of Sciences, "Policy and Procedures on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports," May 2003: Available at: *http://www.nationalacademies.org/coi/index.html.*

[21] National Research Council, *Peer Review in Environmental Technology Development Programs: The Department of Energy's Office of Science and Technology*, National Academy Press, Washington, DC, 1998: 3.

[22] Carnegie Commission on Science, Technology, and Government, *Risk and the Environment: Improving Regulatory Decision Making*, Carnegie Commission, New York, 1993: 90.

[23] Lars Noah, "Scientific 'Republicanism': Expert Peer Review and the Quest for Regulatory Deliberation, *Emory Law Journal*, Atlanta, Fall 2000:1066.

public, including scientific or professional societies. The Department of Energy's use of the American Society of Mechanical Engineers to identify potential peer reviewers from a variety of different scientific societies provides an example of how professional societies can assist in the development of an independent peer review panel.[24]

Conflict of Interest. The National Academy of Sciences defines "conflict of interest" as any financial or other interest that conflicts with the service of an individual on the review panel because it could impair the individual's objectivity or could create an unfair competitive advantage for a person or organization.[25] This standard provides a useful benchmark for agencies to consider in selecting peer reviewers. Agencies shall make a special effort to examine prospective reviewers' potential financial conflicts, including significant investments, consulting arrangements, employer affiliations and grants/contracts. Financial ties of potential reviewers to regulated entities (*e.g.*, businesses), other stakeholders, and regulatory agencies shall be scrutinized when the information being reviewed is likely to be relevant to regulatory policy. The inquiry into potential conflicts goes beyond financial investments and business relationships and includes work as an expert witness, consulting arrangements, honoraria and sources of grants and contracts. To evaluate any real or perceived conflicts of interest with potential reviewers and questions regarding the independence of reviewers, agencies are referred to federal ethics requirements, applicable standards issued by the Office of Government Ethics, and the prevailing practices of the National Academy of Sciences. Specifically, peer reviewers who are Federal employees (including special government employees) are subject to Federal requirements governing conflicts of interest. *See, e.g.*, 18 U.S.C. 208; 5 CFR part 2635 (2004). With respect to reviewers who are not Federal employees, agencies shall adopt or adapt the NAS policy for committee selection with respect to evaluating conflicts of interest.[26] Both the NAS and the Federal government recognize that under certain circumstances some conflict may be unavoidable in order to obtain the necessary expertise. *See, e.g.*, 18 U.S.C. 208(b)(3); 5 U.S.C. App. 15 (governing NAS committees). To improve the transparency of the process, when an agency determines that it is necessary to use a reviewer with a real or perceived conflict of interest, the agency should consider publicly disclosing those conflicts. In such situations, the agency shall inform potential reviewers of such disclosure at the time they are recruited.

Disclosure and Attribution: Anonymous Versus Identified

Peer reviewers must have a clear understanding of how their comments will be conveyed to the authors of the document and to the public. When peer review of government reports is considered, the case for transparency is stronger, particularly when the report addresses an issue with significant ramifications for the public and private sectors. The public may not have confidence in the peer review process when the names and affiliations of the peer reviewers are unknown. Without access to the comments of reviewers, the public is incapable of determining whether the government has seriously considered the comments of reviewers and made appropriate revisions. Disclosure of the slate of reviewers and the substance of their comments can strengthen public confidence in the peer review process. It is common at many journals and research funding agencies to disclose annually the slate of reviewers. Moreover, the National Academy of Sciences now discloses the names of its peer reviewers, without disclosing the substance of their comments. The science advisory committees to regulatory agencies typically disclose at least a summary of the comments of reviewers as well as their names and affiliations.

For agency-sponsored peer review conducted under Sections II and III, this Bulletin strikes a compromise by requiring disclosure of the identity of the reviewers, but not public attribution of specific comments to specific reviewers. The agency has considerable discretion in the implementation of this compromise (*e.g.*, summarizing the views of reviewers as a group or disclosing individual reviewer comments without attribution). Whatever approach is employed, the agency must inform reviewers in advance of how it intends to address this issue. Information about a reviewer retrieved from a record filed by the reviewer's name or other identifier may be disclosed only as permitted by the conditions of disclosure enumerated in the Privacy Act, 5 U.S.C. 552a as amended, and as interpreted in OMB implementing guidance, 40 FR 28,948 (July 9, 1975).

Public Participation

Public comments can be important in shaping expert deliberations. Agencies may decide that peer review should precede an opportunity for public comment to ensure that the public receives the most scientifically strong product (rather than one that may change substantially as a result of peer reviewer suggestions). However, there are situations in which public participation in peer review is an important aspect of obtaining a high-quality product through a credible process. Agencies, however, should avoid open-ended comment periods, which may delay completion of peer reviews and complicate the completion of the final work product.

Public participation can take a variety of forms, including opportunities to provide oral comments before a peer review panel or requests to provide written comments to the peer reviewers. Another option is for agencies to publish a "request for comment" or other notice in which they solicit public comment before a panel of peer reviewers performs its work.

Disposition of Reviewer Comments

A peer review is considered completed once the agency considers and addresses the reviewers' comments. All reviewer comments should be given consideration and be incorporated where relevant and valid. For instance, in the context of risk assessments, the National Academy of Sciences recommends that peer review include a written evaluation made available for public inspection.[27] In cases where there is a public panel, the agency should plan publication of the peer review report(s) and the agency's response to peer reviewer comments.

In addition, the credibility of the final scientific report is likely to be enhanced if the public understands how the agency addressed the specific concerns raised by the peer reviewers. Accordingly, agencies should consider preparing a written response to the peer review report explaining: The agency's agreement or disagreement, the actions the agency has undertaken or will undertake in response to the report, and (if applicable) the reasons the agency believes those actions satisfy any key

[24] American Society for Mechanical Engineers, *Assessment of Technologies Supported by the Office of Science and Technology, Department of Energy: Results of the Peer Review for Fiscal Year 2002*, ASME Technical Publishing, Danvers, MA, 2003.

[25] National Academy of Sciences, "Policy and Procedures on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports," May 2003: Available at: *http://www.nationalacademies.org/coi/index.html.*

[26] Ibid.

[27] National Research Council, *Risk Assessment in the Federal Government: Managing the Process*, National Academy Press, Washington, DC, 1983.

concerns or recommendations in the report.

Adequacy of Prior Peer Review

In light of the broad range of information covered by Section II, agencies are directed to choose a peer review mechanism that is adequate, giving due consideration to the novelty and complexity of the science to be reviewed, the relevance of the information to decision making, the extent of prior peer reviews, and the expected benefits and costs of additional review.

Publication in a refereed scientific journal may mean that adequate peer review has been performed. However, the intensity of peer review is highly variable across journals. There will be cases in which an agency determines that a more rigorous or transparent review process is necessary. For instance, an agency may determine a particular journal review process did not address questions (*e.g.*, the extent of uncertainty inherent in a finding) that the agency determines should be addressed before disseminating that information. As such, prior peer review and publication is not by itself sufficient grounds for determining that no further review is necessary.

Section III: Peer Review of Highly Influential Scientific Assessments

Whereas Section II leaves most of the considerations regarding the form of the peer review to the agency's discretion, Section III requires a more rigorous form of peer review for highly influential scientific assessments. The requirements of Section II of this Bulletin apply to Section III, but Section III has some additional requirements, which are discussed below. In planning a peer review under Section III, agencies typically will have to devote greater resources and attention to the issues discussed in Section II, i.e., individual versus panel review; timing; scope of the review; selection of reviewers; disclosure and attribution; public participation; and disposition of reviewer comments.

A scientific assessment is considered "highly influential" if the agency or the OIRA Administrator determines that the dissemination could have a potential impact of more than $500 million in any one year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest. One of the ways information can exert economic impact is through the costs or benefits of a regulation based on the disseminated information. The qualitative aspect of this definition may be most useful in cases where it is difficult for an agency to predict the potential economic effect of dissemination. In the context of this Bulletin, it may be either the approach used in the assessment or the interpretation of the information itself that is novel or precedent-setting. Peer review can be valuable in establishing the bounds of the scientific debate when methods or interpretations are a source of controversy among interested parties. If information is covered by Section III, an agency is required to adhere to the peer review procedures specified in Section III.

Section III(2) clarifies that the principal findings, conclusions and recommendations in official reports of the National Academy of Sciences that fall under this Section are generally presumed not to require additional peer review. All other highly influential scientific assessments require a review that meets the requirements of Section III of this Bulletin.

With regard to the selection of reviewers, Section III(3)(a) emphasizes consideration of expertise and balance. As discussed in Section II, expertise refers to the required knowledge, experience and skills required to perform the review whereas balance refers to the need for diversity in scientific perspective and disciplines. We emphasize that the term "balance" here refers not to balancing of stakeholder or political interests but rather to a broad and diverse representation of respected perspectives and intellectual traditions within the scientific community, as discussed in the NAS policy on committee composition and balance.[28]

Section III(3)(b) instructs agencies to consider barring participation by scientists with a conflict of interest. The conflict of interest standards for Sections II and III of the Bulletin are identical. As discussed under Section II, those peer reviewers who are Federal employees, including Special Government Employees, are subject to applicable statutory and regulatory standards for Federal employees. For non-government employees, agencies shall adopt or adapt the NAS policy for committee member selection with respect to evaluating conflicts of interest.

Section III(3)(c) instructs agencies to ensure that reviewers are independent of the agency sponsoring the review. Scientists employed by the sponsoring agency are not permitted to serve as reviewers for highly influential scientific assessments. This does not preclude Special Government Employees, such as academics appointed to advisory committees, from serving as peer reviewers. The only exception to this ban would be the rare situation in which a scientist from a different agency of a Cabinet-level department than the agency that is disseminating the scientific assessment has expertise, experience and skills that are essential but cannot be obtained elsewhere. In evaluating the need for this exception, agencies shall use the NAS criteria for assessing the appropriateness of using employees of sponsors (*e.g.*, the government scientist must not have had any part in the development or prior review of the scientific information and must not hold a position of managerial or policy responsibility).

We also considered whether a reviewer can be independent of the agency if that reviewer receives a substantial amount of research funding from the agency sponsoring the review. Research grants that were awarded to the scientist based on investigator-initiated, competitive, peer-reviewed proposals do not generally raise issues of independence. However, significant consulting and contractual relationships with the agency may raise issues of independence or conflict, depending upon the situation.

Section III(3)(d) addresses concerns regarding repeated use of the same reviewer in multiple assessments. Such repeated use should be avoided unless a particular reviewer's expertise is essential. Agencies should rotate membership across the available pool of qualified reviewers. Similarly, when using standing panels of scientific advisors, it is suggested that the agency rotate membership among qualified scientists in order to obtain fresh perspectives and reinforce the reality and perception of independence from the agency.

Section III(4) requires agencies to provide reviewers with sufficient background information, including access to key studies, data and models, to perform their role as peer reviewers. In this respect, the peer review envisioned in Section III is more rigorous than some forms of journal peer review, where the reviewer is often not provided access to underlying data or models. Reviewers shall be informed of applicable access, objectivity, reproducibility and other quality standards under Federal information quality laws.

[28] National Academy of Sciences, "Policy and Procedures on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports," May 2003: Available at: *http://www.nationalacademies.org/coi/index.html*.

Section III(5) addresses opportunity for public participation in peer review, and provides that the agency shall, wherever possible, provide for public participation. In some cases, an assessment may be so sensitive that it is critical that the agency's assessment achieve a high level of quality before it is publicized. In those situations, a rigorous yet confidential peer review process may be appropriate, prior to public release of the assessment. If an agency decides to make a draft assessment publicly available at the onset of a peer review process, the agency shall, whenever possible, provide a vehicle for the public to provide written comments, make an oral presentation before the peer reviewers, or both. When written public comments are received, the agency shall ensure that peer reviewers receive copies of comments that address significant scientific issues with ample time to consider them in their review. To avoid undue delay of agency activities, the agency shall specify time limits for public participation throughout the peer review process.

Section III(6) requires that agencies instruct reviewers to prepare a peer review report that describes the nature and scope of their review and their findings and conclusions. The report shall disclose the name of each peer reviewer and a brief description of his or her organizational affiliation, credentials and relevant experiences. The peer review report should either summarize the views of the group as a whole (including any dissenting views) or include a verbatim copy of the comments of the individual reviewers (with or without attribution of specific views to specific names). The agency shall also prepare a written response to the peer review report, indicating whether the agency agrees with the reviewers and what actions the agency has taken or plans to take to address the points made by reviewers. The agency is required to disseminate the peer review report and the agency's response to the report on the agency's Web site, including all the materials related to the peer review such as the charge statement, peer review report, and agency response to the review. If the scientific information is used to support a final rule then, where practicable, the peer review report shall be made available to the public with enough time for the public to consider the implications of the peer review report for the rule being considered.

Section III(7) authorizes but does not require an agency to commission an entity independent of the agency to select peer reviewers and/or manage the peer review process in accordance with this Bulletin. The entity may be a scientific or professional society, a firm specializing in peer review, or a non-profit organization with experience in peer review.

Section IV: Alternative Procedures

Peer review as described in this Bulletin is only one of many procedures that agencies can employ to ensure an appropriate degree of pre-dissemination quality of influential scientific information. For example, Congress has assigned the NAS a special role in advising the Federal government on scientific and technical issues. The procedures of the NAS are generally quite rigorous, and thus agencies should presume that major findings, conclusions, and recommendations of NAS reports meet the performance standards of this Bulletin.

As an alternative to complying with Sections II and III of this Bulletin, an agency may instead (1) rely on scientific information produced by the National Academy of Sciences, (2) commission the National Academy of Sciences to peer review an agency draft scientific information product, or (3) employ an alternative procedure or set of procedures, specifically approved by the OIRA Administrator in consultation with the Office of Science and Technology Policy (OSTP), that ensures that the scientific information product meets applicable information-quality standards.

An example of an alternative procedure is to commission a respected third party other than the NAS (*e.g.*, the Health Effects Institute or the National Commission on Radiation Protection and Measurement) to conduct an assessment or series of related assessments. Another example of an alternative set of procedures is the three-part process used by the National Institutes of Health (NIH) to generate scientific guidance. Under that process, a scientific proposal or white paper is generated by a working group composed of external, independent scientific experts; that paper is then forwarded to a separate external scientific council, which then makes recommendations to the agency. The agency, in turn, decides whether to adopt and/or modify the proposal. For large science agencies that have diverse research portfolios and do not have significant regulatory responsibilities, such as NIH, an acceptable alternative would be to allow scientists from one part of the agency (for example, an NIH institute) to participate in the review of documents prepared by another part of the agency, as long as the head of the agency confirms in writing that each of the reviewers meets the NAS criteria relating to the appropriateness of using employees of sponsors (*e.g.*, the government scientist must not have had any part in the development or prior review of the scientific information and must not hold a position of managerial or policy responsibility). The purpose of Section IV is to encourage these types of innovation in the methods used to ensure pre-dissemination quality control of influential scientific information.

The mere existence of a public comment process (*e.g.*, notice-and-comment procedures under the Administrative Procedure Act) does not constitute adequate peer review or an "alternative process," because it does not assure that qualified, impartial specialists in relevant fields have performed a critical evaluation of the agency's draft product.[29]

Section V: Peer Review Planning

Section V requires agencies to begin a systematic process of peer review planning for influential scientific information (including highly influential scientific assessments) that the agency plans to disseminate in the foreseeable future. A key feature of this planning process is a Web-accessible listing of forthcoming influential scientific disseminations (i.e., an agenda) that is regularly updated by the agency. By making these plans publicly available, agencies will be able to gauge the extent of public interest in the peer review process for influential scientific information, including highly influential scientific assessments. These Web-accessible agendas can also be used by the public to monitor agency compliance with this Bulletin.

Each entry on the agenda shall include a preliminary title of the planned report, a short paragraph describing the subject and purpose of the planned report, and an agency contact person. The agency shall provide its prediction regarding whether the dissemination will be "influential scientific information" or a "highly influential scientific assessment," as the designation can influence the type of peer review to be undertaken. The agency shall discuss the timing of the peer review, as well as the use of any deferrals. Agencies shall include entries in the agenda for influential scientific information, including highly influential scientific assessments, for which the Bulletin's requirements have

[29] William W. Lowrance, *Modern Science and Human Values*, Oxford University Press, New York, NY 1985: 86.

been deferred or waived. If the agency, in consultation with the OIRA Administrator, has determined that it is appropriate to use a Section IV "alternative procedure" for a specific dissemination, a description of that alternative procedure shall be included in the agenda.

Furthermore, for each entry on the agenda, the agency shall describe the peer review plan. Each peer review plan shall include: (i) A paragraph including the title, subject and purpose of the planned report, as well as an agency contact to whom inquiries may be directed to learn the specifics of the plan; (ii) whether the dissemination is likely to be influential scientific information or a highly influential scientific assessment; (iii) the timing of the review (including deferrals); (iv) whether the review will be conducted through a panel or individual letters (or whether an alternative procedure will be exercised); (v) whether there will be opportunities for the public to comment on the work product to be peer reviewed, and if so, how and when these opportunities will be provided; (vi) whether the agency will provide significant and relevant public comments to the peer reviewers before they conduct their review; (vii) the anticipated number of reviewers (3 or fewer; 4–10; or more than 10); (viii) a succinct description of the primary disciplines or expertise needed in the review; (ix) whether reviewers will be selected by the agency or by a designated outside organization; and (x) whether the public, including scientific or professional societies, will be asked to nominate potential peer reviewers. The agency shall provide a link from the agenda to each document made public pursuant to this Bulletin. Agencies shall link their peer review agendas to the U.S. Government's official Web portal: firstgov at *http://www.FirstGov.gov.*

Agencies should update their peer review agendas at least every six months. However, in some cases—particularly for highly influential scientific assessments and other particularly important information—more frequent updates of existing entries on the agenda, or the addition of new entries to the agenda, may be warranted. When new entries are added to the agenda of forthcoming reports and other information, the public should be provided with sufficient time to comment on the agency's peer review plan for that report or product. Agencies shall consider public comments on the peer review plan. Agencies are encouraged to offer a listserve or similar mechanism for members of the public who would like to be notified by email each time an agency's peer review agenda has been updated.

The peer review planning requirements of this Bulletin are designed to be implemented in phases. Specifically, the planning requirements of the Bulletin will go into effect for documents subject to Section III of the Bulletin (highly influential scientific assessments) six months after publication. However, the planning requirements for documents subject to Section II of the Bulletin do not go into effect until one year after publication. It is expected that agency experience with the planning requirements of the Bulletin for the smaller scope of documents encompassed in Section III will be used to inform implementation of these planning requirements for the larger scope of documents covered under Section II.

Section VI: Annual Report

Each agency shall prepare an annual report that summarizes key decisions made pursuant to this Bulletin. In particular, each agency should provide to OIRA the following: (1) The number of peer reviews conducted subject to the Bulletin (i.e., for influential scientific information and highly influential scientific assessments); (2) the number of times alternative procedures were invoked; (3) the number of times waivers or deferrals were invoked (and in the case of deferrals, the length of time elapsed between the deferral and the peer review); (4) any decision to appoint a reviewer pursuant to any exception to the applicable independence or conflict of interest standards of the Bulletin, including determinations by the Secretary or Deputy Secretary pursuant to Section III(3)(c); (5) the number of peer review panels that were conducted in public and the number that allowed public comment; (6) the number of public comments provided on the agency's peer review plans; and (7) the number of peer reviewers that the agency used that were recommended by professional societies.

Section VII: Certification in the Administrative Record

If an agency relies on influential scientific information or a highly influential scientific assessment subject to the requirements of this Bulletin in support of a regulatory action, the agency shall include in the administrative record for that action a certification that explains how the agency has complied with the requirements of this Bulletin and the Information Quality Act. Relevant materials are to be placed in the administrative record.

Section VIII: Safeguards, Deferrals, and Waivers

Section VIII recognizes that individuals serving as peer reviewers have a privacy interest in information about themselves that the government maintains and retrieves by name or identifier from a system of records. To the extent information about a reviewer (name, credential, affiliation) will be disclosed along with his/her comments or analysis, the agency must comply with the requirements of the Privacy Act, 5 U.S.C. 552a, as amended, and OMB Circular A–130, Appendix I, 61 FR 6428 (February 20, 1996) to establish appropriate routine uses in a published System of Records Notice. Furthermore, the peer review must be conducted in a manner that respects confidential business information as well as intellectual property.

Section VIII also allows for a deferral or waiver of the requirements of the Bulletin where necessary. Specifically, the agency head may waive or defer some or all of the peer review requirements of Sections II or III of this Bulletin if there is a compelling rationale for waiver or deferral. Waivers will seldom be warranted under this provision because the Bulletin already provides significant safety valves, such as: The exemptions provided in Section IX, including the exemption for time-sensitive health and safety information; the authorization for alternative procedures in Section IV; and the overall flexibility provided for peer reviews of influential scientific information under Section II. Nonetheless, we have included this waiver and deferral provision to ensure needed flexibility in unusual and compelling situations not otherwise covered by the exemptions to the Bulletin, such as situations where unavoidable legal deadlines prevent full compliance with the Bulletin before information is disseminated. Deadlines found in consent decrees agreed to by agencies after the Bulletin is issued will not ordinarily warrant waiver of the Bulletin's requirements because those deadlines should be negotiated to permit time for all required procedures, including peer review. In addition, when an agency is unavoidably up against a deadline, deferral of some or all requirements of the Bulletin (as opposed to outright waiver of all of them) is the most appropriate accommodation between the need to satisfy immovable deadlines and the need to undertake proper peer review. If the agency head defers any of the peer review requirements prior to dissemination, peer review should be conducted as soon as practicable thereafter.

Section IX: Exemptions

There are a variety of situations where agencies need not conduct peer review under this Bulletin. These include, for example, disseminations of sensitive information related to certain national security, foreign affairs, or negotiations involving international treaties and trade where compliance with this Bulletin would interfere with the need for secrecy or promptness.

This Bulletin does not cover official disseminations that arise in adjudications and permit proceedings, unless the agency determines that peer review is practical and appropriate and that the influential dissemination is scientifically or technically novel (i.e., a major change in accepted practice) or likely to have precedent-setting influence on future adjudications or permit proceedings. This exclusion is intended to cover, among other things, licensing, approval and registration processes for specific product development activities as well as site-specific activities. The determination as to whether peer review is practical and appropriate is left to the discretion of the agency. While this Bulletin is not broadly applicable to adjudications, agencies are encouraged to hold peer reviews of scientific assessments supporting adjudications to the same technical standards as peer reviews covered by the Bulletin, including transparency and disclosure of the data and models underlying the assessments. Protections apply to confidential business information.

The Bulletin does not cover time-sensitive health and safety disseminations, for example, a dissemination based primarily on data from a recent clinical trial that was adequately peer reviewed before the trial began. For this purpose, "health" includes public health, or plant or animal infectious diseases.

This Bulletin covers original data and formal analytic models used by agencies in Regulatory Impact Analyses (RIAs). However, the RIA documents themselves are already reviewed through an interagency review process under E.O. 12866 that involves application of the principles and methods defined in OMB Circular A–4. In that respect, RIAs are excluded from coverage by this Bulletin, although agencies are encouraged to have RIAs reviewed by peers within the government for adequacy and completeness.

The Bulletin does not cover accounting, budget, actuarial, and financial information including that which is generated or used by agencies that focus on interest rates, banking, currency, securities, commodities, futures, or taxes.

Routine statistical information released by Federal statistical agencies (*e.g.*, periodic demographic and economic statistics) and analyses of these data to compute standard indicators and trends (*e.g.*, unemployment and poverty rates) is excluded from this Bulletin.

The Bulletin does not cover information disseminated in connection with routine rules that materially alter entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof.

If information is disseminated pursuant to an exemption to this Bulletin, subsequent disseminations are not automatically exempted. For example, if influential scientific information is first disseminated in the course of an exempt agency adjudication, but is later disseminated in the context of a non-exempt rulemaking, the subsequent dissemination will be subject to the requirements of this Bulletin even though the first dissemination was not.

Section X: OIRA and OSTP Responsibilities

OIRA, in consultation with OSTP, is responsible for overseeing agency implementation of this Bulletin. In order to foster learning about peer review practices across agencies, OIRA and OSTP shall form an interagency workgroup on peer review that meets regularly, discusses progress and challenges, and recommends improvements to peer review practices.

Section XI: Effective Date and Existing Law

The requirements of this Bulletin, with the exception of Section V, apply to information disseminated on or after six months after publication of this Bulletin. However, the Bulletin does not apply to information that is already being addressed by an agency-initiated peer review process (*e.g.*, a draft is already being reviewed by a formal scientific advisory committee established by the agency). An existing peer review mechanism mandated by law should be implemented by the agency in a manner as consistent as possible with the practices and procedures outlined in this Bulletin. The requirements of Section V apply to "highly influential scientific assessments," as designated in Section III of the Bulletin, within six months of publication of the final Bulletin. The requirements in Section V apply to documents subject to Section II of the Bulletin one year after publication of the final Bulletin.

Section XII: Judicial Review

This Bulletin is intended to improve the internal management of the Executive Branch 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 agencies or other entities, its officers or employees, or any other person.

Bulletin for Peer Review

I. Definitions

For purposes of this Bulletin—

1. The term "Administrator" means the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget (OIRA);

2. The term "agency" has the same meaning as in the Paperwork Reduction Act, 44 U.S.C. 3502(1);

3. The term "dissemination" means agency initiated or sponsored distribution of information to the public (see 5 CFR 1320.3(d) (definition of "Conduct or Sponsor")). Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; or responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, the Government Performance and Results Act or similar law. This definition also excludes distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas and adjudicative processes. The term "dissemination" also excludes information distributed for peer review in compliance with this Bulletin, provided that the distributing agency includes a clear disclaimer on the information as follows: "This information is distributed solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. It has not been formally disseminated by [the agency]. It does not represent and should not be construed to represent any agency determination or policy." For the purposes of this Bulletin, "dissemination" excludes research produced by government-funded scientists (*e.g.*, those supported extramurally or intramurally by Federal

agencies or those working in state or local governments with Federal support) if that information does not represent the views of an agency. To qualify for this exemption, the information should display a clear disclaimer that "the findings and conclusions in this report are those of the author(s) and do not necessarily represent the views of the funding agency";

4. The term "Information Quality Act" means Section 515 of Public Law 106–554 (Pub. L. No. 106–554, § 515, 114 Stat. 2763, 2763A–153–154 (2000));

5. The term "scientific information" means factual inputs, data, models, analyses, technical information, or scientific assessments based on the behavioral and social sciences, public health and medical sciences, life and earth sciences, engineering, or physical sciences. This includes any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that an agency disseminates from a Web page, but does not include the provision of hyperlinks to information that others disseminate. This definition does not include opinions, where the agency's presentation makes clear that what is being offered is someone's opinion rather than fact or the agency's views;

6. The term "influential scientific information" means scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions; and

7. The term "scientific assessment" means an evaluation of a body of scientific or technical knowledge, which typically synthesizes multiple factual inputs, data, models, assumptions, and/or applies best professional judgment to bridge uncertainties in the available information. These assessments include, but are not limited to, state-of-science reports; technology assessments; weight-of-evidence analyses; meta-analyses; health, safety, or ecological risk assessments; toxicological characterizations of substances; integrated assessment models; hazard determinations; or exposure assessments.

II. Peer Review of Influential Scientific Information

1. *In General:* To the extent permitted by law, each agency shall conduct a peer review on all influential scientific information that the agency intends to disseminate. Peer reviewers shall be charged with reviewing scientific and technical matters, leaving policy determinations for the agency. Reviewers shall be informed of applicable access, objectivity, reproducibility and other quality standards under the Federal laws governing information access and quality.

2. *Adequacy of Prior Peer Review:* For information subject to this section of the Bulletin, agencies need not have further peer review conducted on information that has already been subjected to adequate peer review. In determining whether prior peer review is adequate, agencies shall give due consideration to the novelty and complexity of the science to be reviewed, the importance of the information to decision making, the extent of prior peer reviews, and the expected benefits and costs of additional review. Principal findings, conclusions and recommendations in official reports of the National Academy of Sciences are generally presumed to have been adequately peer reviewed.

3. *Selection of Reviewers:* a. *Expertise and Balance:* Peer reviewers shall be selected based on expertise, experience and skills, including specialists from multiple disciplines, as necessary. The group of reviewers shall be sufficiently broad and diverse to fairly represent the relevant scientific and technical perspectives and fields of knowledge. Agencies shall consider requesting that the public, including scientific and professional societies, nominate potential reviewers.

b. *Conflicts:* The agency—or the entity selecting the peer reviewers—shall (i) ensure that those reviewers serving as federal employees (including special government employees) comply with applicable Federal ethics requirements; (ii) in selecting peer reviewers who are not government employees, adopt or adapt the National Academy of Sciences policy for committee selection with respect to evaluating the potential for conflicts (*e.g.*, those arising from investments; agency, employer, and business affiliations; grants, contracts and consulting income). For scientific information relevant to specific regulations, the agency shall examine a reviewer's financial ties to regulated entities (*e.g.*, businesses), other stakeholders, and the agency.

c. *Independence:* Peer reviewers shall not have participated in development of the work product. Agencies are encouraged to rotate membership on standing panels across the pool of qualified reviewers. Research grants that were awarded to scientists based on investigator-initiated, competitive, peer-reviewed proposals generally do not raise issues as to independence or conflicts.

4. *Choice of Peer Review Mechanism:* The choice of a peer review mechanism (for example, letter reviews or ad hoc panels) for influential scientific information shall be based on the novelty and complexity of the information to be reviewed, the importance of the information to decision making, the extent of prior peer review, and the expected benefits and costs of review, as well as the factors regarding transparency described in II(5).

5. *Transparency:* The agency—or entity managing the peer review—shall instruct peer reviewers to prepare a report that describes the nature of their review and their findings and conclusions. The peer review report shall either (a) include a verbatim copy of each reviewer's comments (either with or without specific attributions) or (b) represent the views of the group as a whole, including any disparate and dissenting views. The agency shall disclose the names of the reviewers and their organizational affiliations in the report. Reviewers shall be notified in advance regarding the extent of disclosure and attribution planned by the agency. The agency shall disseminate the final peer review report on the agency's Web site along with all materials related to the peer review (any charge statement, the peer review report, and any agency response). The peer review report shall be discussed in the preamble to any related rulemaking and included in the administrative record for any related agency action.

6. *Management of Peer Review Process and Reviewer Selection:* The agency may commission independent entities to manage the peer review process, including the selection of peer reviewers, in accordance with this Bulletin.

III. Additional Peer Review Requirements for Highly Influential Scientific Assessments

1. *Applicability:* This section applies to influential scientific information that the agency or the Administrator determines to be a scientific assessment that:

(i) Could have a potential impact of more than $500 million in any year, or

(ii) Is novel, controversial, or precedent-setting or has significant interagency interest.

2. *In General:* To the extent permitted by law, each agency shall conduct peer reviews on all information subject to this Section. The peer reviews shall satisfy the requirements of Section II of this Bulletin, as well as the additional

requirements found in this Section. Principal findings, conclusions and recommendations in official reports of the National Academy of Sciences that fall under this Section are generally presumed not to require additional peer review.

3. *Selection of Reviewers:* a. *Expertise and Balance:* Peer reviewers shall be selected based on expertise, experience and skills, including specialists from multiple disciplines, as necessary. The group of reviewers shall be sufficiently broad and diverse to fairly represent the relevant scientific and technical perspectives and fields of knowledge. Agencies shall consider requesting that the public, including scientific and professional societies, nominate potential reviewers.

b. *Conflicts:* The agency—or the entity selecting the peer reviewers—shall (i) ensure that those reviewers serving as Federal employees (including special government employees) comply with applicable Federal ethics requirements; (ii) in selecting peer reviewers who are not government employees, adopt or adapt the National Academy of Sciences' policy for committee selection with respect to evaluating the potential for conflicts (*e.g.*, those arising from investments; agency, employer, and business affiliations; grants, contracts and consulting income). For scientific assessments relevant to specific regulations, a reviewer's financial ties to regulated entities (*e.g.*, businesses), other stakeholders, and the agency shall be examined.

c. *Independence:* In addition to the requirements of Section II (3)(c), which shall apply to all reviews conducted under Section III, the agency—or entity selecting the reviewers—shall bar participation of scientists employed by the sponsoring agency unless the reviewer is employed only for the purpose of conducting the peer review (*i.e.*, special government employees). The only exception to this bar would be the rare case where the agency determines, using the criteria developed by NAS for evaluating use of "employees of sponsors," that a premier government scientist is (a) not in a position of management or policy responsibility and (b) possesses essential expertise that cannot be obtained elsewhere. Furthermore, to be eligible for this exception, the scientist must be employed by a different agency of the Cabinet-level department than the agency that is disseminating the scientific information. The agency's determination shall be documented in writing and approved, on a non-delegable basis, by the Secretary or Deputy Secretary of the department prior to the scientist's appointment.

d. *Rotation:* Agencies shall avoid repeated use of the same reviewer on multiple assessments unless his or her participation is essential and cannot be obtained elsewhere.

4. *Information Access:* The agency—or entity managing the peer review—shall provide the reviewers with sufficient information—including background information about key studies or models—to enable them to understand the data, analytic procedures, and assumptions used to support the key findings or conclusions of the draft assessment.

5. *Opportunity for Public Participation:* Whenever feasible and appropriate, the agency shall make the draft scientific assessment available to the public for comment at the same time it is submitted for peer review (or during the peer review process) and sponsor a public meeting where oral presentations on scientific issues can be made to the peer reviewers by interested members of the public. When employing a public comment process as part of the peer review, the agency shall, whenever practical, provide peer reviewers with access to public comments that address significant scientific or technical issues. To ensure that public participation does not unduly delay agency activities, the agency shall clearly specify time limits for public participation throughout the peer review process.

6. *Transparency:* In addition to the requirements specified in II(5), which shall apply to all reviews conducted under Section III, the peer review report shall include the charge to the reviewers and a short paragraph on both the credentials and relevant experiences of each peer reviewer. The agency shall prepare a written response to the peer review report explaining (a) the agency's agreement or disagreement with the views expressed in the report, (b) the actions the agency has undertaken or will undertake in response to the report, and (c) the reasons the agency believes those actions satisfy the key concerns stated in the report (if applicable). The agency shall disseminate its response to the peer review report on the agency's Web site with the related material specified in Section II(5).

7. *Management of Peer Review Process and Reviewer Selection:* The agency may commission independent entities to manage the peer review process, including the selection of peer reviewers, in accordance with this Bulletin.

IV. Alternative Procedures

As an alternative to complying with Sections II and III of this Bulletin, an agency may instead: (i) Rely on the principal findings, conclusions and recommendations of a report produced by the National Academy of Sciences; (ii) commission the National Academy of Sciences to peer review an agency's draft scientific information; or (iii) employ an alternative scientific procedure or process, specifically approved by the Administrator in consultation with the Office of Science and Technology Policy (OSTP), that ensures the agency's scientific information satisfies applicable information quality standards. The alternative procedure(s) may be applied to a designated report or group of reports.

V. Peer Review Planning

1. *Peer Review Agenda:* Each agency shall post on its Web site, and update at least every six months, an agenda of peer review plans. The agenda shall describe all planned and ongoing influential scientific information subject to this Bulletin. The agency shall provide a link from the agenda to each document that has been made public pursuant to this Bulletin. Agencies are encouraged to offer a listserve or similar mechanism to alert interested members of the public when entries are added or updated.

2. *Peer Review Plans:* For each entry on the agenda the agency shall describe the peer review plan. Each peer review plan shall include: (i) A paragraph including the title, subject and purpose of the planned report, as well as an agency contact to whom inquiries may be directed to learn the specifics of the plan; (ii) whether the dissemination is likely to be influential scientific information or a highly influential scientific assessment; (iii) the timing of the review (including deferrals); (iv) whether the review will be conducted through a panel or individual letters (or whether an alternative procedure will be employed); (v) whether there will be opportunities for the public to comment on the work product to be peer reviewed, and if so, how and when these opportunities will be provided; (vi) whether the agency will provide significant and relevant public comments to the peer reviewers before they conduct their review; (vii) the anticipated number of reviewers (3 or fewer; 4–10; or more than 10); (viii) a succinct description of the primary disciplines or expertise needed in the review; (ix) whether reviewers will be selected by the agency or by a

designated outside organization; and (x) whether the public, including scientific or professional societies, will be asked to nominate potential peer reviewers.

3. *Public Comment:* Agencies shall establish a mechanism for allowing the public to comment on the adequacy of the peer review plans. Agencies shall consider public comments on peer review plans.

VI. Annual Reports

Each agency shall provide to OIRA, by December 15 of each year, a summary of the peer reviews conducted by the agency during the fiscal year. The report should include the following: (1) The number of peer reviews conducted subject to the Bulletin (*i.e.*, for influential scientific information and highly influential scientific assessments); (2) the number of times alternative procedures were invoked; (3) the number of times waivers or deferrals were invoked (and in the case of deferrals, the length of time elapsed between the deferral and the peer review); (4) any decision to appoint a reviewer pursuant to any exception to the applicable independence or conflict of interest standards of the Bulletin, including determinations by the Secretary pursuant to Section III(3)(c); (5) the number of peer review panels that were conducted in public and the number that allowed public comment; (6) the number of public comments provided on the agency's peer review plans; and (7) the number of peer reviewers that the agency used that were recommended by professional societies.

VII. Certification in the Administrative Record

If an agency relies on influential scientific information or a highly influential scientific assessment subject to this Bulletin to support a regulatory action, it shall include in the administrative record for that action a certification explaining how the agency has complied with the requirements of this Bulletin and the applicable information quality guidelines. Relevant materials shall be placed in the administrative record.

VIII. Safeguards, Deferrals, and Waivers

1. *Privacy:* To the extent information about a reviewer (name, credentials, affiliation) will be disclosed along with his/her comments or analysis, the agency shall comply with the requirements of the Privacy Act, 5 U.S.C. 522a as amended, and OMB Circular A–130, Appendix I, 61 FR 6428 (February 20, 1996) to establish appropriate routine uses in a published System of Records Notice.

2. *Confidentiality:* Peer review shall be conducted in a manner that respects (i) confidential business information and (ii) intellectual property.

3. *Deferral and Waiver:* The agency head may waive or defer some or all of the peer review requirements of Sections II and III of this Bulletin where warranted by a compelling rationale. If the agency head defers the peer review requirements prior to dissemination, peer review shall be conducted as soon as practicable.

IX. Exemptions

Agencies need not have peer review conducted on information that is:

1. Related to certain national security, foreign affairs, or negotiations involving international trade or treaties where compliance with this Bulletin would interfere with the need for secrecy or promptness;

2. Disseminated in the course of an individual agency adjudication or permit proceeding (including a registration, approval, licensing, site-specific determination), unless the agency determines that peer review is practical and appropriate and that the influential dissemination is scientifically or technically novel or likely to have precedent-setting influence on future adjudications and/or permit proceedings;

3. A health or safety dissemination where the agency determines that the dissemination is time-sensitive (*e.g.*, findings based primarily on data from a recent clinical trial that was adequately peer reviewed before the trial began);

4. An agency regulatory impact analysis or regulatory flexibility analysis subject to interagency review under Executive Order 12866, except for underlying data and analytical models used;

5. Routine statistical information released by federal statistical agencies (*e.g.*, periodic demographic and economic statistics) and analyses of these data to compute standard indicators and trends (*e.g.*, unemployment and poverty rates);

6. Accounting, budget, actuarial, and financial information, including that which is generated or used by agencies that focus on interest rates, banking, currency, securities, commodities, futures, or taxes; or

7. Information disseminated in connection with routine rules that materially alter entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof.

X. Responsibilities of OIRA and OSTP

OIRA, in consultation with OSTP, shall be responsible for overseeing implementation of this Bulletin. An interagency group, chaired by OSTP and OIRA, shall meet periodically to foster better understanding about peer review practices and to assess progress in implementing this Bulletin.

XI. Effective Date and Existing Law

The requirements of this Bulletin, with the exception of those in Section V (Peer Review Planning), apply to information disseminated on or after six months following publication of this Bulletin, except that they do not apply to information for which an agency has already provided a draft report and an associated charge to peer reviewers. Any existing peer review mechanisms mandated by law shall be employed in a manner as consistent as possible with the practices and procedures laid out herein. The requirements in Section V apply to "highly influential scientific assessments," as designated in Section III of this Bulletin, within six months of publication of this Bulletin. The requirements in Section V apply to documents subject to Section II of this Bulletin one year after publication of this Bulletin.

XII. Judicial Review

This Bulletin is intended to improve the internal management of the executive branch, 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 agencies or other entities, its officers or employees, or any other person.

John D. Graham,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 05–769 Filed 1–13–05; 8:45 am]

BILLING CODE 3110–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting; Board of Directors

TIME AND DATE: Thursday, January 27, 2005, 9:30 a.m. (open portion); 9:45 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 9:30 a.m. to 9:45 a.m.; closed portion will commence at 9:45 a.m. (approx.).

MATTERS TO BE CONSIDERED:

1. President's Report.

2. Approval of November 10, 2004 Minutes (open portion).

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 9:45 a.m.).

1. Auditor's Report to the Board.
2. Finance Project—Algeria.
3. Finance Project—Mexico.
4. Finance Project—Pakistan.
5. Finance Project—Mexico.
6. Finance Project—Mexico.
7. Finance Project—Mexico.
8. Approval of November 10, 2004 Minutes (closed portion).
9. Pending Major Projects.
10. Reports.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: January 12, 2005.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 05–907 Filed 1–12–05; 11:29 am]

BILLING CODE 3210–01–M

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in January 2005. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in February 2005. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the first quarter (January through March) of 2005.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Acting Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. Pursuant to the Pension Funding Equity Act of 2004, for premium payment years beginning in 2004 or 2005, the required interest rate is the "applicable percentage" (currently 85 percent) of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the beginning of the plan year for which premiums are being paid. Thus, the required interest rate to be used in determining variable-rate premiums for premium payment years beginning in January 2005 is 4.73 percent (*i.e.*, 85 percent of the 5.57 percent composite corporate bond rate for December 2004 as determined by the Treasury).

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between February 2004 and January 2005.

For premium payment years beginning in:	The required interest rate is:
February 2004	4.83
March 2004	4.79
April 2004	4.62
May 2004	4.98
June 2004	5.26
July 2004	5.25
August 2004	5.10
September 2004	4.95
October 2004	4.79
November 2004	4.73
December 2004	4.75
January 2005	4.73

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-Employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the first quarter (January through March) of 2005, as announced by the IRS, is 5 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From—	Through—	Interest rate (percent)
1/1/99	3/31/99	7
4/1/99	3/31/00	8
4/1/00	3/31/01	9
4/1/01	6/30/01	8
7/1/01	12/31/01	7
1/1/02	12/31/02	6
1/1/03	9/30/03	5
10/1/03	3/31/04	4
4/1/04	6/30/04	5
7/1/04	9/30/04	4
10/1/04	3/31/05	5

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). The rate for the first quarter (January through March) of 2005 (*i.e.*, the rate reported for December 15, 2004) is 5.25 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From—	Through—	Interest Rate (percent)
1/1/99	9/30/99	7.75
10/1/99	12/31/99	8.25
1/1/00	3/31/00	8.50
4/1/00	6/30/00	8.75
7/1/00	3/31/01	9.50
4/1/01	6/30/01	8.50
7/1/01	9/30/01	7.00
10/1/01	12/31/01	6.50
1/1/02	12/31/02	4.75
1/1/03	9/30/03	4.25
10/1/03	9/30/04	4.00
10/1/04	12/31/04	4.50
1/1/05	3/31/05	5.25

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in February 2005 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of January 2005.

Joseph H. Grant,

Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 05–794 Filed 1–13–05; 8:45 am]

BILLING CODE 7708–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 34–1 and RI 34–3

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 34–1, Financial Resources Questionnaire, collects detailed financial information for use by OPM to determine whether to agree to a waiver, compromise, or adjustment of the collection of erroneous payments from the Civil Service Retirement and Disability Fund. RI 34–3, Notice of Amount Due Because of Annuity Overpayment, informs the annuitant about the overpayment and collects information from the annuitant about how repayment will be made.

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

Approximately 520 RI 34–1 and 1,561 RI 34–3 forms are completed annually. Each form takes approximately 60 minutes to complete. The annual estimated burden is 520 hours and 1,561 hours respectively.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Pamela S. Israel, Chief, Operations Support Group, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3540.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 05–758 Filed 1–13–05; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions To Private Voluntary Organizations

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is implementing a Combined Federal Campaign (CFC) pilot program for up to 16 Local Federal Coordinating Committees (LFCC) to allow them to enter into two-year agreements with non-profit organizations to serve as the Principal Combined Fund Organization (PCFO). These agreements would be subject to renewal after the first year, following a review of performance as defined by the CFC regulations at 5 CFR Part 950, subparts A, D through F, and I. The primary objective of the pilot program is to assess the potential impact of the multi-year agreements in advance of a possible proposal for a permanent amendment to the CFC regulations and nationwide implementation with particular attention on: (a) Potential for costs savings; (b) potential to promote competition; (c) serve as incentive for mergers; and (d) potential need for new regulatory safeguards.

DATES: The pilot program will be effective for the selection of the 2005 PCFO, which must occur no later than March 15, 2005. Selected LFCCs that choose to participate will be required to conduct a performance review and decide whether or not to renew the agreement with the PCFO for the second year no later than January 16, 2006. If the agreement is not renewed, then the participating LFCC will need to solicit a new PCFO and make a selection no later than March 15, 2006.

FOR FURTHER INFORMATION CONTACT: Mark W. Lambert, Senior Compliance Officer for the Office of CFC Operations, by telephone on (202) 606–2564, by FAX on (202) 606–0902, or by e-mail at *cfc@opm.gov*.

Authority: E.O. 12353 (March 23, 1982), 47 FR 12785 (March 25, 1982). 3 CFR 1982 Comp., p. 139. E.O. 12404 (February 10, 1983), 48 FR 6685 (February 15. 1983), Pub. L 100–202, and Pub. L. 102–393 (5 U.S.C. 1101 Note).

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 05–745 Filed 1–13–05; 8:45 am]

BILLING CODE 6325–46–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations.

Summary: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility, (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of information collection: Certification of Termination of Service and Relinquishment of Rights: OMB 3220–0016. Under Section 2(e)(2) of the Railroad Retirement Act (RRA), an age and service annuity, spouse annuity, or divorced spouse annuity cannot be paid unless the Railroad Retirement Board (RRB) has evidence that the applicant has ceased railroad employment and relinquished rights to return to the service of a railroad employer. The procedure pertaining to the relinquishment of rights by an annuity applicant is prescribed in 20 CFR 216.24. Under Section 2(f)(6) of the RRA, earnings deductions are required each month an annuitant works in certain nonrailroad employment termed Last Pre-Retirement Non-Railroad Employment.

Normally, the employee, spouse, or divorced spouse relinquish rights and certify that employment has ended as part of the annuity application process. However, this is *not always* the case. In limited circumstances, the RRB utilizes Form G–88, Certification of Termination of Service and Relinquishment of Rights, to obtain an applicant's report of termination of employment and relinquishment of rights. One response is required of each respondent. Responses are required to obtain or retain benefits. The RRB proposes non-burden impacting editorial, and clarification changes to Form G–88.

The estimated annual respondent burden is as follows:

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form Nos.	Annual responses	Time (min)	Burden (hrs)
G–88	3,600	6	360

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 05–766 Filed 1–13–05; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 17, 2005:

A Closed Meeting will be held on Tuesday, January 18, 2005 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (6), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (6), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Tuesday, January 18, 2005, will be:

Formal orders of investigations;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: January 11, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–875 Filed 1–11–05; 4:07 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51006; File No. SR–CBOE–2005–04]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Systematizing of Orders in the Standard and Poor's Depositary Receipts ("SPDR") Option Class

January 10, 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 January 10, 2005, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Exchange has filed the proposal as a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

"non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its rules relating to the systematizing of orders in the Standard and Poor's Depositary Receipts ("SPDR") option class. The text of the proposed rule change is below. Proposed new language is in *italics*.

CHAPTER VI

* * * * *

Section B: Member Activities on the Floor

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Required Order Information

Rule 6.24

(a)(1)–(2) No change.

(a)(3) Orders in Certain Index Option Classes *and the Standard and Poor's Depositary Receipts ("SPDR") Option Class.* The requirement to systematize orders as set forth in this Rule shall commence on March 28, 2005, in the following option classes: the S&P 500 index option class (SPX), *the SPDR option class,* the S&P 100 index option class (OEX), and the European-style S&P 100 index option class (XEO).

(a)(4) No change.

(b)–(c) No change.

* * * Interpretations and Policies:

.01—.07 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In connection with the development of a Consolidated Options Audit Trail System ("COATS"), CBOE recently amended CBOE Rule 6.24 to require that each order, cancellation of, or change to an order transmitted to CBOE must be "systematized", in a format approved by the Exchange, either before it is sent to the Exchange or upon receipt on the floor of the Exchange.[6] An order is systematized if: (i) The order is sent electronically to the Exchange; or (ii) the order that is sent to the Exchange non-electronically (*e.g.*, telephone orders) is input electronically into the Exchange's systems contemporaneously upon receipt on the Exchange, and prior to representation of the order.

The requirements of CBOE Rule 6.24 to systematize orders commenced on January 10, 2005 in all option classes traded on CBOE, except for the S&P 500 index option class (SPX), the S&P 100 index option class (OEX), and the European-style S&P 100 index option class (XEO). In these option classes, the requirement to systematize orders will commence on March 28, 2005. In its rule change amending CBOE Rule 6.24, CBOE noted that the extension until March 28, 2005, for these option classes is reasonable and appropriate because the manner in which these option classes trade is significantly different than equity option classes and because of the trading environment that exists in these option classes.[7]

The purpose of this rule filing is to amend CBOE Rule 6.24 to state that the requirement to systematize orders in the S&P Depositary Receipts Trust ("SPDR") option class will commence on March 28, 2005, as it will for SPX, OEX and XEO options. Options on SPDRs, which is an exchange-traded fund based on the S&P 500 index, began trading on CBOE on January 10, 2005. CBOE anticipates that options on SPDRs will traded in a manner similar to SPX options (an index option based on the S&P 500 index), and therefore believes it is reasonable and appropriate to extend the requirement to systematize orders in options on SPDRs until March 28, 2005.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] because it will enhance CBOE's audit trail for orders by incorporating non-electronic orders into COATS, and will permit CBOE to reconstruct markets in a more efficient and effective manner.

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 not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange satisfied the five-day pre-filing requirement. The Exchange further requested that the Commission

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[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The CBOE asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] See Securities Exchange Act Release No. 50996 (January 7, 2005) (SR–CBOE–2004–77).

[7] Moreover, CBOE noted in its rule filing that it initially developed its floor broker workstation ("FBW") to assist its members in complying with their obligations to systematize orders for COATS. However, the FBW was designed specifically for COATS compliance in equity option classes, and not for use in index option classes. Upon being advised in late December 2003 that the requirement to systematize orders also applied to non-equity option classes, the Exchange actively pursued developing an alternative technology to utilize in index option classes.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78(f)(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6).

waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change immediately operative. The Commission notes that by waiving the operative period, the Exchange has stated that it will be able to implement trading in options on SPDRs expeditiously, which the Exchange states should serve to enhance the depth and liquidity of the SPDR market as well as the products for which SPDRs or the S&P 500 Index is the underlying benchmark. For these reasons, the Commission, consistent with the protection of investors and the public interest, has waived the 30-day operative date requirement for this proposed rule change, and has determined to designate the proposed rule change as operative on January 10, 2005, the date it was submitted to the Commission.

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–CBOE–2005–04 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–CBOE–2005–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–04 and should be submitted on or before February 4, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–133 Filed 1–13–05; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51003; File No. SR–CBOE–2005–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to Allowing Market Participants To Submit Orders for Automatic Execution

January 10, 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 December 31, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 CBOE proposes to allow market participants to submit orders for automatic execution. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

When CBOE market participants[5] interact with orders in the electronic book ("the book" or "E-book"), CBOE Rule 6.45A(c) governs the allocation of such orders.[6] Generally, if only one market participant ("MP") interacts with the order in the book, he/she will be entitled to receive the entire order. If, however, more than one MP attempts to interact with the same order in the book, a "quote trigger" process initiates. Under the quote trigger process, the first MP to interact with the book order starts a counting period lasting N-seconds whereby each MP that submits an order within that "N-second period" becomes part of the "N-second group" and is entitled to share in the allocation of that order via the formula contained in the rule. The Exchange proposes to provide an alternative method by which MPs may interact with orders in the book.

[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] Per CBOE Rule 6.45A, the term market participants includes an in-crowd Market-Maker, a Market-Maker complying with the in-person requirements of CBOE Rule 8.7.03(B)(1) who submits quotes from off of the floor of the Exchange through the facilities of the Exchange, an in-crowd DPM, an e-DPM, and a floor broker representing orders in the trading crowd.

[6] Market participants currently interact with orders in the book in one of two ways: by submitting a quote or by submitting an order. Such orders are referred to as "I-orders."

As proposed, MPs will have the ability to submit orders that will be eligible to execute automatically against resting orders in the book. As such, execution will be based on time priority such that the first order, whether from a MP, a customer, or broker-dealer, will have priority for up to the size of his/her order. Subsequent orders will be entitled to allocations only to the extent the first order did not exhaust the size of the order in the book. CBOE Rule 6.13 governs orders submitted for automatic execution and orders submitted by MPs would be subject to these requirements. Orders submitted by MPs that are CBOE Market-Makers ("MMs") will be treated as orders from "Options Exchange Market-Makers," as defined in CBOE Rule 6.13(b)(i)(C)(ii)(A), and therefore will be subject to the same restrictions imposed by CBOE Rule 6.13(b)(i)(C)(iii), which generally limits *all* options exchange MMs (whether CBOE or away MMs) to one execution (on the same side of the market) per 15-seconds.[7]

Upon implementation of this new rule, CBOE MMs will have two alternative methods by which they can access orders in the book.[8] One will be through the use of I-orders (with allocation via the "N-second group" as described above) and the other will be through the use of an order submitted for automatic execution (with allocation based on time priority). CBOE MMs may choose which method they want to utilize to send in orders. Functionally, the vast majority of MMs will have one handheld device through which they submit either an I-order or an order for automatic execution.[9] Upon approval of this rule, MMs could choose to submit two orders simultaneously.[10] For example, a MM may submit an order for automatic execution immediately followed by an I-order. In this respect, if the MM's auto-ex order is first, he/she will receive an execution. If, however, the MM is not first and instead was "beaten" to the order by another CBOE MM, the first MM may still participate in the order by virtue of sending in the I-order.

With respect to priority between the two types of orders, the first order received by the Exchange has priority over the other. For example, assume two MMs in the trading crowd both attempt to execute against an order in the book by sending in different types of orders. MM A sends an I-order while MM B sends an order for automatic execution. The first order received by the Exchange has priority. If it is the I-order, then the order submitted by the MM B for automatic execution will only execute to the extent there is a balance remaining after the I-order executes.[11] If the auto-ex order is received first, then the I-order submitted by MM A will only execute to the extent there is a balance remaining after the auto-ex order executes.[12] An order submitted by a MM for automatic execution will not participate in the "N-second group."

2. Statutory Basis

The Exchange represents that allowing MMs to submit orders for automatic execution in accordance with CBOE Rule 6.13 will enhance their ability to provide liquidity and manage risk. Accordingly, CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[13] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[14] requirement that the rules of an exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, CBOE believes that the proposed rule change will have a positive effect on competition, which is appropriate and in furtherance of the purposes of the Act. Specifically, the proposal would allow CBOE MMs to have the ability to be first with respect to executing against a booked order, which entitles them to receive all of that order (up to the size of the order the MM submits). Currently, the only way a MM can take 100% of a booked order is if no other market participant submits an order during the "N-second" period. The Exchange believes that the ability to receive a larger allocation will serve as an incentive to a MM to make more vigorous markets. The Exchange believes that the proposal also puts CBOE MMs on equal footing with their away-market counterparts, who have the ability to submit orders to CBOE for automatic execution. For these reasons, CBOE believes that the proposal will have a significantly positive effect on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16] The Exchange represents that the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of

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[7] CBOE Rule 6.13(b)(i)(C)(iii) provides: "With respect to orders eligible for submission pursuant to paragraph (b)(i)(C)(ii), members shall neither enter nor permit the entry of multiple orders on the same side of the market in an option class within any 15-second period for an account or accounts of the same beneficial owner. The appropriate FPC may shorten the duration of this 15-second period by providing notice to the membership via a Regulatory Circular that is issued at least one day prior to implementation. The effectiveness of this rule shall terminate on January 12, 2005." The Exchange has proposed to extend the effectiveness of this Rule until October, 2005. The Exchange represents that it has the ability to surveil for violations of this rule by CBOE MPs.

[8] Floor brokers already have this dual ability with respect to orders they represent as agent. They may choose to submit the order for automatic execution (in accordance with CBOE Rule 6.13) or they may determine to join the "N-second group." Away MMs, too, have the ability to submit orders for automatic execution (in accordance with CBOE Rule 6.13) or they may have a floor broker represent their orders as part of the "N-second group."

[9] The routing of the order the MM submits is dictated by the way the MM marks the order. An order designated with an "I" origin code routes directly to the book and participates in the "N-second group." An order submitted for automatic execution by a MM will be marked with an "M" origin code and will route through ORS where it executes in accordance with Rule 6.13.

[10] CBOE has confirmed that the limit on sending more than one order within 15 seconds in CBOE Rule 6.13(b)(i)(C)(iii), as described in fn. 7 *supra*, only applies to auto-ex orders. Hence, a MP could send two orders simultaneously as long as one of them is sent as an I-order. Telephone conversation between Deborah L. Flynn, Assistant Director, Division of Market Regulation, Commission and Steve Youhn, Assistant Secretary, CBOE on January 5, 2005.

[11] When the I-order executes against the order in the book, it starts the N-second process.

[12] If there is a balance remaining against which the I-order executes, the N-second process starts again when the I-order executes.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78(f)(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay period for "non-controversial" proposals and make the proposed rule change effective and operative upon filing.

The Commission has determined to waive the five-day pre-filing notice requirement and the 30-day operative delay period.[17] The Commission notes that the proposal would only give CBOE market makers the option of sending their proprietary orders for automatic execution, an option that other CBOE market participants already enjoy. For this reason, the Commission sees no reason to delay the operation of the proposed change. Therefore, the foregoing rule change has become immediately effective and operative upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19]

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.[20]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–01 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–CBOE–2005–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 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–CBOE–2005–01 and should be submitted on or before February 4, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–135 Filed 1–13–05; 8:45 am]

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[17] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6).

[20] *See* 15 U.S.C. 78s(b)(3)(C).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51000, File No. SR-MSRB–2004–08]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Relating to Amendments to MSRB Rule G–34, on CUSIP Numbers and New Issue Requirements, To Facilitate Real-Time Transaction Reporting of Trades in New Issue Municipal Securities

January 7, 2005.

On November 18, 2004, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Rule G–34, on CUSIP numbers and new issue requirements, to facilitate real-time transaction reporting of trades in new issue municipal securities. The proposed rule change was published for comment in the **Federal Register** on December 7, 2004.[3] The Commission received no comment letters regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB[4] and, in particular, the requirements of Section 15B(b)(2)(C) of the Act and the rules and regulations thereunder.[5] Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules 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.[6] In particular, the Commission finds that the proposed rule change will facilitate the processing of transactions in new issue municipal securities so that such transactions can be reported to the MSRB in real-time and prices of such transactions can be disseminated on a contemporaneous basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–MSRB–2004–08) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–156 Filed 1–13–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50773 (December 1, 2004), 69 FR 70731 (December 7, 2004).

[4] In approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o–4(b)(2)(C).

[6] *Id.*

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50971; File No. SR–NASD–2004–180]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Regarding Waiver of California Arbitrator Disclosure Standards

January 6, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 9, 2004, the National Association of Securities Dealers, Inc., ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III, below, which NASD has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to extend the pilot rule in IM–10100(f) of the NASD Code of Arbitration Procedure ("Code"), relating to the California waiver program, until September 30, 2005. NASD is not proposing any textual changes to the By-Laws or Rules of NASD.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective July 1, 2002, the California Judicial Council adopted a set of rules, "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" ("California Standards"),[3] which contain extensive disclosure requirements for arbitrators. According to NASD, the rules were designed to address conflicts of interest in private arbitration forums that are not part of a Federal Regulatory System overseen on a uniform, national basis by the SEC. NASD states that the California Standards impose disclosure requirements on arbitrators that conflict with the disclosure rules of NASD and the New York Stock Exchange ("NYSE"). Because NASD could not both administer its arbitration program in accordance with its own rules and comply with the new California Standards at the same time, NASD initially suspended the appointment of arbitrators in cases in California, but offered parties several options for pursuing their cases.[4]

In July 2002, NASD and the NYSE filed a lawsuit in Federal district court seeking a declaratory judgment that the California Standards are inapplicable to arbitration forums sponsored by self-regulatory organizations ("SROs").[5] On November 12, 2002, the United States District Court for the Northern District of California dismissed the case on Eleventh Amendment grounds. In December 2002, NASD and the NYSE filed a Notice of Appeal to the United States Court of Appeals for the Ninth Circuit. This appeal is currently stayed pending a decision in *Credit Suisse First Boston Corp.* v. *Grunwald*,[6] which is discussed below.

In another case before the United States District Court for the Northern District of California regarding the applicability of the California Standards to NASD arbitrations, Judge Jeremy Fogel denied the plaintiff's motion to vacate an order compelling arbitration.[7] In his April 2003 decision, Judge Fogel concluded that the application of the California Standards to the NYSE and other SROs, such as NASD, is preempted by the Exchange Act and by the Federal Arbitration Act ("FAA"). The *Mayo* decision was not appealed.

The applicability of the California Standards to SRO arbitrations was again addressed by the United States District Court for the Northern District of California in *Grunwald*. The court found that the California Standards could not apply to SRO-appointed arbitrators because such arbitrators did not fall within the definition of "neutral arbitrators" that is set forth in the California Code of Civil Procedure. Consequently, the court concluded that the Judicial Council had exceeded its authority in drafting the California Standards and thus declared them void. The *Grunwald* decision has been appealed to the United States Court of Appeals for the Ninth Circuit. Although the appeal has been briefed and argued, the Ninth Circuit has not yet issued a decision.

In *Jevne* v. *The Superior Court of Los Angeles County*,[8] the California Court of Appeal, Second District found that the Judicial Council had not exceeded its authority in drafting the California Standards and that the standards are not preempted by the FAA. The court did find, however, that the California Standards are preempted by the Exchange Act. On March 17, 2004, the California Supreme Court granted review in *Jevne*. Although the case has been fully briefed, oral arguments have not yet been scheduled.

To allow arbitrations to proceed in California while the litigation regarding the applicability of the California Standards to SRO arbitrations is pending, NASD implemented a pilot rule to require all industry parties (member firms and associated persons) to waive application of the California Standards to the case, if all the parties in the case who are customers, associated persons with claims against industry parties, member firms with claims against other member firms, or member firms with claims against associated persons that relate exclusively to promissory notes, have done so.[9] In such cases, the arbitration

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b–4.

3 California Rules of Court, Division VI of the Appendix.

4 These measures included providing venue changes for arbitration cases, using non-California arbitrators when appropriate, and waiving administrative fees for NASD-sponsored mediations.

5 *See* Motion for Declaratory Judgment, *NASD Dispute Resolution, Inc. and NYSE, Inc.* v. *Judicial Council of California*, filed in the United States District Court for the Northern District of California, No. C 02 3486 SBA (July 22, 2002), available on the NASD Web site at: *http://www.nasd.com/stellent/groups/med_arb/documents/mediation_arbitration/nasdw_009557.pdf*.

6 No. C 02–2051 SBA (N.D. Cal. March 31, 2003).

7 *Mayo* v. *Dean Witter Reynolds, Inc.*, 258 F. Supp. 2d 1097 (N.D. Cal. 2003).

8 6 Cal. Rptr. 3d 542, 113 Cal. App. 4th 486 (2d Dist. 2003).

9 Originally, the pilot rule applied only to claims by customers, or by associated persons asserting a statutory employment discrimination claim against a member, and required a written waiver by the industry respondents. In July 2003, NASD expanded the scope of the pilot rule to include all claims by associated persons against another associated person or a member. At the same time, the rule was amended to provide that when a customer, or an associated person with a claim against a member or another associated person, agrees to waive the application of the California Standards, all respondents that are members or associated persons will be deemed to have waived

Continued

proceeds under the NASD Code of Arbitration Procedure, which already contains extensive disclosure requirements and provisions for challenging arbitrators with potential conflicts of interest.[10]

The pilot rule, which was originally approved for six months on September 26, 2002,[11] has been extended and is now due to expire on March 31, 2005.[12] Because NASD believes all the pending litigation regarding the California Standards is unlikely to be resolved by March 31, 2005, NASD requests that the effectiveness of the pilot rule be extended through September 30, 2005, in order to prevent NASD from having to suspend administration of cases covered by the pilot rule.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[13] which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that expediting the appointment of arbitrators under the proposed waiver, at the request of customers, associated persons with claims against industry parties, member firms with claims against other member firms, or member firms with claims against associated persons that relate exclusively to promissory notes, will allow those parties to exercise their contractual rights to proceed in arbitration in California, notwithstanding the conflict between the disputed California Standards and the NASD rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–180 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–NASD–2004–180. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–180 and should be submitted on or before February 4, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–134 Filed 1–13–05; 8:45 am]

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the application of the standards as well. The July 2003 amendment also clarified that the pilot rule applies to terminated members and associated persons. *See* Securities Exchange Act Release No. 48187 (July 16, 2003), 68 FR 43553 (July 23, 2003) (SR–NASD–2003–106). In October 2003, NASD again expanded the scope of the pilot rule to include claims filed by members against other members and to claims filed by members against associated persons that relate exclusively to promissory notes. *See* Securities Exchange Act Release No. 48711 (October 29, 2003), 68 FR 62490 (November 4, 2003) (SR–NASD–2003–153).

[10] NASD states that the NYSE has a similar rule, NYSE Rule 600(g).

[11] *See* Securities Exchange Act Release No. 46562 (September 26, 2002), 67 FR 62085 (October 3, 2002) (SR–NASD–2002–126).

[12] *See* Securities Exchange Act Release No. 50447 (September 24, 2004), 69 FR 58567 (September 30, 2004) (SR–NASD–2004–126).

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50982; File No. SR–NYSE–2004–49]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 3 to Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Procedures for Companies That Fail To File Annual Reports in a Timely Manner

January 6, 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 December 21, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 3 to the proposed rule change as described in Items I, II, III below, which Items have been prepared by the Exchange.[3] The proposed rule change was published for public comment in the **Federal Register** on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240–19b–4.

[3] The Exchange filed Amendment No. 1 on October 29, 2004, which stated that the proposed rule change would apply to companies that are already late in filing their annual reports as of the date that the Commission approves the proposed rule change. On November 29, 2004, the Exchange filed Amendment No. 2, which replaced and superseded Amendment No. 1. On December 21, 2004, the Exchange withdrew Amendment No. 2.

October 1, 2004.[4] The Commission is publishing this notice to solicit comments on Amendment No. 3 to 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 reflects amendments to the Listed Company Manual to include procedures applicable to companies that fail to file their Exchange Act annual report in a timely manner.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for Amendment No. 3 to 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 and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to codify existing procedures followed in situations where companies fail to satisfy the Commission's filing requirements for annual reports on Forms 10–K, 10–KSB, 20–F, 40–F, or N–CSR in a timely manner. The purpose of Amendment No. 3 is to provide notice that, since the proposed rule codifies existing NYSE procedures, it would apply with full effect to companies that are already late in filing their annual report on Form 10–K, 20–F, 40–F, or N–CSR with the SEC as of the date that the Commission approves this rule filing.

Set forth below is a description of the proposed rule change as originally proposed:

The Exchange closely monitors whether listed companies have filed their annual reports with the Commission as part of its continued listing program. At any given point over the past four years, no more than approximately two dozen NYSE-listed companies failed to file their annual reports with the Commission by the later of the date the filing was required to be made or, if the company filed a Form 12b–25 in a timely manner, by the extended due date. Most of these companies subsequently filed the required annual report within three to four months of the filing due date, and the vast majority of the remaining companies complied within six months of the filing due date. Cumulatively, approximately 13 companies took more than six months to make their filings over the past four years.

In all cases where a company failed to file its annual report by the filing due date, Exchange staff held regular discussions and meetings with each company's management, directors, regulators and advisors to monitor the status of the annual report filing and to determine whether to allow the company to continue to trade despite the continued failure to file an annual report with the Commission. In several of these situations, the Exchange ultimately moved to suspend the company's trading and delist its securities due to the length of time that passed without the company providing audited financial statements to the marketplace.

In order to formalize the process that the Exchange currently follows when a company has failed to file its annual report on a timely basis, the Exchange proposes to amend Section 802.01 of the Listed Company Manual as described below.

Proposed Section 802.01E

A company that fails to file its annual report (Forms 10–K, 10–KSB, 20–F, 40–F or N–CSR) with the Commission in a timely manner will be subject to the following procedures:

Once the Exchange identifies that a company has failed to file a timely periodic annual report with the Commission by the later of (a) the date that the annual report was required to be filed with the Commission by the applicable form or (b) if a Form 12b–25 was timely filed with the Commission, the extended filing due date for the annual report, the Exchange would notify the company in writing of its status. The later of these two dates would be referred to as the "Filing Due Date."

Within five days of receipt of this notification, the company would be required to (a) contact the Exchange to discuss the status of the annual report filing, and (b) if it has not already done so, issue a press release disclosing the status of the filing. If the company fails to issue this press release in a timely manner, the Exchange would itself issue a press release stating that the company has failed to timely file its annual report with the Commission.

During the nine-month period from the Filing Due Date, the Exchange would monitor the company and the status of the filing, including through contact with the company, until the annual report is filed. If the company fails to file the annual report within nine months from the Filing Due Date, the Exchange would be permitted, in its sole discretion, to allow the company's securities to be traded for up to an additional three-month trading period depending on the company's specific circumstances. If the Exchange determines that an additional trading period of up to three months is not appropriate, suspension and delisting procedures would commence in accordance with the procedures set out in Para. 804.00 of the Listed Company Manual. A company would not be eligible to follow the procedures outlined in Paras. 802.02 and 802.03 with respect to this criteria.

In determining whether an additional up to three-month trading period is appropriate, the Exchange would consider the likelihood that the filing could be made during the additional period, as well as the company's general financial status, based on information provided by a variety of sources, including the company, its audit committee, its outside auditors, the staff of the Commission and any other regulatory body. The Exchange strongly encourages companies to provide ongoing disclosure on the status of the annual report filing to the market through press releases, and would also take the frequency and detail of such information into account in determining whether an additional three-month trading period is appropriate.

If the Exchange determined that an additional up to three-month trading period was appropriate and the company failed to file its periodic annual report by the end of the additional period, suspension and delisting procedures would commence in accordance with the procedures set out in Para. 804.00.

Note that if, at any time, the Exchange deemed it necessary or appropriate in the public interest or for the protection of investors, trading in any security could be suspended immediately, and, in accordance with the procedures set out in Para. 804.00, application made to the Commission to delist the security.

2. Statutory Basis

The Exchange believes that the basis for this proposed rule change, as amended, is the requirement under

[4] Securities Exchange Act Release No. 50452 (September 27, 2004), 69 FR 58987.

Section 6(b)(5)[5] of the Act that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–49 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–NYSE–2004–49. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–49 and should be submitted on or before February 4, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–136 Filed 1–13–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51015; File No. SR–NYSE–2004–54]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to the NYSE Constitution and the Adoption of an Independence Policy of the NYSE Board of Directors

January 11, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 17, 2004 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing amendments to the various provisions of the NYSE Constitution. These amendments further implement the new governance architecture adopted by the Exchange in December 2003. The text of the proposed rule change is attached hereto as Exhibits A–1 and A–2.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, its proposal and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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

Changes to the NYSE Constitution

The proposed amendments to the NYSE Constitution follow the basic constructs of the Exchange's new governance architecture. The proposed amendments to the various provisions of the NYSE Constitution and the proposed Independence Policy of the Exchange Board of Directors, containing standards which NYSE directors must meet in order to be considered independent, are attached, respectively, as Exhibits A–1 and A–2 hereto.

The proposed amendments to the NYSE Constitution mostly clarify the positions of the separate Chief Executive Officer and the members of the Exchange's Board of Executives under that architecture. One proposed change allows the Board to set the annual membership meeting earlier in the year

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

than the June date set under the current scheme.

Under Article XIV, Section 1 of the Constitution, amendment to many Constitutional provisions requires adoption by the members. However, amendment to certain Constitutional provisions (generally, provisions dealing with the internal Exchange matters not directly involving the membership or other Exchange constituent groups) may be made by the Board without the vote of members, except that no such amendment by the Board alone can take effect without two weeks' notice being given to the members. Following are descriptions of the proposed amendments to the NYSE Constitution. The last five amendments, amendments (6)–(10), did not require a membership vote.

1. An amendment to Article III, Section 1 of the Constitution will enable the Board to move up the Annual Meeting of members closer to the end of the fiscal (calendar) year. The amendment also provides the Board a degree of time flexibility in reporting nominations to the membership, but without reducing the current time period for members to propose nominations by petition.

2. An amendment to Article IV, Section 14(b) of the Constitution will recuse the Chief Executive Officer from participation in the review by the Board of Directors of decisions by Exchange staff, officers and committees. The Exchange believes that this is appropriate because decisions appealed to the Board include decisions in the regulatory area, and decisions by the Chief Executive Officer and those reporting to the Chief Executive Officer. Such recusal of the Chief Executive Officer is consistent with the oversight of Exchange management by the independent Directors.

3. An amendment to Article IX, Section 3 will prohibit Board of Executives members from serving on the Hearing Board in light of the participation of certain Board of Executives members on the Regulation, Enforcement & Listing Standards Committee.

4. An amendment to Article IX, Section 6 will prohibit the Chief Executive Officer from requiring reviews of disciplinary decisions and will recuse the Chief Executive Officer from participating in reviews by the Board of disciplinary decisions. The Exchange believes that this is consistent with the Chief Executive Officer's separation from the regulatory function.

5. An amendment to Article XV, Section 9 will correct an incomplete cross-reference in that section from "Nominating Committee" to "Nominating & Governance Committee."

As discussed above, the following amendments did not require a member vote.

6. An amendment to Article IV, Section 12(a)(1)(vii) will eliminate the Chairman as a mandated subject of succession planning by the Nominating & Governance Committee. Under the Exchange's new governance architecture, the Board determines from time to time whether to continue to separate the offices of the Chairman of the Board and the Chief Executive Officer. The Exchange believes that succession planning with respect to the Chief Executive Officer is the norm in corporate governance practice.

7. An amendment to Article IV, Section 14(a) will correct an erroneous cross-reference from "Article VII, Section 1" (which pertains to Exchange Contracts), to "Article VIII, Section 1" (which pertains to regulation).

8. Amendments to Article V, Sections 2(b) and 6(a), and to Article VI, Section 2 will permit either the Chairman of the Board, or the Chief Executive Officer, as the Chairman determines from time to time, to preside over meetings of the Board of Executives, to call meetings of the Board of Executives and to determine when circumstances require shorter notice of meetings of the Board of Executives than otherwise provided for that group—all in the event the Chairman is not also the Chief Executive Officer. The Exchange believes that these changes are consistent with the function of the Board of Executives to advise the Chief Executive Officer in the management of the operations of the Exchange.

9. An additional amendment to Article V, Section 2(b) will clarify that the Board may appoint as a non-specialist floor member of the Board of Executives any non-specialist who spends a substantial part of his or her time on the Floor of the Exchange. (The current description of the non-specialist floor members of the Board of Executives was carried over from a category of "industry director" which applied under the prior Exchange governance structure and appears to not include the entire non-specialist constituency as it exists today.)

10. An amendment to Article V, Section 11 will replace the requirement for Plenary Sessions of the Board and the Board of Executives with a more specific requirement for each director to be present for at least three meetings of the Board of Executives each year. A related change in Article VI, Section 2 provides for the Chairman to make the Annual Report on the Exchange's activities to the Board of Executives, rather than to a "Plenary Session" of the Board and the Board of Executives.

Independence Policy of the NYSE Board of Directors

The NYSE Board of Directors also has adopted an Independence Policy of the Exchange Board of Directors (the "Independence Policy") in accordance with the Constitution to ensure the independence of its elected Directors and its non-executive Chairman. Under the Independence Policy, an elected Director will not be considered independent unless he or she meets the independence standards required of a director of an NYSE listed company. Additional requirements address independence from Exchange constituents. Under Article IV, Section 2 of the Exchange Constitution, the Independence Policy must be filed with and approved by the Commission. The Board is following this policy pending Commission action.[3]

2. Statutory Basis

The Exchange represents that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[4] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[3] The Commission notes that it recently published for comment a proposed rulemaking that, among other things, would establish governance requirements for national securities exchanges and registered securities associations and would include a definition of the term "independent director." *See* Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004).

[4] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–54 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–NYSE–2004–54. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–54 and should be submitted on or before February 4, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jill M. Peterson,

Assistant Secretary.

Exhibit A–1—Text of the Proposed Rule Change

(New language is *italicized;* deletions are [bracketed].)

Constitution of the NYSE

* * * * *

Article III. Meetings of Members

Sec. 1. Annual Meeting. A meeting of the members of the Exchange entitled to vote thereat shall be held annually for the election of directors and other elective positions, and for the transaction of any other proper business, at such time *and date* as the Board may select [on], *but in no event later than* the first Thursday in June [in each year] or, if the Exchange is not open for business on that day, on the next succeeding business day. At such annual election, there shall be elected by the membership by ballot:

(a) all directors to be elected by members to serve for a term of one year;

(b) two Trustees of the Gratuity Fund who shall be regular members (and not lessor members), to serve for a term of three years; and

(c) qualified persons to fill any vacancies among the trustees of the Gratuity Fund.

The Board shall distribute its annual nominating report, which lists the nominees to serve in the elective positions, to each member [not less than 60 days in advance of the annual meeting] *a sufficient number of days in advance of the annual meeting to take into account the number of days for the filing of petitions by members for the proposal of nominations for elective positions, the determination by the Board of eligibility of persons nominated by petition and the notice to members of said annual meeting, all as provided in this Article III.*

Article IV. Board of Directors

* * * * *

Sec. 12. Standing Committees. The Standing Committees and their respective Chairmen shall be appointed by the Board at its annual organizational meeting. The Board shall adopt for each Standing Committee a charter consistent with the duties prescribed in the subsections below, and including such additional duties as may be considered appropriate and not inconsistent with this Constitution. Each Standing Committee shall have the authority to engage independent legal counsel and other advisors as it determines necessary to carry out its duties, but may not use counsel or other advisors who advise Exchange officers or employees.

(a) *Committees Consisting Solely of Directors.* The Standing Committees described in Section 12(a)(1)–(4) shall consist solely of directors, other than the Chief Executive Officer, and shall report to the Board. Such Standing Committees may be combined with any other such Standing Committee, be subdivided into one or more such Standing Committees, or the Board may constitute itself as a committee of the whole in respect of such a Standing Committee. The Chief Executive Officer shall be recused from deliberations of the Board, whether it is acting as the Board or as a committee of the whole, with respect to the activities of the Nominating & Governance Committee, the Human Resources & Compensation Committee, the Audit Committee or the Regulatory Oversight & Regulatory Budget Committee.

(1) *Nominating & Governance Committee.* The Nominating & Governance Committee shall be responsible for (i) recommending to the Board candidates for Board membership in accordance with Article IV, Section 2 and candidates for Trustees of the Gratuity Fund, (ii) recommending to the Board candidates for Board of Executives membership, (iii) conducting the Board's annual governance review, (iv) reviewing and recommending the Exchange's corporate governance guidelines, (v) establishing an appropriate process for, and overseeing implementation of, the Board's self-assessments (including Board self-assessment, committee self-assessments and director assessments) and the Board of Executives' self-assessments, (vi) recommending director compensation, and (vii) succession planning for the [Chairman and] Chief Executive Officer of the Exchange. In discharging its responsibilities under clause (i) of the immediately preceding sentence, the Nominating & Governance Committee shall propose persons as candidates for the Board who, in the opinion of the

[5] 17 CFR 200.30–3(a)(12).

Committee, (a) are committed to serving the interests of the public and strengthening the Exchange as a public securities market; and (b) include among their number individuals at least one of whom is intended to allow the Exchange to meet the requirements of section 6(b)(3) of the Act concerning issuers and at least one of whom is intended to allow the Exchange to meet the requirements of section 6(b)(3) of the Act concerning investors. In addition, the Nominating & Governance Committee shall establish procedures to solicit the input of investors in equity securities and members regarding Board candidates. The Nominating & Governance Committee shall also solicit input from the various Exchange communities regarding candidates for appointment by the Board to the Board of Executives. Consensus recommendations for candidates to represent the groups referenced in clauses (ii), (iii) and (iv) of Article V, Section 2(b) put forward by the respective representatives of those groups shall be forwarded to the Board as the recommendations of the Nominating & Governance Committee unless and to the extent such Committee determines that a candidate does not qualify for the position.

Article IV. Board of Directors

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Sec. 14. Delegation. (a) *Delegation Authority.* The Board may delegate such of its powers as it may from time to time determine, subject to the provisions of the Constitution and applicable law, to the Board of Executives, to such officers and employees of the Exchange, and to such committees, composed either of directors or otherwise, as the Board may from time to time authorize; provided, however, that, except as this Constitution otherwise provides, the Board may not delegate, and no committee may re-delegate, to the Board of Executives, to officers and employees of the Exchange or to any committee other than a committee consisting solely of directors (other than the Chief Executive Officer) authority either to adopt rules under Article VIII, Section 1 or Article IX, Section 1, or to act on any subject matter described in Article IV, Section 12(a) or (b)(1), except by effecting a rule change within the meaning of Section 19(b)(1) of the Act. Notwithstanding the foregoing, the Board may authorize an officer or officers of the Exchange to adopt rules as aforesaid, so long as the Board is informed of any such action at its next meeting, and the prior approval of the Chief Regulatory Officer is obtained for any regulatory matter. Any committee of directors to which authority is delegated to adopt rules under Article [VII] *VIII*, Section 1 or Article IX, Section 1 shall include thereon at least one director nominated by the Industry Members of the Board of Executives, as provided in Article IV, Section 2. The Board shall diligently oversee the activities of the Board of Executives, the officers and employees of the Exchange, and any committees to which the Board has delegated authority pursuant hereto.

(b) *Limitation of Delegation Authority.* A member, member organization, allied member or approved person affected by a decision of any officer, employee or committee acting under powers delegated by the Board may require a review by the Board of such decision, by filing with the Secretary of the Exchange a written demand therefor[e] within 10 days after the decision has been rendered, except as otherwise provided in Article IX, Section 6. Any and all powers delegated by the Board may continue to be exercised by the Board notwithstanding such delegation, and the Board may exercise such review and oversight over the exercise of (or omission to exercise) any delegated authority as it shall at any time determine. *Notwithstanding any other provisions of this paragraph (b), the Chief Executive Officer shall be recused from deliberations and actions of the Board with respect to matters to be reviewed by the Board pursuant to this paragraph (b).*

Article V. Board of Executives.

* * * * *

Sec. 2. *Composition of Board of Executives.*

* * * * *

(b) The Board of Executives shall consist of the Chairman of the Board [(who shall be the Chairman of the Board of Executives)] *(if such individual is not also the Chief Executive Officer),* the Chief Executive Officer [(if such individual is not also the Chairman)], and at least 20 but no more than 25 members ("Board of Executives members"). *Either the Chairman of the Board or the Chief Executive Officer, as the Chairman of the Board determines from time to time, shall serve as Chairman of the Board of Executives.* The Board of Executives members (other than the Chairman and Chief Executive Officer) shall be appointed by the Board at its annual organizational meeting and shall consist of (i) at least six individuals who are either the chief executive or a principal executive officer of a member organization that engages in a business involving substantial direct contact with securities customers, (ii) at least two individuals, each of whom is registered as a specialist and spends a *substantial part* of his or her time on the Floor of the Exchange, (iii) at least two individuals, each of whom spends a [majority] substantial part of his or her time on the Floor of the Exchange [, and has a substantial part of his or her business the execution of transactions on the Floor of the Exchange for other than his or her own account or the account of his or her member organization], but who shall not be registered as a specialist, (iv) at least two individuals who are lessor members who are not affiliated with a broker or dealer in securities, (v) at least four individuals who are either the chief executive or a principal executive officer of an institution that is a significant investor in equity securities, at[s] least one of whom shall be a fiduciary of a public pension fund; (vi) at least one individual intended to represent individuals who invest in equity securities and are retail clients of member organizations, and (vii) at least four individuals who are either the chief executive or a principal executive officer of a listed company (the members of the Board of Executives referenced in subsections (i), (ii), and (iii) herein collectively shall be called "Industry Members of the Board of Executives"). If the Board increases the size of the Board of Executives it shall strive to maintain approximately the same balance between Industry Members of the Board of Executives and other members of the Board of Executives as is represented above. If the Board increases the size of the Board of Executives, it shall also be free to add members to the Board of Executives who represent other elements of the Exchange community. Each person who is not a member of the Exchange and is appointed to the Board of Executives shall, by the acceptance of such position, be deemed to have agreed to uphold this Constitution.

* * * * *

Sec. 6. *Meetings.* (a) *Frequency of Meetings.* The Board of Executives shall have not less than six meetings each year. Special meetings of the Board of Executives may be called by the Chairman of the Board *or by the Chief Executive Officer,* or pursuant to the written request of not less than one third of the Board of Executives members then in office, in accordance with the provision of notice of meetings, except that when in the judgment of the Chairman of the Board *or the Chief Executive Officer,* emergency requires shorter notice.

* * * * *

Sec. 11. *[Plenary Sessions of the] Board Member Attendance at Meetings of [and] the Board of Executives.* [The Board and the Board of Executives shall meet jointly (a "Plenary Session")] *Each member of the Board shall attend a meeting of the Board of Executives* at least [twice] *three times* each year. [The Chairman of the Board shall chair all Plenary Sessions.]

* * * * *

Article VI. Officers.

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Sec. 2. *The Chairman.* The Chairman shall preside at all meetings of the Board [and of the Board of Executives] and shall decide all questions of order, subject, however, to an appeal to the Board; provided, however, that if the Chairman is also the Chief Executive Officer, he or she shall not participate in executive sessions of the Board. If the Chairman is not the Chief Executive Officer, he or she shall act as liaison officer between the Board and the Chief Executive Officer. In addition to his or her usual duties, the Chairman shall make an Annual Report on the Exchange's activities to [a Plenary Session] *the Board of Executives.*

* * * * *

Article IX. Disciplinary Proceedings.

* * * * *

Sec. 3. *Hearing Board.* The Chairman of the Board, subject to the approval of the Board, shall from time to time appoint a hearing board to be composed of such number of members and allied members of the Exchange who are not members of the Board *or of the Board of Executives,* and registered employees and non-registered employees of members and member organizations, as the Chairman of the Board shall deem necessary. The members of the hearing board shall be appointed annually and serve at the pleasure of the Board. The Chairman of the Board, subject to the approval of the Board, shall also designate from among the officers and employees of the Exchange a chief hearing officer and one or more other hearing officers who shall have no Exchange duties or functions relating to the investigation or preparation of disciplinary matters and who shall be appointed annually and shall serve as hearing officers at the pleasure of the Board.

* * * * *

Sec. 6. *Review.* In a disciplinary proceeding not involving a written consent to the imposition of a specified penalty, any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization, adjudged guilty of any charge, or the division or department of the Exchange which brought the charges, or any member of the Board or the Board of Executives, may, in accordance with procedures set forth in the rules of the Exchange, require a review by the Board, of any determination or penalty, or both, imposed by the hearing panel. Upon review, the Board, by the affirmative vote of a majority of the entire Board, may sustain any determination or penalty imposed, may modify or reverse any such determination, and may increase, decrease or eliminate any such penalty, or impose any penalty permitted under this Article as it deems appropriate.

In a disciplinary proceeding involving a written consent to the imposition of a specified penalty, any member of the Board or the Board of Executives may require a review by the Board of any determination or penalty, or both, imposed by the hearing panel. In any such proceeding, the division or department which entered into the written consent, may require a review by the Board of any penalty, including any determination related thereto, imposed by the hearing panel, which is less severe than the stipulated penalty. The respondent or the division or department which entered into the written consent may require a review by the Board of any rejection of the written consent by the hearing panel. Any review provided in this paragraph shall be conducted in accordance with procedures set forth in the rules of the Exchange. Upon review, the Board, by the affirmative vote of a majority of the entire Board, may fix and impose the penalty agreed to in such written consent or any penalty which is less severe than the stipulated penalty, or remand the case for further proceedings.

Notwithstanding any other provisions of this Section, the Chief Executive Officer (a) may not require a review by the Board under this Section and (b) shall be recused from deliberations and actions of the Board with respect to matters to be reviewed by the Board under this Section.

* * * * *

Article XV. The Gratuity Fund.

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Sec. 9. *Management of Gratuity Fund.* The management and distribution of the Gratuity Fund shall be under the charge of a board of trustees, acting as agent for the Exchange, to be known as the "trustees of the Gratuity Fund," and shall consist of six regular members of the Exchange who are not lessor members and are elected by the membership. In case of a vacancy among the trustees, the Board, at its next regular meeting thereafter, shall proceed to fill the same until the next annual election of the Exchange. Prior to filling such vacancy, the Board shall request the Nominating *& Governance* Committee to submit to the Board the name of the person recommended by the Nominating *& Governance* Committee to fill such vacancy.

Exhibit A–2—Text of the Proposed Rule Change

(New language is *italicized.*)

INDEPENDENCE POLICY OF THE EXCHANGE BOARD OF DIRECTORS

Purpose

The purpose of this Policy is to set forth the independence requirements that shall apply to the members of the Board of Directors (the "Board") of the Exchange in accordance with Article IV, Section 2 of the New York Stock Exchange Constitution.

Independence Requirements

1. *Each Director elected by the members and the Chairman of the Board if not also the Chief Executive Officer shall be independent within the meaning of this Policy. A list of the Directors shall be maintained on the Exchange's web site.*

2. *A Director shall be independent only if the Board determines that the Director does not have any material relationships with the Exchange. When assessing a Director's relationships and interests, the Board shall consider the issue not merely from the standpoint of the Director, but also from the standpoint of persons or organizations with which the Director is affiliated*[6] *or associated.*

3. *In making independence determinations, the Board shall consider the special responsibilities of a Director in light of the status of the Exchange as a New York not-for-profit corporation, and as a self-regulatory organization and national securities exchange subject to the supervision of the Securities and Exchange Commission.*

4. *The Board shall make an independence determination with respect to each Director elected by the members upon the Director's nomination or appointment to the Board and thereafter at such times as the Board considers advisable in light of the Director's circumstances and any*

[6] *An "affiliate" of, or a person "affiliated" with, a specific person is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.*

changes to this Policy, but in any event not less frequently than annually. Upon adoption of this Policy, the Board shall make an affirmative determination with respect to the independence of each Director then serving on the Board.

5. It shall be the responsibility of each Director to inform the Chairman of the Board and the Chairman of the Nominating & Governance Committee promptly and otherwise as requested of the existence of such relationships and interests which might reasonably be considered to bear on the Director's independence.

6. Any Director elected by the members who is no longer independent due to the existence of a relationship described in Article IV, Section 2(a)–(d) of the Constitution or whom the Board otherwise determines not to be independent from the Exchange under this Policy shall, pursuant to Article IV, Section 9, be deemed to have tendered his or her resignation for consideration by the Board, and such resignation shall not be effective unless and until accepted by the Board.

Independence Qualifications

1. In making an independence determination with respect to any Director or Director candidate, the Board shall consider the standards below with respect to relationships or interests of the Director or Director candidate with or in (a) the Exchange or its subsidiaries, (b) members, allied members, and lessor members, (c) member organizations of the Exchange ("Member Organizations") or non-member broker-dealers that engage in business involving substantial direct contact with securities customers ("Non-Member Broker-Dealers"), and (d) companies other than Member Organizations whose securities are listed on the Exchange ("Listed Companies"). The standards below relating to category (a) are the same as those that the Exchange applies to its own listed companies. The standards below relating to categories (b), (c) and (d) stem from the differing regulatory responsibilities and roles that the Exchange exercises in overseeing the organizations and companies included in those categories.

2. The term "approved person" used herein has the meaning set forth in the NYSE Constitution.

3. The term "immediate family member" with respect to any Director has the meaning set forth in the NYSE Listed Company Manual.

4. The following independence criteria shall apply:

Independence From the Exchange

A Director is not independent if the Director or an immediate family member of the Director has or had a relationship or interest with or in the Exchange which, if such relationship or interest existed with respect to a Listed Company, would preclude a Director of the Listed Company from being considered an independent Director of the Listed Company pursuant to Section 303A.02(a) or (b) of the Listed Company Manual.[7]

Members, Allied Members and Lessor Members

A Director is not independent if he or she is, or within the last three years was, or has an immediate family member who is, or within the last three years was, a member, allied member, lessor member or approved person.

Member Organizations

A Director is not independent if the Director (a) is, or within the last three years was, employed by a Member Organization, (b) has an immediate family member who is, or within the last three years was, an executive officer of a Member Organization, (c) has within the last three years received from any Member Organization more than $100,000 per year in direct compensation, or received from Member Organizations in the aggregate an amount of direct compensation which in any one year is more than 10 percent of the Director's annual gross income for such year, excluding in each case Director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service), or (d) is affiliated, directly or indirectly, with a Member Organization.

Non-Member Broker-Dealers

A Director is not independent if the Director is employed by or affiliated, directly or indirectly, with a Non-Member Broker-Dealer.

Listed Companies

A Director is not independent if the Director is an executive officer of an issuer of securities listed on the Exchange.

5. The Exchange shall make disclosure of any charitable relationship that a listed company would be required to disclose pursuant to Listed Company Manual Section 303A.02(b)(v) and commentary. Gifts by the Exchange or by the NYSE Foundation shall not favor charities on which any Director serves as an executive officer or member of the board of trustees or directors or comparable governing body.

[FR Doc. E5–144 Filed 1–13–05; 8:45 am]

BILLING CODE 8010–01–P

[7] The relevant sections of the Listed Company Manual and commentary are available on the website at www.nyse.com/pdfs/finalcorpgovrules.pdf

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before March 15, 2005.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Charles Ou, Senior Economist, Office of Advocacy, Small Business Administration, 409 3rd Street, SW., Suite 7800, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles Ou, Senior Economist, (202) 205–6966 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION: *Title:* "Impact of Credit Scoring on Lending to Small Firms."

Description of Respondents: Senior executives in banks and thrifts who are knowledgeable about credit risk and lending practices for small businesses.

Form No: N/A.

Annual Responses: 1,200.

Annual Burden: 300.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 05–856 Filed 1–13–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #10005]

State of Texas (TX–00001) (Amendment # 1)

The above numbered declaration is hereby amended to establish the incident period for this disaster as beginning November 15, 2004, and continuing through December 4, 2004. The declaration is also amended to include Gonzales County in the State of Texas as a primary disaster area due to damages caused by severe storms, excessive rain and flooding.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bastrop, De Witt, Fayette, Karnes, and Lavaca in the State of Texas may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have previously been declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is March 7, 2005 and for economic injury the deadline is October 4, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: January 6, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–857 Filed 1–13–05; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1557).

TIME AND DATE: 9 a.m. (e.s.t.), January 18, 2005, The Pollard Technology Conference Center, 210 Badger Avenue, Oak Ridge, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on November 30, 2004.

New Business

C—Energy

C1. Contract with Porter-Walker, LLC, for industrial supplies, nonpower hand tools, and safety supplies at any TVA location.

C2. Contract with Framatome ANP for reactor pressure vessel head inspections and repairs at the Watts Bar and Sequoyah Nuclear Plants.

C3. Contract with Frham Safety Products, Inc., for health physics supplies and equipment for any TVA nuclear site.

C4. Supplement to contract with Framatome ANP, Inc., for refuel floor support services and reactor component inspections for Browns Ferry Nuclear Plant Units 2 and 3.

C5. Supplement to Contract No. 2767 with Babcock and Wilcox for pulverizer parts and technical services.

C6. Contracts with Mega Power, Inc., and Listerhill Total Maintenance Center for various plant equipment repair and machining services for any TVA location.

C7. Contract with Alstom Power, Inc., for supply of labor, materials, parts and services for maintenance and repair of Alstom (formerly Combustion Engineering) boilers in service at various TVA fossil plants.

E—Real Property Transactions

E1. Extension of a term recreation easement for 1 year to Boys Scouts of America, National Council, affecting approximately 354 acres of land on Kentucky Reservoir in Marshall County, Kentucky, Tract No. XGIR–906RE, S.1X.

E2. Sale of a permanent easement to Mike Proulx for the expansion of an existing sewer line easement, affecting approximately .02 acre of TVA land on Fulton Springs Substation in Jefferson County, Alabama, Tract No. XFLSS–2S.

E3. Sale of a noncommercial, nonexclusive permanent easement to Bill Kittrell for construction and maintenance of recreational water-use facilities, affecting approximately .61 acre of TVA land on Tellico Reservoir in Loudon County, Tennessee, Tract No. XTELR–248RE.

E4. Sale of a noncommercial, nonexclusive permanent easement to Kenneth and Constance Goff for construction and maintenance of recreational water-use facilities, affecting approximately .2 acre of land on Tellico Reservoir in Loudon County, Tennessee, Tract No. XTELR–247RE.

E5. Grant of a permanent easement to the town of Bryson City, North Carolina, for expansion of a waste water treatment plant, affecting approximately .87 acre of TVA land on Fontana Reservoir in Swain County, North Carolina, Tract No. XTFR–14SP.

F—Other

F1. Approval to file a condemnation case to acquire right to enter for a TVA power transmission line project affecting the Aspen Grove-Westhaven Transmission Line in Williamson County, Tennessee.

Information Items

1. Approval of temporary measures relating to the transition to a new portfolio of industrial power products.

2. Approval of a grant of a permanent easement to the North Jackson Water Authority for the construction of a raw water intake structure and line, affecting approximately 6.72 acres of TVA land on Guntersville Reservoir in Jackson County, Alabama, Tract No. XTGR–174PS.

3. Approval of a grant of a permanent easement to the Benton/Decatur Counties Special Sewer District for the construction of a sewer line and outfall, affecting approximately 3.6 acres of TVA land on Kentucky Reservoir in Benton County, Tennessee, Tract No. XTGIR–151S.

4. Approval of a delegation of authority to the Executive Vice President, Fossil Power Group, to execute a 20-year contract with Synthetic Materials, Inc., for the dewatering and marketing of scrubber gypsum and approval of related easements.

5. Approval of supplements to the Electric Power Research Institute Membership Contract and Supplemental Funded Projects Agreement.

6. Approval of a public auction sale of the Natural Resources and Forestry Buildings, affecting approximately 5.8 acres of TVA land located in Norris, Tennessee, Tract Nos. XNT–18 and XNOFB–1.

7. Approval of a delegation of authority to the Chief Financial Officer, the Treasurer, or designees, to enter into agreements with financial institutions for the sale of promissory notes that distributors have issued to TVA under TVA's Distributor Financing Program.

8. Amendments to the Provisions of the TVA Savings and Deferral Retirement Plan (401(k) Plan) to provide for certain enhancements to the Plan.

9. Approval of an amendment to the Trust Agreement between the Board of Directors of the TVA Retirement System and Fidelity Management Trust Company.

10. Amendment to the Rules and Regulations of the TVA Retirement System to limit a member's contributions to the System's fixed and variable annuity funds to $10,000 per year and shorten from 12 months to 6 months the suspension period for contributions to the System's annuity funds after taking a hardship withdrawal from the System's 401(k) Plan.

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: January 11, 2005.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 05–892 Filed 1–12–05; 9:54 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee: Public Comments Regarding the Environmental Review of the WTO DOHA Development Agenda (DDA) Negotiations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) is requesting written public comments on the scope of the environmental review of the multilateral negotiations of the Doha Development Agenda (DDA) conducted under the auspices of the World Trade Organization (WTO). The TPSC is seeking to supplement and further inform its consideration of reasonably foreseeable significant environmental effects that might flow from economic changes attributable to the negotiations, in the light of progress to date in the negotiations, notably, the Decision Adopted by the WTO General Council on 1 August 2004 on the Doha Work Program.

DATES: Public comments should be received no later than March 31, 2005.

ADDRESSES: *Submissions by electronic mail: FR0515@USTR.EOP.GOV. Submissions by facsimile:* Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143. The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: General inquiries concerning the environmental review should be made to the USTR Office of Environment and Natural Resources at (202) 395–7320. Procedural inquiries concerning the public comment process should be directed to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative (USTR), (202) 395–3475.

SUPPLEMENTARY INFORMATION:

Environmental Review: Executive Order 13141—*Environmental Review of Trade Agreements* (November 1999)—and the implementing guidelines (December 2000) formalize the U.S. policy of conducting environmental reviews for certain major trade agreements. Reviews are used to identify potentially significant, reasonably foreseeable environmental impacts (both positive and negative), and information from the review can help facilitate consideration of appropriate responses where impacts are identified. The Order requires environmental reviews of certain types of agreements, including comprehensive multilateral trade rounds. *See* 64 FR 63169. Reviews address potential environmental impacts that may be associated with projected economic changes expected to occur as a result of the proposed agreement, and potential implications for environmental laws and regulations. The focus of the reviews is on impacts on the United States, although global and transboundary impacts may be considered, where appropriate and prudent.

Comments are invited on the scope of the environmental review, including any reasonably foreseeable, potentially significant environmental effects that might flow from economic changes attributable to the negotiations, and potential implications for U.S. environmental laws, regulations and other measures. The TPSC also welcomes public views on appropriate methodologies for conducting the review. Comments are particularly invited on potentially significant environmental effects—both positive and negative—that might flow from the agriculture, non-agricultural market access (including tariffs and non-tariff barriers to sectors such as environmental goods, fish and forestry), services (including environmental services), rules (including ways to clarify and improve disciplines on environmentally harmful fish subsidies), trade facilitation, and the Special Session of the Committee on Trade and Environment negotiations. Persons submitting written comments should provide as much detail as possible on the degree to which the subject matter they propose for inclusion in the review may raise significant environmental issues in the context of the negotiation.

This request for comment supplements earlier requests for comments, and there is no need to resubmit comments previously provided to the TPSC. Submissions were received and are being considered in response to the following notices: (1) Notice of Initiation of the Environmental Review and Request for Comment on Scope of Environmental Review of Mandated Multilateral Trade Negotiations on Agriculture and Services in the World Trade Organization, 66 FR 20846 (April 25, 2001); and (2) Initiation of Environmental Review of Doha Multilateral Trade Negotiations and Public Comments on the Scope of Environmental Review, 67 FR 34750 (May 15, 2002). Those comments are available for public inspection in the USTR Reading Room (*see* below). New or updated submissions are welcome. The TPSC will review supplemental or new comments, in conjunction with earlier submissions, in conducting the environmental review.

DOHA Development Agenda: The next meeting of the WTO at the ministerial-level will be in December 2005. Work in 2005 is expected to focus on the technical issues necessary to move the agenda forward, particularly in the light of the WTO General Council's Decision of 1 August 2004, which contained further direction for the agriculture, non-agricultural market access and services negotiations, and the launch of negotiations on trade facilitation. The General Council's decision also took note of the reports from the Negotiating Group on Rules and from the Special Session of the Committee on Trade and Environment. It reaffirmed Members' commitment to progress in these areas of the negotiations in line with the Doha mandate. Accordingly, the TPSC seeks to provide a new opportunity for public comment on the environmental review of the ongoing negotiations.

In a separate notice, the TPSC has requested public views on the general U.S. negotiating objectives and country and item-specific priorities for the Doha negotiations, including with respect to objectives concerning the environmental discussions, 69 FR 71466 (December 9, 2004). That notice contains more detailed information concerning the scope of the negotiations. Further information on the WTO, including the declarations and decisions referred to in this notice or proposals tabled, can be obtained via the Internet at the WTO Web site, *http://www.wto.org,* and/or the USTR Web site, *http://www.ustr.gov.* The 2004 President's Annual Report on the Trade Agreements Program, which is available on the USTR Web site, contains extensive information on the WTO and the status of work in the WTO.

Written Submissions: Persons submitting comments may either send one copy by fax to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143 or transmit a copy electronically to *FR0515@USTR.EOP.GOV,* with "Doha Environmental Review" in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy electronically. The public is strongly encouraged to submit documents electronically rather than by facsimile. USTR encourages the use of Adobe PDF format to submit attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments should be submitted no later than March 31, 2005.

Business confidential information will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such and must be accompanied by a non-confidential summary thereof. A justification as to why the information contained in the submission should be treated confidentially should also be contained in the submission. In addition, any submissions containing business confidential information must clearly be marked "Business Confidential" at the top and bottom of the cover page (or letter) and each succeeding page of the submission. The version that does not contain business confidential information should also be clearly marked at the top and bottom of each page, "Public Version" or "Non-Confidential."

Written comments submitted in connection with this request, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 will be available for public inspection in the USTR Reading Room, Office of the United States Trade Representative. An appointment to review the file can be made by calling (202) 395–6186. The Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m. Monday through Friday.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 05–772 Filed 1–13–05; 8:45 am]

BILLING CODE 3190–W5–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Draft Environmental Impact Statement (DEIS) Containing a Draft Air Quality General Conformity Determination (DGCD) and Draft Section 106 Historic Resources Report; Notice of Public Comment Period and Schedule of Public Information Meetings and Public Hearings for Proposed New Runways and Associated Development at Washington Dulles International Airport, Chantilly, VA

AGENCY: Federal Aviation Administration (FAA), DOT. The U.S. Army Corps of Engineers (USACE) is a cooperating federal agency, having jurisdiction by law because the proposed federal action has the potential for significant wetland impacts.

ACTION: Notice of availability, notice of comment period, notice of Public Information Meetings and Public Hearings.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that a Draft Environmental Impact Statement (DEIS)—Proposed New Runways and Associated Development at Washington Dulles International Airport, has been prepared and is available for public review and comment. The DEIS incorporates a Draft Air Quality General Conformity Determination (DGCD) and Draft Section 106 Historic Resources Report. Written requests for the DEIS and written comments on the DEIS and related documents can be submitted to the individual listed in the section **FOR FURTHER INFORMATION CONTACT**. Public Information Meetings and Public Hearings will be held on February 22 and February 23, 2005. The public comment periods will commence on January 21, 2005 and will close on March 7, 2005.

Public Comment and Information Meetings/Public Hearings: The start of the public comment period on the DEIS and associated studies will be January 21, 2005 and will end on March 7, 2005. Public Information Meetings and Public Hearings will be held on February 22, 2005 in Loudoun County and on February 23, 2005 in Fairfax County. The Public Information Meetings will begin at 5 p.m. (EST) and will last until 8 p.m. (EST). The Public Hearings will be conducted concurrently with the information meetings and will begin at 6 p.m. (EST). The location for the Public Information Meetings/Public Hearings is as follows: February 22, 2005, Loudoun County, Farmwell Station Middle School, 44281 Glouscester Parkway, Ashburn, VA; February 23, 2005, Fairfax County, Stone Middle School, 5500 Sully Park Drive, Centreville, VA.

Copies of the DEIS and related documents may be viewed during regular business hours at the following locations:

1. Centreville Regional Library, 14200 St. Germaine Drive, Centreville, VA.
2. Chantilly Regional Library, 4000 Stringfellow Road, Chantilly, VA.
3. Great Falls Library, 9830 Georgetown Pike, Great Falls, VA.
4. Herndon Fortnightly Library, 768 Center Street, Herndon, VA.
5. Reston Regional Library, 11925 Bowman Towne Drive, Reston, VA.
6. Fairfax City Regional Library, 3915 Chain Bridge Road, Fairfax, VA.
7. Ashburn Library, 43316 Hay Road, Ashburn, VA.
8. Rust Library, 380 Old Waterford Road, Leesburg, VA.
9. Middleburg Library, 101 Reed Street, Middleburg, VA.
10. Purcellville Library, 220 E. Main Street, Purcellville, VA.
11. Sterling Library, 120 Enterprise Street, Sterling, VA.
12. Eastern Loudoun Regional Library, 21030 Whitfield Place, Sterling, VA.
13. Tysons-Pimmit Regional Library, 7584 Leesburg Pike, Falls Church, VA.

A limited number of copies of the DEIS and related documents will also be available for review by appointment only at the following FAA/Metropolitan Washington Airports Authority (MWAA) Offices. Please call to make arrangements for viewing: Federal Aviation Administration, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA, (703) 661–1364; Washington Dulles International Airport, Airport Managers Office, Main Terminal Baggage Claim Level, Dulles, VA, (703) 572–2710. An Executive Summary will be available January 21, 2005 on Dulles Airport's Web site at *http://www.mwaa.com/dulles/EnvironmentalStudies/RunwaysEIS.htm.*

FOR FURTHER INFORMATION CONTACT: Brad Mehaffy, Environmental Specialist, Federal Aviation Administration, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA. Mr. Mehaffy can be contacted at (703) 661–1364.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) is issuing this Notice of Availability to advise the public that a Draft Environmental Impact Statement (DEIS) containing a Draft Air Quality General

Conformity Determination (DGCD) and Draft Section 106 Historic Resources Report will be available for public review beginning January 21, 2005. The DEIS details the proposed development of two new runways, terminal facilities, and related facilities at Washington Dulles International Airport (IAD), Dulles, Virginia.

The U.S. Army Corps of Engineers (USACE) is a cooperating federal agency, having jurisdiction by law because the proposed federal action has the potential for significant wetland impacts.

The DEIS presents the purpose and need for the proposed project, a comprehensive analysis of the alternatives to the proposed project, including the no-action alternative and potential environmental impacts associated with the proposed development of two new air carrier runways and related improvements at IAD.

In accordance with section 176(c) of the Federal Clean Air Act, FAA has assessed whether the air emissions that would result from FAA's action in approving the proposed projects conform with the State Implementation Plan (SIP). This assessment is contained in the Draft Air Quality General Conformity Determination.

Pursuant to the Coastal Zone Management Act of 1972, as amended, this project is being evaluated for consistency with the Virginia Coastal Program. Section 306(d)(14) of the CZMA requires public participation in the Federal consistency review process.

The Public Workshops/Hearings are also being conducted pursuant to MWAA's 1987 Programmatic Memorandum of Agreement with the Virginia State Historic Preservation Officer and the Adivosry Council on Historic Preservation (as regards Section 106 of the National Historic Preservation Act of 1966–36 CFR 800).

The FAA encourages all interested parties to provide comments concerning the scope and content of the DEIS, Draft Air Quality General Conformity Determination and Draft Section 106 Historic Resources Report. Comments should be as specific as possible and address the analysis of potential environmental impacts and the adequacy of the proposed action or merits of alternatives and the mitigation being considered. Reviewers should organize their participation so that it is meaningful and makes the agencies aware of the viewer's interests and concerns using quotations and other specific references to the text of the DEIS and related documents. Matters that could have been raised with specificity during the DEIS comment period may not be considered if they are raised later in the decision making process. This commenting procedure is intended to ensure that substantive comments and concerns are made available to the FAA in a timely manner so that the FAA has an opportunity to address them.

Comments from interested parties on the DEIS and related documents are encouraged and may be presented verbally or in writing at the Public Information Meetings and/or Public Hearings or may be submitted in writing to the FAA at the address listed in the section entitled **FOR FURTHER INFORMATION CONTACT**. The comment period will close on March 7, 2005.

Issued in Dulles, Virginia, on January 7, 2005.

Terry Page,

Manager, Washington Airports District Office, Federal Aviation Administration.

[FR Doc. 05–855 Filed 1–13–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–4]

Petitions for Exemption; Dispositions of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the disposition of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, or Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on January 7, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Dispositions of Petitions

Docket No.: FAA–2004–17186.
Petitioner: Mr. John C. Kline.
Section of 14 CFR Affected: 14 CFR 121.383(c).
Description of Relief Sought/ Disposition: To permit Mr. John C. Kline to act as a pilot in operations conducted under part 121 after reaching his 60th birthday. *Denial, 12/10/2004, Exemption No. 8458.*

Docket No.: FAA–2003–14879.
Petitioner: AFTA, Inc. (formerly Xtrajet, Inc.)
Section of 14 CFR Affected: 14 CFR 135.152(a).
Description of Relief Sought/ Disposition: To permit AFTA, Inc. (formerly Xtrajet, Inc.) to operate its Gulfstream G–1159 aircraft without installing the flight data recorder required by the regulation. *Denial, 12/14/2004, Exemption No. 8044A*

Docket No.: FAA–2000–8436.
Petitioner: William J. Hughes Technical Center.
Section of 14 CFR Affected: 4 CFR 91.117(a), 91.119(c), 91.159(a), and 91.303(e).
Description of Relief Sought/ Disposition: To permit the William J. Hughes Technical Center to conduct flight operations in support of its research and development projects without meeting certain Federal Aviation Administration regulations governing aircraft speed, minimum safe altitudes, cruising altitudes for flights conducted under visual flight rules, and aerobatic flight. *Grant, 12/10/2004, Exemption No. 6883C.*

Docket No.: FAA–2004–19151.
Petitioner: Middle Tennessee State University.
Section of 14 CFR Affected: 14 CFR 61.65(a)(1).
Description of Relief Sought/ Disposition: To permit students enrolled in the Middle Tennessee State University FAA-approved pilot school curriculum that utilizes the FAA/ Industry Training Standards Private/ Instrument Syllabus for Technically Advanced Piston Aircraft-Single Engine Land and who hold only a Student Pilot certificate to take concurrently the private pilot and instrument rating practical tests, subject to certain conditions and limitations. *Grant, 12/10/2004, Exemption No. 8456*

Docket No.: FAA–2004–19417.
Petitioner: Lufthansa Cargo AG.
Section of 14 CFR Affected: 14 CFR 61.77(a).

Description of Relief Sought/ Disposition: To permit pilots employed by Lufthansa Cargo AG to be eligible for the issuance of special purpose pilot authorizations under part 61, subject to certain conditions and limitations. *Grant, 12/10/2004, Exemption No. 8437A*

Docket No.: FAA–2002–14105.
Petitioner: Mr. Michael S. Friedman.
Section of 14 CFR Affected: 14 CFR 91.109(a).
Description of Relief Sought/ Disposition: To permit Mr. Michael S. Friedman to conduct certain flight instruction and simulated instrument flights to meet the recent experience requirements in Beechcraft Bonanza, Baron, and Travel Air airplanes equipped with a functioning throwover control wheel in place of functioning dual controls. *Grant, 12/03/2004, Exemption No. 7950A*

Docket No.: FAA–2000–8179.
Petitioner: M7 Aerospace LP.
Section of 14 CFR Affected: 14 CFR 91.531(a)(3).
Description of Relief Sought/ Disposition: To permit M7 Aerospace LP (M7) to conduct production and experimental test flights in SA227–CC and SA227–DC Metro 23 airplanes without a pilot designated as a second in command (SIC). In addition, it permits all operators of M7 commuter category airplanes (SA227–C, SA227–DC, and other airplanes on the same type certificate) to conduct flight operations without a designated SIC, provided the airplane is type certificated for single-pilot operations and is carrying nine or fewer passengers. *Grant, 12/03/2004, Exemption No. 5367H*

Docket No.: FAA–2004–19517.
Petitioner: Island Helicopter.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Island Helicopter to operate its Robinson R–22 helicopter under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 12/06/2004, Exemption No. 8454*

Docket No.: FAA–2002–13966.
Petitioner: St. Charles Flying Service, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Island Helicopter to operate its Robinson R–22 helicopter under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 12/06/2004, Exemption No. 8454.*

Docket No.: FAA–2002–13966.
Petitioner: St. Charles Flying Service, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit St. Charles Flying Service, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) installed on those aircraft. *Grant, 12/06/2004, Exemption No. 7929A.*

Docket No.: FAA–2004–19759.
Petitioner: Dassault Aviation.
Section of 14 CFR Affected: 14 CFR 121.344a and 135.152(h).
Description of Relief Sought/ Disposition: To permit Dassault Aviations' future operators of the Dassault Falcon 2000EX EASy and Falcon 900EX EASy airplanes the ability to operate newly manufactured airplanes without three of the required flight recorder parameters fully operational. *Denial, 12/23/2004, Exemption No. 8459.*

Docket No.: FAA–2000–8419.
Petitioner: Department of the United States Air Force.
Section of 14 CFR Affected: 14 CFR 91.209(a)(1) and (b).
Description of Relief Sought/ Disposition: To permit the United States Air Force to conduct counternarcotics aircrew flight training operations in support of drug law enforcement and drug traffic interdiction, without lighted aircraft position or anticollision lights. *Grant, 12/23/2004, Exemption No. 5305F.*

Docket No.: FAA–2001–9618.
Petitioner: Department of the United States Air Force.
Section of 14 CFR Affected: 14 CFR 91.209(a) and (b).
Description of Relief Sought/ Disposition: To permit the United States Air Force to conduct helicopter night-vision flight training operations without lighted aircraft position lights at or below 500 feet above ground level. *Grant, 12/23/2004, Exemption No. 5891D.*

Docket No.: FAA–2004–19718.
Petitioner: Southern Air, Inc.
Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit Southern Air, Inc., to substitute a qualified and authorized check airman in place of an Federal Aviation Administration inspector to observe a qualifying pilot in command who is completing initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing. *Grant, 12/29/2004, Exemption No. 8464.*

Docket No.: FAA–2004–19692.
Petitioner: Mission Mountain Flying Service.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Mission Mountain Flying Service to operate their aircraft, Registration No. N58441, Serial No. U20602604, with any TSO–C74b transponder or TSO–C74c transponder. *Grant, 01/04/2005, Exemption No. 8466.*

Docket No.: FAA–2004–19926.
Petitioner: Northern Air Cargo, Inc.
Section of 14 CFR Affected: 14 CFR 121.356(a) and (c).
Description of Relief Sought/ Disposition: To permit Northern Air Cargo, Inc., to operate one cargo Boeing 727 airplane, Registration No. N992AJ, Serial No. 19428, and one cargo Douglas DC–6 airplane, Registration No. N6174C, Serial No. 44075, from January 1, 2005 until February 1, 2005, that is not equipped with an approved TCAS II traffic alert and collision avoidance system and the appropriate class of Mode S transponder, subject to compliance with certain conditions and limitations. *Grant, 12/30/2004, Exemption No. 8462.*

Docket No.: FAA–2004–19881.
Petitioner: Mr. Edward J. Tarver III.
Section of 14 CFR Affected: 14 CFR 91.109(a).
Description of Relief Sought/ Disposition: To permit Mr. Edward J. Tarver III to conduct certain flight training in certain Beechcraft Bonanza/ Debonair/Baron airplanes that equipped with a functioning throwover control wheel, subject to certain conditions and limitations. *Grant, 12/29/2004, Exemption No. 8465.*

Docket No.: FAA–2001–10267.
Petitioner: Carver Aero, Inc.
Section of 14 CFR Affected: 14 CFR 135.421(a).
Description of Relief Sought/ Disposition: To permit Carver Aero, Inc., to operate a Piper PA–23–250 aircraft under part 135 without having overhauled the engine at the interval recommended by the manufacturer, as required by regulation. *Denial, 12/29/ 2004, Exemption No. 8463.*

Docket No.: FAA–2000–8186.
Petitioner: Sound Flight, Inc.
Section of 14 CFR Affected: 14 CFR 135.203(a)(1).
Description of Relief Sought/ Disposition: To permit Sound Flight, Inc., to conduct operations under visual flight rules at an altitude below 500 feet, over water, outside controlled airspace. *Grant, 12/29/2004, Exemption No. 6428D.*

Docket No.: FAA–2000–8009.
Petitioner: Alaska Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 121.44(a) and SFAR 58, paragraph 6(b)(3)(ii)(A).

Description of Relief Sought/ Disposition: To permit Alaska Airlines, Inc., to meet line check requirements using an alternative line check program. *Grant, 12/29/2004, Exemption No. 6043F.*

Docket No.: FAA–2001–8987.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: 14 CFR 91.515(a)(1).

Description of Relief Sought/ Disposition: To permit the Boeing Company to conduct noise measurement tests, Ground Proximity Warning System research and development, and aircraft certification tests at altitudes less than 1,000 feet above the surface or 1,000 feet from any mountain, hill, or other obstruction outside of daytime only conditions, subject to certain conditions and limitations. *Grant, 12/29/2004, Exemption No. 4783I.*

Docket No.: FAA–2000–7991.

Petitioner: ATA Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought/ Disposition: To permit ATA Airlines, Inc., to observe a qualifying pilot in command who is completing initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing. *Grant, 12/29/2004, Exemption No. 7491B.*

[FR Doc. 05–795 Filed 1–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–5]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 3, 2005.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http:// dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on January 7, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2004–19350.

Petitioner: Aero Sports Connection, United States Ultralight Association, and North American Powered Parachute Federation.

Section of 14 CFR Affected: 14 CFR 103.1(e)(1).

Description of Relief Sought: To allow Aero Sports Connection, United States Ultralight Association, and North American Powered Parachute Federation to conduct certain studies that would increase the 254 pounds (empty weight) limitation for ultralight vehicles.

[FR Doc. 05–796 Filed 1–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 05–04–C–00–LYH To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lynchburg Regional Airport, Lynchburg, VA

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 and use the revenue from a PFC at Lynchburg Regional Airport (LYH) 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 February 14, 2005.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, Virginia 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Mark Courtney, Airport Director, Lynchburg Regional Airport of the City of Lynchburg at the following address: City of Lynchburg, Lynchburg Regional Airport, 4308 Wards Road, Lynchburg, Virginia 24502.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the public agency full name under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Terry J. Page, Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, Virginia 20166, Telephone: 703–661–1354. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites pubic comment on the application to impose and use the revenue from a PFC at Lynchburg Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158). On

January 6, 2005, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Lynchburg 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 April 6, 2005.

The following is a brief overview of the application.

Proposed Charge Effective Date: June 1, 2005.

Proposed Charge Expiration Date: June 1, 2015.

Level of the Proposed PFC: $4.50.

Total Estimated PFC Revenue: $2,650,559.

Brief Description of Proposed Project(s): Reimbursement of PFC Development, Administration Costs, and Debt Service. Runway 4–22 Extension (Phase IV Construction). Passenger Loading Bridge. Rehabilitation of Hanger 7 and 8 Ramp.

Level of the Proposed PFC: $4.50.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports office located at: Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, New York 11434–4809.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Lynchburg.

Issued in Dulles, Virginia, on January 7, 2005.

Terry J. Page,

Manager, Washington Airports District Office, Eastern Region.

[FR Doc. 05–854 Filed 1–13–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement Number PS–ACE100–2004–10035]

Proposed Small Airplane Directorate Policy on Standardization of Application of 14 CFR Part 23, Section 23.1309 Regarding Hazardous Misleading Attitude Information

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces a Federal Aviation Administration (FAA) proposed policy on hazardous misleading attitude information. It covers the display of hazardously misleading attitude information, which should be considered a catastrophic failure condition at the aircraft level. This notice is necessary to advise the public of this FAA policy and give all interested persons an opportunity to present their views on it.

DATES: Send your comments by February 14, 2005.

Discussion: The Small Airplane Directorate is making the proposed policy statement on hazardous misleading attitude information that applies to an airplane with a certification basis under Amendment 23–41 or later.

ADDRESSES: Copies of the proposed policy statement, PS–ACE100–2004–10035, may be requested from the following: Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 901 Locust Street, Room 301, Kansas City, MO 64106. The proposed policy statement is also available on the Internet at the following address *http://www.airweb.faa.gov/policy.* Send all comments on this proposed policy statement to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Federal Aviation Administration, Small Airplane Directorate, Regulations & Policy, ACE–111, 901 Locust Street, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4134; fax: 816–329–4090; e-mail: *erv.dvorak@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite your comments on this proposed policy statement. Send any data or views as you may desire. Identify the proposed Policy Statement Number PS–ACE100–2004–10035 on your comments, and if you submit your comments in writing, send two copies of your comments to the above address. The Small Airplane Directorate will consider all communications received on or before the closing date for comments. We may change the proposal contained in this notice because of the comments received.

Comments sent by fax or the Internet must contain "Comments to proposed policy statement PS–ACE100–2004–10035" in the subject line. You do not need to send two copies if you fax your comments or send them through the Internet. If you send comments over the Internet as an attached electronic file, format it in either Microsoft Word 97 for Windows or ASCII text. State what specific change you are seeking to the proposed policy memorandum and include justification (for example, reasons or data) for each request.

Issued in Kansas City, Missouri on January 6, 2005.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–853 Filed 1–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Monroe County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Monroe County, New York.

FOR FURTHER INFORMATION CONTACT: Charles E. Moynihan, P.E., Regional Director, New York State Department of Transportation; 1530 Jefferson Road, Rochester, NY 14623; Telephone: (585) 272–3310; or Robert E. Arnold, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 7th Floor, Room 719, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 431–4127.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT), will prepare an environmental impact statement (EIS) on a proposal to improve Routes 31 and 531 in the Towns of Ogden and Sweden, Monroe County, New York. The approximate project limits are from the current terminus of Route 531 at Route 36 to west of Redman Road. Improvements to the 6.5 mile long corridor are considered necessary to provide for the existing and projected traffic demand and to address highway safety.

Alternatives under consideration include (1) taking no action; (2) improvements to the Route 531 terminus and to Route 31; (3) constructing a four-lane, limited access highway on new location. Incorporated into and studied with the various build alternatives will be design variation of grade and alignment and various intersection improvements.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations nad citizens who have previously expressed interest in this proposal. In addition to scoping discussion with these interested parties, the general public will have the opportunity to make scoping comments both in writing and in person at a Public Information/ Scoping Meeting that will be held at Brockport Central Fred Hill Elementary School, 40 Allen Street, Brockport, on Tuesday, March 8, 2005. After the DEIS is prepared, it will be available for public and agency review and comment. This will be followed by a public hearing. Public notice will be given of the time and place of the hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; CFR 771.123

Issued on: January 3, 2005.

Willet R. Schroft,

District Operations Engineer, Federal Highway Administration, New York Division, Albany, New York.

[FR Doc. 05–768 Filed 1–13–05; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Transylvania County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Transylvania County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Clarence W. Coleman, P.E., Area Engineer, Federal Highway Administration, 310 New Bern Avenue, Ste. 410, Raleigh, North Carolina, 27601–1418, Telephone: (919) 856–4346.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to improve North Carolina Route 215 (NC 215) in Transylvania County, North Carolina. An Environmental Assessment (EA) for the improvements was approved on July 12, 1998. Based on comments received from the November 19, 1998, Informal Public Hearing on the project and the subsequent input from various federal and state agencies, the FHWA and NCDOT has agreed to prepare an EIS for the NC 215 improvements.

Alternatives under consideration include (1) the "no build", (2) improve existing facilities, and (3) constructing a two-lane highway on new location.

Over the last few years, several meetings have been held with appropriate federal, state, and local agencies, and with private organizations and citizens who have previously expressed or are known to have interest in this proposal. The Draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting will be held.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Clarence W. Coleman,

Area Engineer, Raleigh, North Carolina.

[FR Doc. 05–767 Filed 1–13–05; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–20027]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice publishes the FMCSA's receipt of applications from 29 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before February 14, 2005.

ADDRESSES: You may submit comments identified by any of the following methods. Please identify your comments by the DOT DMS Docket Number FMCSA–2005–20027.

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *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.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this notice. 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. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Maggi Gunnels, Office of Bus and Truck Standards and Operations, (202) 366–4001, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the "help" section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation'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.*

Background

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. The 29 individuals listed in this notice have recently requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statute.

Qualifications of Applicants

1. Eddie Alejandro

Mr. Alejandro, age 26, has had vision loss in his right eye since childhood due to a coloboma of the iris. His best-corrected visual acuity in the right eye is finger counting and in the left, 20/20. Following an examination in 2004, his optometrist certified, "Mr. Alejandro has been a commercial driver in the past with the same visual deficiency that he has now and had no problems. He is very aware of his 'handicap' and knows that side view mirrors are a must for him and that he needs to be extra cautious because of the field loss to the right eye. I feel that Mr. Alejandro is capable of operating a commercial vehicle if the above mentioned cautions are taken." Mr. Alejandro submitted that he has driven straight trucks for 3 years, accumulating 299,000 miles. He holds a Class B commercial driver's license (CDL) from Illinois. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

2. Eldred S. Boggs

Mr. Boggs, 52, has optic nerve atrophy in his right eye due to injury in 1976. His best-corrected visual acuity in the right eye is count fingers and in the left, 20/20. Following an examination in 2004, his ophthalmologist certified, "It is my medical opinion that Mr. Boggs has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Boggs reported that he has driven straight trucks for 4 years, accumulating 80,000 miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

3. David F. Breuer

Mr. Breuer, 54, has a history of central serous retinopathy in his right eye since 1989. His best-corrected visual acuity in the right eye is 20/100 and in the left, 20/20. Following an examination in 2004, his ophthalmologist noted, "I would unequivocally state that Mr. Breuer is safe to drive a commercial vehicle." Mr. Breuer reported that he has driven straight trucks for 1 year, accumulating 25,000 miles, and tractor-trailer combinations for 30 years, accumulating 2.5 million miles. He holds a Class ABCDM CDL from Wisconsin. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

4. James T. Butler

Mr. Butler, 50, has had glaucomatous damage in his left eye since 2001. The visual acuity in his right eye is 20/20 and in the left, counting fingers. Following an examination in 2004, his ophthalmologist noted, "Since patient has visual acuity of 20/20 and no known disease in the right eye, in my opinion this patient should qualify to perform commercial vehicle driving tasks." Mr. Butler reported that he has driven tractor-trailer combinations for 7 years, accumulating 700,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

5. Roger K. Cox

Mr. Cox, 41, has a retinal scar in his right eye due to an injury 30 years ago. His best-corrected visual acuity in the right eye is 20/200 and in the left, 20/20. Following an examination in 2004, his ophthalmologist certified, "In my opinion Mr. Roger K. Cox has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Cox submitted that he has driven straight trucks for 20 years, accumulating 200,000 miles. He holds a Class B CDL from New Jersey. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

6. Richard S. Cummings

Mr. Cummings, 47, lost the vision in his left eye due to an accident at age 8. The visual acuity in his right eye is 20/20, and in the left, light perception. His optometrist examined him in 2004 and stated, "I feel that since this condition is long-standing and stable, Mr. Cummings should be able to perform the visual tasks needed to operate a commercial vehicle." Mr. Cummings submitted that he has driven straight trucks for 30 years, accumulating 825,000 miles, and tractor-trailer combinations for 28 years, accumulating 2.8 million miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

7. Joseph A. Dean

Mr. Dean, 28, lost his left eye at the age of 8 due to trauma. His visual acuity in the right eye is 20/20. Following an examination in 2004, his optometrist certified, "In my opinion, the vision in his healthy right eye is sufficient to perform the driving tasks necessary to operate a commercial vehicle in a safe manner." Mr. Dean submitted that he has driven straight trucks and tractor-trailer combinations for 2 years each, accumulating 60,000 miles in the former and 30,000 miles in the latter. He holds a Class A CDL from Arkansas. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

8. Donald P. Dodson, Jr.

Mr. Dodson, 46, has amblyopia in his right eye. His visual acuity in the right eye is 20/80 and in the left, 20/20. Following an examination in 2004, his ophthalmologist certified, "His vision is sufficient to perform the driving tasks required to operate a commercial vehicle." Mr. Dodson submitted that he has driven straight trucks for 17 years, accumulating 37,000 miles. He holds a Class B CDL from West Virginia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

9. William H. Goss

Mr. Goss, 30, has had a retinal scar in his right eye since birth. His visual acuity in the right eye is 20/400 and in the left, 20/20. Following an examination in 2004, his optometrist noted, "This certifies that in my opinion the above named patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Goss submitted that he has driven straight trucks for 7 years, accumulating 182,000 miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

10. Eric W. Gray

Mr. Gray, 46, has a macular scar in his right eye due to injury 34 years ago. The visual acuity in his right eye is count fingers and in the left, 20/15. His ophthalmologist examined him in 2004 and stated, "It is my medical opinion that Mr. Gray has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Gray reported that he has driven straight trucks for 10 years, accumulating 150,000 miles, and buses for 1 year, accumulating 20,000 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

11. James K. Holmes

Mr. Holmes, 50, experienced a retinal detachment in his right eye in 1997. His best-corrected visual acuity in the right eye is 20/70 and in the left, 20/20. Following an examination in 2004, his optometrist certified, "I believe that he has sufficient vision to drive a commercial vehicle." Mr. Holmes reported that he has driven straight trucks for 7 years, accumulating 140,000 miles, and tractor-trailer combinations for 25 years, accumulating 3.0 million miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

12. Daniel L. Jacobs

Mr. Jacobs, 47, has amblyopia in his left eye. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/70. His optometrist examined him in 2004 and certified, "In my professional opinion, I feel that Daniel Jacobs has sufficient vision to perform the tasks required to operate a commercial vehicle." Mr. Jacobs reported that he has driven tractor-trailer combinations for 26 years, accumulating 2.6 million miles. He holds a Class A CDL from Arizona. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

13. Jose M. Limon-Alvarado

Mr. Limon-Alvarado, 35, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/400 and in the left, 20/20. Following an examination in 2004, his optometrist certified, "It is my opinion that Jose has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Limon-Alvarado reported that he has driven straight trucks for 10 years, accumulating 102,000 miles, and tractor-trailer combinations for 5 years, accumulating 153,000 miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

14. Robert S. Loveless, Jr.

Mr. Loveless, 36, has decreased vision in his left eye due to trauma 20 years ago. The visual acuity in his right eye is 20/20 and in the left, 20/200. His optometrist examined him in 2004 and certified, "It is my opinion that he has adequate vision to operate a commercial vehicle." Mr. Loveless reported that he has driven straight trucks for 17 years, accumulating 216,000 miles. He holds a Class A CDL from Tennessee. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

15. Eugene R. Lydick

Mr. Lydick, 39, experienced a retinal detachment in his right eye in 1982. His best-corrected visual acuity in the right eye is finger counting and in the left, 20/25. Following an examination in 2004, his ophthalmologist certified, "In my professional opinion, this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Lydick reported that he has driven tractor-trailer combinations for 4 years, accumulating 400,000 miles. He holds a Class AM CDL from Virginia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

16. John W. Montgomery

Mr. Montgomery, 51, has a macular scar in his right eye due to injury 27 years ago. His visual acuity in the right eye is 20/200, and in the left, 20/25. Following an examination in 2004, his ophthalmologist certified, "In my professional opinion, the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Montgomery reported that he has driven straight trucks for 9 years, accumulating 270,000 miles, and tractor-trailer combinations for 22 years, accumulating 1.1 million miles. He holds a Class AM CDL from Massachusetts. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

17. Danny R. Pickelsimer

Mr. Pickelsimer, 26, has amblyopia in his right eye. The best-corrected visual acuity in his right eye is light perception and in the left, 20/20. His optometrist examined him in 2004 and stated, "In my medical opinion, Mr. Pickelsimer has sufficient vision to perform the driving tasks required to operate a commercial motor vehicle." Mr. Pickelsimer submitted that he has driven straight trucks for 7 years, accumulating 70,000 miles. He holds a Class D driver's license from Oklahoma. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

18. Zeljko Popovac

Mr. Popovac, 47, had a macular vision loss in his left eye in 1971 due to an injury. The visual acuity in his right eye is 20/20 and in the left, 20/100. Following an examination in 2004, his optometrist stated, "In my medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Popovac reported that he has driven straight trucks for 3 years, accumulating 112,000 miles. He holds a Class A CDL from Vermont. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

19. Juan Manuel M. Rosas

Mr. Rosas, 32, had congenital cataracts removed from his right eye at age 3. The best-corrected visual acuity in his right eye is hand motion and in the left, 20/20. His optometrist examined him in 2004 and stated, "This is to certify that Juan's condition is stable and that he has sufficient vision to operate a commercial vehicle." Mr. Rosas submitted that he has driven straight trucks and tractor-trailer combinations for 8 years, accumulating 280,000 miles in the former and 400,000 miles in the latter. He holds a Class A CDL from Arizona. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

20. Francis L. Savell

Mr. Savell, 56, lost the vision in his left eye due to trauma in 1979. His best-corrected visual acuity in the right eye is 20/20. Following an examination in 2004, his ophthalmologist noted, "In my opinion, Mr. Savell has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Savell reported that he has driven straight trucks for 20 years, accumulating 140,000 miles, and tractor-trailer combinations for 1 year, accumulating 25,000 miles. He holds a Class D chauffeur's license from Louisiana. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

21. Richie J. Schwendy

Mr. Schwendy, 50, lost the central vision in his left eye due to an injury in 1970. The best-corrected visual acuity in his right eye is 20/20. His optometrist examined him in 2004 and noted, "In my opinion, Mr. Schwendy has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Schwendy reported that he has driven straight trucks for 12 years, accumulating 480,000 miles, and tractor-trailer combinations for 11 years, accumulating 550,000 miles. He holds a Class AM CDL from Illinois. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

22. David M. Stout

Mr. Stout, 50, lost his right eye due to an accident at age 10. The best-corrected visual acuity in his left eye is 20/20. His optometrist examined him in 2004 and stated, "In my medical opinion, David Stout has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Stout reported that he has driven straight trucks for 10 years, accumulating 1.0 million miles, and tractor trailer combinations for 18 years, accumulating 1.8 million miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

23. Artis Suitt

Mr. Suitt, 51, has reduced vision in his left eye due to an injury at age 10. The visual acuity in his right eye is 20/15 and in the left, 20/400. His ophthalmologist examined him in 2004 and stated, "In my opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle as he has done this for 20 years, and his vision has basically been unchanged during that time." Mr. Suitt submitted that he has driven straight trucks for 3 years, accumulating 150,000 miles, and tractor-trailer combinations for 20 years, accumulating 2.1 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 15 mph.

24. Gregory E. Thompson

Mr. Thompson, 41, has amblyopia in his right eye. The best-corrected visual acuity in his right eye is 20/50 and in the left, 20/20. His optometrist examined him in 2004 and certified, "In my medical opinion, this patient has sufficient visual acuity to perform the driving tasks required to operate a commercial vehicle." Mr. Thompson submitted that he has driven tractor-trailer combinations for 11 years, accumulating 1.1 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—"failure to obey traffic sign"—in a CMV.

25. Kerry W. VanStory

Mr. VanStory, 53, has amblyopia in his left eye. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/400. His optometrist examined him in 2004 and certified, "Based upon his current findings, and his past examinations, it is my medical opinion that Mr. VanStory is completely capable to safely operate a commercial vehicle based upon his current visual status." Mr. VanStory reported that he has driven tractor-trailer combinations for 20 years, accumulating 900,000 miles. He holds a Class AMX CDL from Texas. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

26. Harry S. Warren

Mr. Warren, 34, has amblyopia in his right eye. The best-corrected visual acuity in his right eye is 20/150 and in the left, 20/20. Following an examination in 2004, his optometrist certified, "In my medical opinion, Mr. Warren's vision is more than adequate for operating a commercial vehicle." Mr. Warren reported that he has driven straight trucks for 7 years, accumulating 700,000 miles, and tractor-trailer combinations for 11 years, accumulating 1.0 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

27. Carl L. Wells

Mr. Wells, 61, had his right eye surgically removed in 1987 due to choroidal melanoma. His best-corrected visual acuity in the left eye is 20/20. Following an examination in 2004, his optometrist certified, "I certify that Mr. Wells has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Wells reported that he has driven tractor-trailer combinations for 19 years, accumulating 2.4 million miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

28. Prince E. Williams

Mr. Williams, 66, has a macular scar in his left eye due to an infection 30 years ago. His visual acuity in the right eye is 20/20 and in the left, 20/400. Following an examination in 2004, his ophthalmologist certified, "It is in my opinion that Mr. Williams has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Williams reported that he has driven straight trucks for 20 years, accumulating 1.9 million miles. He holds a Class B CDL from Georgia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

29. Keith L. Wraight

Mr. Wraight, 57, has amblyopia in his left eye. The visual acuity in his right eye is 20/15 and in the left, 20/400. His optometrist examined him in 2004 and stated, "Patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Wraight submitted that he has driven straight trucks for 25 years, accumulating 625,000 miles, and tractor-trailer combinations for 18 years, accumulating 720,000 miles. He holds a Class AM CDL from New York. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: January 10, 2005.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 05–850 Filed 1–13–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2004–19477]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The FMCSA announces its decision to exempt 29 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: January 14, 2005.

FOR FURTHER INFORMATION CONTACT: Maggi Gunnels, Office of Bus and Truck Standards and Operations, (202) 366–4001, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at: *http://dmses.dot.gov.*

Background

On November 8, 2004, the FMCSA published a notice of receipt of exemption applications from 29 individuals, and requested comments from the public (69 FR 64806). The 29 individuals petitioned the FMCSA for exemptions from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. They are: Leonida R. Batista, Johnny Becerra, Larry W. Burnett, Ross E. Burroughs, Roger C. Carson, Lester W. Carter, Larry Chinn, Christopher L. DePuy, John B. Ethridge, Larry J. Folkerts, Randolph D. Hall, Richard T. Hatchel, Paul W. Hunter, Harold D. Jones, Lester G. Kelley II, Robert L. Lafollette, Ray P. Lenz, John M. Lonergan, Michael B. McClure, Lamont S. McCord, Francis M. McMullin, Joe L. Meredith, Jr., Norman Mullins, Harold W. Mumford, Charles R. O'Connell, Dennis R. O'Dell, Jr., Virgil A. Potts, Clarence H. Redding, and David J. Triplett.

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. Accordingly, the FMCSA has evaluated the 29 applications on their merits and made a determination to grant exemptions to all of them. The comment period closed on December 8, 2004. Two comments were received, and their contents were carefully considered by the FMCSA in reaching the final decision to grant the exemptions.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

Since 1992, the agency has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., Visual Requirements and Commercial Drivers, October 16, 1998, filed in the docket, FMCSA–98–4334.) The panel's conclusion supports the agency's view that the present visual acuity standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 29 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, a macular scar, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but 10 of the applicants were either born with their vision impairments or have had them since childhood. The 10 individuals who sustained their vision conditions as adults have had them for periods ranging from 13 to 61 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion has sufficient vision to perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 29 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 4 to 44 years. In the past 3 years, six of the drivers have had convictions for traffic violations. Five of these convictions were for speeding and three were for "failure to obey traffic sign." Five drivers were involved in a crash but did not receive a citation.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the November 8, 2004, notice (69 FR 64806). Since there were no substantial docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants is supported by the information published on November 8, 2004 (69 FR 64806).

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, the FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA–98–3637.

We believe we can properly apply the principle to monocular drivers, because data from a former FMCSA waiver study program clearly demonstrates that the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996.) The fact that experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes. (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 29 applicants receiving an exemption, we note that the applicants have had only five crashes and eight traffic violations in the last 3 years. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, the FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to the 29 applicants listed in the notice of November 8, 2004 (69 FR 64806).

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on the 29 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

The FMCSA received two comments in this proceeding. The comments were considered and are discussed below.

Ms. Barb Sashaw believes the qualifications presented for each applicant should include an ophthalmologist's statement on an FMCSA-mandated form that would include all elements that would make the vision in the better eye sufficient for driving. Also, she objected to the wording of an opinion by the optometrist regarding Applicant #8. Finally, Ms. Sashaw does not think it safe in general for monocular drivers to be allowed to operate a CMV in highly congested States, such as New Jersey, New York, Connecticut and California.

In regard to the first issue, the FMCSA believes it can rely on the medical opinions of vision specialists on whether a driver has sufficient vision to perform the tasks associated with operating a CMV, since the specialists express these opinions only after a thorough vision examination, including formal field of vision testing to identify any medical condition which may compromise the visual field, such as glaucoma, stroke or brain tumor.

In the case of Applicant #8, the optometrist stated, "I feel he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Ms. Sashaw believes the use of the word "feel" makes the statement insufficient. In the context of the requirements for statements of medical specialists described above, the FMCSA believes the optometrist expressed her medical opinion, and it can rely on that opinion regarding whether the driver's visual capacity is sufficient to enable safe operations.

In regard to the third issue, the discussion above under the heading, "Basis for Exemption Determination," explains why FMCSA believes the monocular drivers included in this notice have demonstrated their ability to drive safely in conditions similar to interstate driving by operating in intrastate commerce for 3 years prior to their applications.

Advocates for Highway and Auto Safety (Advocates) expresses continued opposition to the FMCSA's policy to grant exemptions from the FMCSRs, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which the FMCSA presents driver information to the public and makes safety determinations; (2) objects to the agency's reliance on conclusions drawn from the vision waiver program; (3) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)); and finally (4) suggests that a 1999 Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

Conclusion

Based upon its evaluation of the 29 exemption applications, the FMCSA exempts Leonida R. Batista, Johnny Becerra, Larry W. Burnett, Ross E. Burroughs, Roger C. Carson, Lester W. Carter, Larry Chinn, Christopher L. DePuy, John B. Ethridge, Larry J. Folkerts, Randolph D. Hall, Richard T. Hatchel, Paul W. Hunter, Harold D. Jones, Lester G. Kelley II, Robert L. Lafollette, Ray P. Lenz, John M. Lonergan, Michael B. McClure, Lamont S. McCord, Francis M. McMullin, Joe L. Meredith, Jr., Norman Mullins, Harold W. Mumford, Charles R. O'Connell, Dennis R. O'Dell, Jr., Virgil A. Potts, Clarence H. Redding, and David J. Triplett from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Issued on: January 10, 2005.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 05–851 Filed 1–13–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–19996; Notice 1]

Dynamic Tire Corp., Receipt of Petition for Decision of Inconsequential Noncompliance

Dynamic Tire Corp. (Dynamic Tire) has determined that certain tires it imported and which were manufactured by Tianjin Wanda Tyre Group Co., LTD., do not comply with S6.5(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New pneumatic tires for vehicles other than passenger cars." Dynamic Tire 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), Dynamic Tire 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 Dynamic Tire'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.

A total of approximately 67,864 tires produced between August 1, 2004 to December 4, 2004 are affected. S6.5(b) of FMVSS No. 119 requires that each tire shall be marked on each sidewall with "the tire identification number required by part 574 of this chapter." Part 574.5(d) requires the date code to be listed such that the first two symbols must identify the week of the year and third and fourth symbols must identify the year. The noncompliant tires reversed the order of these symbols.

Dynamic Tire believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Dynamic Tire states that "the production week * * * begins with the 31st week of 2004 which eliminates any possibility of confusion between week and year designation." Dynamic Tire further states that the tires comply with all other requirements of the Federal Motor Vehicle Safety Standards.

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, Nasif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nasif 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: February 14, 2005.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: January 10, 2005.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 05–858 Filed 1–13–05; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–19991; Notice 1]

Coupled Products, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Coupled Products, Inc. (Coupled Products) has determined that certain hydraulic brake hose assemblies that it produced do not comply with S5.3.4 and S5.3.6 of 49 CFR 571.106, Federal Motor Vehicle Safety Standard (FMVSS) No. 106, "Brake hoses." Coupled Products 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), Coupled Products 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 Coupled Product'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.

A total of approximately 7,417 brake hose assemblies are affected, utilizing a fitting identified as Part Number 12271 which was incorporated into 6,075 assemblies bearing Part Number 3381 and 1,244 assemblies bearing Part Number 3381A; plus 98 assemblies bearing a fitting with Part Number 380653.

S5.3.4 of FMVSS No. 106, tensile strength, requires that "a hydraulic brake hose assembly shall withstand a pull of 325 pounds without separation of the hose from its end fittings." S5.3.6 of FMVSS No. 106, water absorption and tensile strength, requires that "a hydraulic brake hose assembly, after immersion in water for 70 hours, shall not rupture when run continuously on a flexing machine for 35 hours."

The potentially affected hoses were manufactured during the time period of January 30, 2004 through September 10, 2004, using a "straight cup" procedure rather than the appropriate "step cup" procedure. Coupled Products states that these hoses were sold for original equipment applications. Compliance testing by the petitioner of sample hose assemblies from each of the affected part numbers revealed that they failed the tensile strength test, and also failed the water absorption and tensile strength test.

Coupled Products believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. The petitioner states the following:

> Part number 12217 is used in assemblies for SUV and pick-up truck applications. Part number 380653 is utilized for suspension lift kits. * * * [T]he hose assemblies in these applications are located in a location that is above significant pieces of vehicle hardware including the driveshaft, differential case, and fuel tank (Hardware). This configuration is such that a linear, end-to-end "straight pull" on the hose assembly, as that contained in the FMVSS No. 106 tensile strength test procedure, is not a real-life scenario. Rather than a "straight pull," it is more likely (albeit remote) that the free length of the hose itself could be entangled or caught on a piece of road debris or other obstruction, resulting in a "side pull" on the assembly. This scenario itself is remote because the underlying hardware shields the hose assembly. Therefore, if debris were to become entangled in the hose assembly, it would first have to bypass the Hardware. If that were to occur, the impact would need to be so great as to make the concern of braking potential irrelevant.
>
> Despite the fact that tensile stress on the assembly is an unlikely real life scenario, to assess the impact of this unlikely scenario, petitioner conducted a side pull tensile test on a sample of the subject brake hose assemblies to simulate the possible effect of a side pull on the integrity of the hose assembly. * * * The "side pull" test results show that the tensile load achieved prior to the ends separating from the hose exceeded 538 pounds in each of the samples analyzed for tensile results—well in excess of the 325 pound requirement.

Coupled Products states that in other cases NHTSA determined that a FMVSS No. 106 noncompliance is inconsequential where, because of the specific vehicle application involved, the hose assembly would not be subject to the type of forces specified in the standard. Coupled Product says:

> *See, e.g.*, General Motors Grant of Petition * * * 57 FR 1511 (January 14, 1992) (granting petition with respect to adhesion test noncompliance because, among other reasons, the "end use of the hoses was such that they were subject to pressure, not vacuum applications"), and Mitsubishi Motors America Grant of Petition * * * 57 FR 45868 (October 5, 1992) (same).

Coupled Products further states:

> Because the braking system on the vehicles in question utilizes a dual chamber master cylinder, any failure of the hose assembly due to excessive tensile force—unlikely as that may be—will not result in a loss of braking capability of the vehicle. Depending on the assembly affected, front or rear braking capability would still exist, although additional stopping distance might be required. Furthermore, the vehicle's emergency braking system would also exist.

Couple Products indicates that the problem has been corrected.

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: February 14, 2005.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: January 10, 2005.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 05–859 Filed 1–13–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–19257; Notice 2]

The Spares Company, Denial of Petition for Decision of Inconsequential Noncompliance

The Spares Company (Spares), has determined that air brake hose assemblies it manufactured from 2000 to 2004 do not comply with S7.2.3 of 49

CFR 571.106, Federal Motor Vehicle Safety Standard (FMVSS) No. 106, "Brake Hoses." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Spares has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Notice of receipt of the petition was published, with a 30 day comment period, on October 8, 2004 in the **Federal Register** (69 FR 60460). NHTSA received two comments.

A total of approximately 17,000 aftermarket air brake hose assemblies produced between November 2000 and June 2004 are affected. S7.2.3 of FMVSS No. 106 requires that "each air brake hose assembly made with end fittings that are attached by crimping or swaging * * * shall be labeled by means of a band around the brake hose assembly * * * [with the DOT symbol and the name of the manufacturer] or, at the option of the manufacturer, by means of labeling [of at least one end fitting which is etched, stamped or embossed with a designation that identifies the manufacturer]." The affected brake hoses do not have the manufacturer's label or a designation of the manufacturer as required by S7.2.3.

Spares manufactured these brake hose assemblies from its incorporation date in November 2000 until June 2004, when production was stopped because Spares discovered the noncompliance.

Spares believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Spares explains that the units are assembled by Spares using Goodyear-labeled hoses and RB Royal-labeled fittings. Spares states that the "brake hose assemblies meet all functional performance requirements of the standard for the hose, the fittings, and the assembly and therefore will perform exactly as intended."

Spares further states that there have been no complaints from any distributor or consumer concerning the functioning of the brake hose assemblies. Spares has begun notifying all of its distributors of the labeling defect and will provide a band for each noncomplying hose currently remaining in the distributors' possession. Also, Spares has corrected the problem.

The agency received two public comments. One was received from an individual who stated he has many years of experience in brake systems and components for air braked vehicles. He agreed with Spares' assertion that the lack of a labeling band is inconsequential to safety as long as all performance requirements of FMVSS No. 106 are met. The comment said in part:

> Spares appears to be doing the right thing in supplying labeling bands to their distributor for application onto existing inventory. It would be very difficult, if not impossible, to notify vehicle owners about hoses sold in the aftermarket * * *.

However, the fact that it may be difficult to notify vehicle owners does not lessen the consequence of the noncompliance to motor vehicle safety and therefore is not persuasive.

A second comment was from a private individual who supported not granting the petition. However, this commenter did not address the issue to be considered in determining whether to grant this petition, that is, is the effect of the noncompliance on motor vehicle safety. Therefore, this comment also was considered not to be persuasive.

This matter presents an unusual and unique notification issue. The air brake hose assemblies are not labelled to designate the manufacturer. NHTSA has reviewed the petition and has determined that the noncompliance is not inconsequential to motor vehicle safety. All brake hose assembly manufacturers are required to label their assemblies by either a band around the brake hose or by marking the end fitting with a designation that identifies the assembly manufacturer. This label is critical, since in cases where the assembly has a defect or a noncompliance the label would be the only way to identify and track the affected assemblies. Thus, the agency maintains a manufacturer identification database to ensure that each manufacturer has a unique identifier, so that in the event of a defect or noncompliance the manufacturer can be easily identified and consumers will be able to easily identify a product that may be the subject of a recall.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Spares' petition is hereby denied.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: January 10, 2005.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 05–860 Filed 1–13–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 6, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 14, 2005, to be assured of consideration.

Departmental Offices/Office of Foreign Assets Control

OMB Number: 1505–0167.

Form Numbers: TD F 90–22.52.

Type of Review: Extension.

Title: Cuban Remittance Affidavit.

Description: Submissions will provide the U.S. Government with information to be used in enforcing the prohibitions on the transmission of funds to Cuba by persons subject to U.S. jurisdiction.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 2,100,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 minute.

Frequency of Response: Other (variable).

Estimated Total Reporting/Recordkeeping Burden: 65,000 hours.

Clearance Officer: Lois K. Holland, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220, (202) 622–1563.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–823 Filed 1–13–05; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: CMIA Annual Report and Interest Calculation Cost Claims

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, 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. By this notice, the Financial Management Service solicits comments concerning the Annual Report and Interest Calculation Cost Claim request required under the provisions of the Cash Management Improvement Act (CMIA), Pub. L. 101–453, as amended.

DATES: Written comments should be received on or before March 15, 2005.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Program Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Fred Williams, Intergovernmental Programs Division, 401 14th Street, SW, Room 406D, Washington, DC 20227, (202) 874–6736.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A), the Financial Management Service solicits comments on the collection of information described below:

Title: CMIA Annual Report and Interest Calculation Cost Claims.

OMB Number: 1510–0061.

Form Number: None.

Abstract: States and Territories must report interest owed to and from the Federal government for major Federal assistance programs on an annual basis using the internet application (CMIAS). States and Territories also must report interest calculation cost claims annually using CMIAS. The data is used by Treasury and other Federal agencies to verify State and Federal interest claims, to assess State and Federal cash management practices and to exchange amounts of interest owed, and to compensate States and Territories for permissible administrative expenses.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Federal Government and State Governments.

Estimated Number of Respondents: 56.

Estimated time Per Respondent: Average of 403 hours.

Estimated Total Annual Burden Hours: 22,579.

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: January 7, 2005.

Gary Grippo,

Assistant Commissioner, Federal Finance.

[FR Doc. 05–816 Filed 1–13–05; 8:45 am]

BILLING CODE 4810–35–M

Federal Register

Friday,

January 14, 2005

Part II

Securities and Exchange Commission

17 CFR Part 275

Certain Broker-Dealers Deemed Not To Be Investment Advisers; Temporary Rule and Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release Nos. 34–50979; IA–2339; File No. S7–25–99]

RIN 3235–AH78

Certain Broker-Dealers Deemed Not To Be Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of temporary rule.

SUMMARY: The Securities and Exchange Commission is adopting a temporary rule addressing the application of the Investment Advisers Act of 1940 to broker-dealers offering certain types of brokerage programs. Under the rule, a broker-dealer providing nondiscretionary advice that is solely incidental to its brokerage services is excepted from the Investment Advisers Act regardless of whether it charges an asset-based or fixed fee (rather than commissions, mark-ups, or mark-downs) for its services. The temporary rule also provides that broker-dealers are not subject to the Investment Advisers Act solely because they offer full-service brokerage and discount brokerage services, including execution-only brokerage, for reduced commission rates. The temporary rule will expire on April 15, 2005.

DATES: Effective Date: Section 275.202(a)(11)T will be effective from January 6, 2005 to April 15, 2005.

FOR FURTHER INFORMATION CONTACT: Robert L. Tuleya, Senior Counsel, or Nancy M. Morris, Attorney-Fellow, at (202–942–0719), or *Iarules@sec.gov,* Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth St., NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission" or "SEC") is adopting temporary rule 202(a)(11)T under the Investment Advisers Act of 1940 ("Advisers Act" or "Act").[1]

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I. Discussion

On November 4, 1999, the Commission issued a release proposing for comment a new rule under the Advisers Act that responded to the introduction of two new types of brokerage programs offered by full-service broker-dealers—"fee-based brokerage programs" and "discount brokerage programs."[2] Under the proposed rule, a broker-dealer providing investment advice to customers would be excluded from the definition of investment adviser in the Act regardless of the form that its compensation takes, as long as: (i) The advice is provided on a nondiscretionary basis; (ii) the advice is solely incidental to the brokerage services; and (iii) the broker-dealer discloses to its customers that their accounts are brokerage accounts. In addition, we proposed that a broker-dealer would not be deemed to have received special compensation solely because the broker-dealer charges a commission, mark-up, mark-down, or similar fee for brokerage services that is greater than or less than one it charges another customer. The Proposing Release included a statement that, "until the Commission takes final action on the proposed rule, the Division of Investment Management will not recommend, based on the form of compensation received, that the Commission take any action against a broker-dealer for failure to treat any account over which the broker-dealer does not exercise investment discretion as subject to the Act."[3]

These new brokerage programs responded to changes in the marketplace for retail brokerage. They also addressed concerns we have long held about the incentives that commission-based compensation provides to churn accounts, recommend unsuitable securities, and engage in aggressive marketing of brokerage services.

The comments we received on the Proposing Release have raised complicated and significant issues, including what is solely incidental to brokerage and how a broker-dealer can hold itself and its services out to the public. These issues extend beyond those originally contemplated by the Proposing Release, and suggest the need to repropose the rule in the full context of what is "solely incidental" to brokerage. Accordingly, we are today issuing a companion release that requests additional comment on these issues, as well as other issues associated with the scope of the broker-dealer exception in the Act.[4] We direct interested parties to that rulemaking.

As a result of the adoption of this temporary rule, we note that the staff no-action position announced in the Proposing Release has terminated. Since rule 202(a)(11)–1 was proposed, broker-dealers have relied on the staff no-action position. Today, fee-based programs are offered by most of the larger broker-dealers and hold over $254 billion of customer assets.[5] Industry observers expect that fee-based programs will continue to grow as broker-dealers move away from transaction-based brokerage relationships that provide unsteady sources of revenue.[6] In order to avoid the disruption to broker-dealers offering these programs and to their customers who invest through them, and to provide time for further consideration of the proposal in the Companion Release, we are today adopting temporary rule 202(a)(11)T under the Advisers Act.[7]

A. Temporary Rule

Under temporary rule 202(a)(11)T, a broker-dealer providing investment advice to its brokerage customers is not required to treat those customers as advisory clients solely because of the form of the broker-dealer's compensation. The rule is available to any broker-dealer registered under the Securities Exchange Act of 1934[8] that

[1] 15 U.S.C. 80b–1. Unless otherwise noted, when we refer to the Advisers Act, or any paragraph of the Act, we are referring to 15 U.S.C. 80b of the United States Code in which the Act is published.

[2] *Certain Broker-Dealers Deemed Not to be Investment Advisers,* Investment Advisers Act Release No. 1845 (Nov. 4, 1999) [64 FR 61226 (Nov. 10, 1999)] ("Proposing Release"). We reopened the period for public comment on the proposed rule in August 2004. Investment Advisers Act Release No. 2278 (Aug. 18, 2004) [69 FR 51620 (Aug. 20, 2004)]. The comment letters are generally available for viewing and downloading on the Internet at *http://www.sec.gov/rules/proposed/s72599.shtml.* Letters are otherwise available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549 (File No. S7–25–99). In the Proposing Release, we referred to what we now term "discount brokerage" programs as "execution-only" programs. "Discount brokerage" more fully describes the programs covered by this rule.

[3] Proposing Release, *supra* note 2.

[4] Investment Advisers Act Release No. 2340 (Jan. 6, 2005) ("Companion Release").

[5] The Cerulli Edge, Managed Accounts Edition (3rd Quarter 2004).

[6] The Cerulli Edge, Managed Accounts Edition (1st Quarter 2004). *See also* Robert D. Hershey, Jr., *Investing: The Rise of the Fee-Based Account,* N.Y. Times, Jan. 27, 2002, section 3, at 6; Sara Hansard, *Demand for advice spurs switch to fees; Investors expect more than just stock tips,* Inv. News, July 29, 2002, at 6.

[7] Because of these concerns, and because the rule provides an exception, the Commission believes that immediate effectiveness is appropriate. 5 U.S.C. 553(d).

[8] 15 U.S.C. 78(a) ("Exchange Act"). Unless otherwise noted, when we refer to the Exchange Act, or any paragraph of that Act, we are referring to 15 U.S.C. 78(a) of the United States Code in which the Exchange Act is published.

satisfies two conditions: (i) The broker-dealer must not exercise investment discretion over the account from which it receives special compensation; and (ii) any investment advice must be solely incidental to the brokerage services provided to the account. The Companion Release sets out certain proposed interpretations of what services we view as solely incidental to brokerage and, as noted above, seeks comment on other issues related to this topic.

The temporary rule differs from the rule proposed in the Proposing Release in that the temporary rule does not include a requirement that broker-dealers disclose to customers that their accounts are brokerage accounts.[9] We nevertheless encourage broker-dealers to make that disclosure.

The temporary rule will expire on April 15, 2005. The Commission intends to act on the proposal set forth in the Companion Release before that time. During the period of operation of the temporary rule, a broker-dealer receiving special compensation for advisory services provided to customers must satisfy *each* of the requirements of the temporary rule to avoid application of the Advisers Act. Unless another exception is available, the failure of a broker-dealer to meet any one of the requirements of the temporary rule will result in the loss of the exception, and the likely violation by the broker-dealer of one or more provisions of the Advisers Act.

The temporary rule also contains a provision that a broker-dealer will not be considered to have received special compensation solely because the broker-dealer charges a commission, mark-up, mark-down or similar fee for brokerage services that is greater than or less than one it charges another customer.[10] This provision is intended to keep a full-service broker-dealer from being subject to the Advisers Act solely because it also offers electronic trading or other forms of discount brokerage. Conversely, a discount broker will not be subject to the Act solely because it introduces a full-service brokerage program.

B. Scope of Exception

A broker-dealer that is registered under the Exchange Act and registered under the Advisers Act is an investment adviser solely with respect to those accounts for which it provides services or receives compensation that subject the broker-dealer to the Advisers Act. This interpretation will continue to permit a broker-dealer registered under the Advisers Act to distinguish its brokerage customers from its advisory clients during the term of the temporary rule.[11]

II. Cost Benefit Analysis

The Commission is sensitive to the costs and benefits of its rules. Under the temporary rule, broker-dealers will not be deemed to be investment advisers with respect to accounts for which they receive asset-based fees, fixed fees, or similar non-commission compensation, provided that they do not exercise investment discretion over the account and their investment advice is solely incidental to the brokerage services provided to the account. The temporary rule also provides that broker-dealers are not subject to the Advisers Act solely because, in addition to full-service brokerage services, they also offer discount brokerage services, including execution-only brokerage, for reduced commission rates. These provisions of the temporary rule are designed to permit broker-dealers to continue to offer these fee-based and discount brokerage programs without triggering regulation under the Advisers Act. As discussed above, the Commission is issuing the temporary rule to avoid disruption to broker-dealers who have begun offering these accounts after a staff no-action position relating to these accounts was announced in the Proposing Release in 1999. The temporary rule is effective until April 15, 2005. While the temporary rule is in place, the Commission will review the proposed exception and related issues set out in the Companion Release.

The temporary rule imposes no costs. Broker-dealers will benefit from the temporary rule in the form of saved compliance costs they would otherwise expend on Advisers Act compliance with respect to accounts excepted from such compliance by the rule. In light of the Commission's issuance of the Companion Release requesting comment whether the exception should be incorporated into a permanent rule, these broker-dealers would face the choice whether to incur the costs of bringing these accounts into compliance with the Advisers Act now—without knowing whether such costs will be avoidable in the near future—or terminating these fee arrangements with their existing customers. These customers will similarly benefit from not having their existing account arrangements disrupted pending the Commission's consideration of comments received on the Companion Release.

III. Effects on Competition, Efficiency and Capital Formation

Section 202(c) of the Advisers Act mandates that the Commission, when engaging in rulemaking, consider whether an action is necessary or appropriate in the public interest, and to consider whether the action will promote efficiency, competition, and capital formation.[12]

As discussed above, rule 202(a)(11)T provides temporary relief from the Advisers Act to broker-dealers that offer certain fee-based brokerage programs or discount brokerage programs. Many broker-dealers have established these programs since 1999 when we issued our Proposing Release, which announced a staff no-action position relating to such programs.

As a result of the adoption of this temporary rule, we note that the staff no-action position announced in the Proposing Release has terminated. In order to avoid disruption to broker-dealers offering these programs, and to their customers who invest through them, rule 202(a)(11)T continues to except them under the Advisers Act until April 15, 2005. Given the brief duration of the temporary rule, and the fact that it does not expand the capability of broker-dealers to offer fee-based or discount brokerage programs, the temporary rule will have no effect on competition, efficiency, or capital formation.

IV. Paperwork Reduction Act

The temporary rule contains no "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[13]

V. Final Regulatory Flexibility Analysis

The Commission proposed rule 202(a)(11)–1 under the Advisers Act in the Proposing Release.[14] An Initial Regulatory Flexibility Analysis ("IRFA") was published in the Proposing Release. No comments were received specifically on the IRFA. The Commission has prepared the following Final Regulatory Flexibility Analysis ("FRFA") in accordance with 5 U.S.C. 604, regarding temporary rule 202(a)(11)T under the Advisers Act.

[9] The staff no-action position also was not conditioned on this disclosure.

[10] Rule 202(a)(11)T(a)(2).

[11] Proposing Release, *supra* note 2. *See also Final Extension of Temporary Rules,* Investment Advisers Act Release No. 626 (Apr. 27, 1978) [43 FR 19224 (May 4, 1978)].

[12] 15 U.S.C. 80b–2(c).

[13] 44 U.S.C. 3501 to 3520.

[14] Proposing Release, *supra* note 2.

A. Need for the Rule and Amendments

Section I of this Release describes the reasons for and objectives of the temporary rule. As discussed in detail above, the temporary rule is designed to permit broker-dealers to continue to maintain, on an interim basis, fee-based and discount brokerage programs which they have established in increasing numbers since our issuance of the Proposing Release in 1999, which announced a staff no-action position relating to such accounts. The temporary rule is effective until April 15, 2005, during which time the Commission will consider whether to adopt rules proposed in the Companion Release that would except these types of accounts, and related issues.

B. Significant Issues Raised by Public Comment

The Commission received over 1,700 letters from commenters in response to the Proposing Release and a subsequent request for additional comments. Most commenters addressed provisions under proposed rule 202(a)(11)–1 pertaining to fee-based brokerage programs. Among those commenting on proposed rule 202(a)(11)–1, broker-dealers strongly supported it, while a large number of investment advisers and, in particular, financial planners, strongly opposed the proposal. The Commission specifically requested comments with respect to the IRFA, but did not receive any comments addressing the IRFA. The Commission did, however, receive a limited number of comments that discussed the effect proposed rule 202(a)(11)–1 might have on smaller broker-dealers, although these commenters did not address whether their comments pertained to entities that would be small businesses for purposes of Regulatory Flexibility Act analysis. These commenters argued that the inapplicability of the fee-based account exception to discretionary accounts disproportionately affects the competitiveness of certain smaller broker-dealers that assertedly rely on discretionary services to set themselves apart from larger broker-dealers.

C. Small Entities

Temporary rule 202(a)(11)T under the Advisers Act applies to all brokers-dealers offering fee-based and discount brokerage programs on an interim basis that are registered with the Commission, including small entities. In developing the temporary rule we have considered its potential effect on small entities. Under Commission rules, for purposes of the Regulatory Flexibility Act, a broker-dealer generally is a small entity if it had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared, and it is not affiliated with any person (other than a natural person) that is not a small entity.[15]

The Commission estimates that as of December 31, 2003, approximately 905 Commission-registered broker-dealers were small entities.[16] The Commission is not aware of any small entities that are re-pricing their brokerage services in a manner that rule 202(a)(11)T addresses, but assumes for purposes of this FRFA that all of these small entities could rely on the exception provided by the rule.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The provisions of rule 202(a)(11)T, pertaining to the new types of brokerage accounts, impose no new reporting, recordkeeping, or compliance requirements. Rule 202(a)(11)T is designed to prevent regulatory burdens from being imposed on broker-dealers under the Advisers Act on an interim basis, pending the Commission's consideration of the exception in the Companion Release.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities.[17] In connection with the temporary rule the Commission considered the following alternatives: (a) The use of performance rather than design standards; and (b) an exemption from coverage of the rule, or any part thereof, for such small entities.[18]

With respect to the first alternative, the Commission believes that the compliance requirements contained in the temporary rule already appropriately use performance standards instead of design standards. The temporary rule is crafted to make regulation under the Advisers Act turn on the nature of the services performed by a broker-dealer rather than on the type of compensation involved. Thus, eligibility for the rule's exception hinges on the services performed by the broker-dealer.

With respect to the second alternative, the Commission believes that exempting small entities would be inappropriate. To the extent rule 202(a)(11)T allows broker-dealers to avoid regulatory burdens that might otherwise be imposed on broker-dealers during the Commission's consideration of comments received on the Companion Release, small entities, as well as large entities, will benefit from the rule. Small broker-dealers should be permitted to enjoy this benefit to the same extent as larger broker-dealers. The Commission also believes that commenters' suggestions to exempt small entities from one of the conditions for applicability of the fee-based account exception—that the broker-dealer not exercise investment discretion over the account—would be inconsistent with the Commission's objectives under the temporary rule.

VI. Statutory Authority

Our authority to adopt the temporary rule is based on section 202(a)(11)(F) of the Advisers Act, which expressly allows the Commission to except persons—in addition to those already excepted by sections 202(a)(11)(A)–(E)—that the definition of investment adviser was not intended to cover.[19] We are also acting pursuant to section 211(a) of the Advisers Act, which gives us the authority to classify, by rule, persons and matters within our jurisdiction and to prescribe different requirements for different classes of persons, as necessary or appropriate to the exercise of our authority under the Act. Additionally, section 206A of the Advisers Act gives us the authority, by rules and regulations, to exempt any person or transaction, or any class or classes of persons or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if such exemption is necessary or appropriate in the public interest and

[15] 17 CFR 240.0–10(c).

[16] This estimate is based on the most recent information available, as provided in Form X–17A–5 Financial and Operational Combined Uniform Single Reports filed pursuant to Section 17 of the Exchange Act and Rule 17a–5 thereunder.

[17] 5 U.S.C. 603(c).

[18] Rule 202(a)(11)T does not contain any reporting, recordkeeping, or compliance requirements. Accordingly, the Commission did not consider (a) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; or (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities.

[19] Because we are using our authority under section 202(a)(11)(F), broker-dealers relying on the temporary rule would not be subject to state adviser statutes. Section 203A(b)(1)(B) of the Advisers Act provides that "[n]o law of any State or political subdivision thereof requiring the registration, licensing, or qualification as an investment adviser or supervised person of an investment adviser shall apply to any person * * * that is not registered under [the Advisers Act] *because that person is excepted from the definition of an investment adviser under section 202(a)(11).*" (emphasis added).

consistent with the protection of investors and the purposes of the Act.

List of Subjects in 17 CFR Part 275

Investment advisers, Reporting and recordkeeping requirements.

Text of Rule

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 1. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

■ 2. Section 275.202(a)(11)T is added to read as follows:

§ 275.202(a)(11)T Temporary rule regarding certain broker-dealers.

(a) A broker or dealer registered with the Commission under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78a) (the "Exchange Act"):

(1) Will not be deemed to be an investment adviser based solely on its receipt of special compensation, provided that:

(i) The broker or dealer does not exercise investment discretion, as that term is defined in section 3(a)(35) of the Exchange Act (15 U.S.C. 78c(a)(35)), over accounts from which it receives special compensation; and

(ii) Any investment advice provided by the broker or dealer with respect to accounts from which it receives special compensation is solely incidental to the brokerage services provided to those accounts; and

(2) Will not be deemed to have received special compensation solely because the broker or dealer charges a commission, mark-up, mark-down or similar fee for brokerage services that is greater than or less than one it charges another customer.

(b) A broker or dealer registered with the Commission under section 15 of the Exchange Act is an investment adviser solely with respect to those accounts for which it provides services or receives compensation that subject the broker or dealer to the Advisers Act.

(c) This temporary section shall expire on April 15, 2005.

By the Commission.

Dated: January 6, 2005.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 05–602 Filed 1–13–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release Nos. 34–50980; IA–2340; File No. S7–25–99]

RIN 3235–AH78

Certain Broker-Dealers Deemed Not To Be Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is reproposing a rule addressing the application of the Investment Advisers Act of 1940 to broker-dealers offering certain types of brokerage programs. Under the reproposed rule, a broker-dealer providing nondiscretionary advice that is solely incidental to its brokerage services is excepted from the Investment Advisers Act regardless of whether it charges an asset-based or fixed fee (rather than commissions, mark-ups, or mark-downs) for its services. The rule would also state that exercising investment discretion is not solely incidental to brokerage business, and thus, a broker-dealer providing discretionary advice would be deemed to be an investment adviser under the Investment Advisers Act. In addition, under the rule, broker-dealers would not be subject to the Investment Advisers Act solely because they offer full-service brokerage and discount brokerage services, including electronic brokerage, for reduced commission rates. Finally, the Commission is proposing to issue a statement of interpretive position that would clarify when certain broker-dealer advisory services, including financial planning, are solely incidental to brokerage business.

DATES: Comments should be received on or before February 7, 2005.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–25–99 on the subject line; or

• Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–25–99. 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/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. 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.

FOR FURTHER INFORMATION CONTACT: Robert L. Tuleya, Senior Counsel, or Nancy M. Morris, Attorney-Fellow, at 202–942–0719, or Iarules@sec.gov, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth St., NW., Washington, D.C. 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission" or "SEC") is proposing rule 202(a)(11)-1 under the Investment Advisers Act of 1940 ("Advisers Act" or "Act").[1] We are also requesting comment on interpretive positions under section 202(a)(11)(C) of the Act.

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I. Background

The Advisers Act regulates the activities of certain "investment advisers," which are defined in section 202(a)(11) as persons who receive compensation for providing advice about securities as part of a regular business.[2] Section 202(a)(11)(C) of the Advisers Act excepts, from the definition, a broker or dealer "whose performance of [advisory] services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor." The broker-dealer exception "amounts to a recognition that brokers and dealers commonly give a certain amount of advice to their customers in the course of their regular business and that it would be inappropriate to bring them within the scope of the [Advisers Act] merely because of this aspect of their business." [3]

Many securities firms currently are registered with us under both the Securities Exchange Act of 1934 [4] (as broker-dealers) and the Advisers Act (as advisers), but treat only certain of their accounts as subject to the Advisers Act. We have viewed the Advisers Act, and the protections afforded by the Act, as applying only to those accounts to which the broker-dealer provides investment advice that is not solely incidental to brokerage services or from which the firm receives special compensation (or both).[5]

On November 4, 1999, the Commission issued a release proposing for comment a new rule under the Advisers Act in response to the introduction of two new types of brokerage programs offered by full-service broker-dealers "fee-based brokerage programs" and "discount brokerage programs." [6] The rulemaking addressed whether, as a result of introducing these programs, broker-

[1] 15 U.S.C. 80b. Unless otherwise noted, when we refer to the Advisers Act, or any paragraph of the Act, we are referring to 15 U.S.C. 80b of the United States Code in which the Act is published.

[2] For a discussion of the scope of the Advisers Act, see *Applicability of the Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services*, Ivnestment Advisers Act Release No. 1092 (Oct. 8, 1987) [52 FR 38400 (Oct. 16, 1987)] ("Advisers Act Release No. 1092").

[3] *See Opinion of the General Counsel relating to Section 202(a)(11)(C) of the Ivnestment Advisers Act of 1940*, Investment Advisers Act Release No. 2 (Oct. 28, 1940) [11 FR 10996 (Sept. 27, 1946)] ("Advisers Act Release No. 2").

[4] 15 U.S.C. 78a ("Exchange Act").

[5] *Final Extension of Temporary Rules*, Investment Advisers Act Release No. 626 (Apr. 27, 1978) [43 FR 19224 (May 4, 1978)] ("Advisers Act Release No. 626") ("A broker or dealer who is registered as an investment adviser is not by reason of that fact an ivnestment adviser to those of his brokerage clients to whom he provides advisory services on a solely incidental basis and without special compensation.").

[6] In the Proposing Release, we referred to what we not term "discount brokerage" programs as "execution-only" programs. Proposing Release, *supra* note 5. "Discount brokerage" more fully describes the programs referenced in this Release.

dealers would be unable to rely on the broker-dealer exception of the Advisers Act. If so, some broker-dealers would be required to register under the Act, while those already registered would be required to treat customers with such accounts as advisory clients and also as brokerage customers.

Fee-based brokerage programs provide customers a package of brokerage services "including execution, investment advice, custodial and recordkeeping services "for a fee based on the amount of assets on account with the broker-dealer (*i.e.*, an asset-based fee) or a fixed fee. Asset-based fees generally range from 1.10 percent to 1.50 percent of assets.[7] A broker-dealer receiving fee-based compensation may be unable to rely on the broker-dealer exception because the fee constitutes "special compensation" under the Act—that is, it involves the receipt by a broker-dealer of compensation other than brokerage commissions or dealer compensation (*i.e.*, mark-up, mark-down, or similar fee).[8]

Discount brokerage programs, including electronic trading programs, give customers who do not want or need advice from brokerage firms the ability to trade securities at a lower commission rate. Electronic trading programs provide customers the ability to trade on-line, typically without the assistance of a registered representative, from any personal computer connected to the Internet. Customers trading electronically may devise their own investment or trading strategies, or may seek advice separately from investment advisers. The introduction of electronic trading and other discount services at a lower commission rate may trigger application of the Advisers Act to any full-service accounts for which the broker-dealer provides some investment advice. This is because the difference in the commission rates represents a clearly definable portion of the brokerage commission that may be primarily attributable to investment advice. Our staff has viewed such a two-tiered fee structure as involving "special compensation" under the Advisers Act.[9]

After reviewing these new programs, we concluded that they were not fundamentally different from traditional brokerage programs. As a general matter, fee-based brokerage programs offer the same general package of services as commission-based brokerage programs. Electronic and other discount brokerage programs, for their part, do not offer any advisory service, but merely make visible that which has always been understood: A portion of the commissions charged by full-service broker-dealers compensate the broker-dealers for advisory services. Thus, we viewed broker-dealers offering these new programs as having re-priced traditional brokerage programs rather than as having created advisory programs.[10]

We were concerned that application of the Advisers Act to broker-dealers offering these new programs would inhibit the development of these programs, which we viewed as potentially providing important benefits to brokerage customers. Most importantly, we believed Congress could not have intended to subject full-service broker-dealers offering these programs to the Advisers Act when, in conducting these programs, broker-dealers offer advice as part of traditional brokerage services.

Under the 1999 proposed rule, a broker-dealer providing investment advice to customers would be excluded from the definition of investment adviser regardless of the form that its compensation takes as long as: (i) The advice is provided on a nondiscretionary basis; (ii) the advice is solely incidental to the brokerage services; and (iii) the broker-dealer prominently discloses to its customers that their accounts are brokerage accounts. These provisions of the proposed rule were designed to make application of the Advisers Act turn more on the nature of the services provided by the broker than on the form of the broker's compensation.

In addition, we proposed that a broker or dealer would not be deemed to have received special compensation solely because the broker or dealer charges a commission, mark-up, mark-down, or similar fee for brokerage services that is greater than or less than one it charges another customer. This provision was designed to permit full-service broker-dealers to offer discounted brokerage, including electronic trading, without having to treat full-price, full-service brokerage customers as advisory clients.[11]

These new brokerage programs responded to changes in the market place for retail brokerage.[12] They also responded to concerns we have long held about the incentives that commission-based compensation provides to churn accounts, recommend unsuitable securities, and engage in aggressive marketing of brokerage services. These concerns led to the formation, in 1994, of a broad-based committee ("Tully Committee") whose mandate was to identify conflicts of interest in brokerage industry compensation practices and "best" practices in compensating registered representatives.[13] The Tully Committee found that fee-based compensation would better align the interests of broker-dealers and their clients and would allow registered representatives to focus on their most important role—providing investment advice to individual clients, not generating transaction revenues.[14]

Over the years, many of our enforcement cases and many investor losses can be traced to individual representatives responding to the need to generate commissions rather than service customers.[15] These new fee-

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[7] The Cerulli Edge, Managemed Accounts Edition (1st Quarter 2004) at 2 ("Cerulli Edge 1st Quarter".)

[8] *See* S. Rep. No. 76–1775, 76th Cong., 3d Sess. 22 (1940) ("S. Rep. No. 76–1775") (section 202(a)(11)(C) of the Advisers Act applies to broker-dealers "insofar as their advice is merely incidental to brokerage transactions for which they recieve on*ly* brokerage commission.") (emphasis added). *See also Disclosure by Investment Advisers Regarding Wrap Fee Programs*, Investment Advisers Act Release No. 1401 (Jan. 13, 1994) at n.2. Our references in this release to "commission-based brokerage" include transactions effected on a prinipal basis for which the broker-delaer is compensated by a mark-up or mark-down.

[9] Advisers Act Release No. 626, *supra* note 5; Advisers Act Release No. 2, *supra* note 3; Robert S. Strevell, SEC Staff No-Action Letter (Apr. 29, 1985) ("Strevell No-Action Letter") ("If two general fee schedules are in effect, either formally or informally, the lower without investment advice and the higher with investment advice, and the difference is primarily attributable to this factor there is special compensation.").

[10] For a discussion of "traditional brokerage services" and "traditional brokerage programs" *see infra* note 42 and accompanying text.

[11] We also proposed an amendment to the instructions for Advisers Act Form ADV [17 CFR part 279] regarding calculation of assets under management for investment advisers dually registered as broker-dealers. Proposing Release, *supra* note 5, at II.B. This proposal was effectively incorporated into the instructions of the new Form ADV adopted by the Commission in September 2000, and is, therefore, not further addressed in this release. *See Electronic Filing by Investment Advisers;Amendments to Form ADV*, Investment Advisers Act Release No. 1897 (Sept. 12, 2000) (65 FR 57438 (Sept. 22, 2000)].

[12] *See* Patrick McGeehan, *The Medio Business: Advertising, Schwab Takes Another Kind of Swipe ot the Big Wall Street Firms in a New Compoign*, N.Y. TIMES, Aug. 28, 2000, at C11; Jack White and Doug Ramsey, *A Belle Epoque for Woll Street*, BARRON'S, Oct. 18, 1999, at 54; John Steele Gordon, *Manoger's Journal: Merrill Lynch Once Led Woll Street. Now It's Cotching Up*, WALL ST. J., June 14, 1999, at A20.

[13] *Report of the Committee on Compensotion Practices* (Apr. 10, 1995) ("Tully Report"). The committee was formed in 1994 at the suggestion of Commission Chairman Arthur Levitt.

[14] *Id.*

[15] *See, e.g., In the Motter of the Application of Michoel T. Studer*, Securities Exchange Act Release No. 50543 (Oct. 14, 2004) (churning customer account); *In the Motter of Robert H. Wolfson*, Securities Exchange Act Release No. 41831 (Sept.

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based programs offered at least a partial solution to an age-old problem facing investors, the Commission, and the securities firms themselves. We included in the Proposing Release a statement that our staff would not recommend, based on the form of compensation received, that the Commission take any action against a broker-dealer for failure to treat any account over which the broker-dealer does not exercise investment discretion as subject to the Advisers Act.[16]

Twenty-five letters were submitted during the comment period. Following the close of the comment period, however, we received hundreds more letters, most of which opposed the rule, and many of which appeared to be form letters. Some commenters wrote multiple letters. In view of ongoing and significant public interest in the proposal, and in order to provide all persons who were interested in this matter a current opportunity to comment, we reopened the period for public comment on the proposed rule in August 2004.[17] In all, we have received over 1,700 comment letters on the proposal.[18]

Most commenters discussed only the provisions of the rule that addressed fee-based brokerage programs. Broker-dealers commenting on the rule strongly supported it.[19] They asserted that fee-based brokerage programs benefited customers by aligning the interests of representatives with those of their customers.[20] According to some of these broker-dealers, the application of the Advisers Act would discourage the introduction of fee-based programs by imposing what these brokerage firms viewed to be a duplicative and unnecessary regulatory regime.[21] Other commenters argued that investors do not lose relevant protections when they deal with a brokerage firm instead of an advisory firm.[22]

A large number of investment advisers—in particular, financial planners—and a few consumer groups submitted letters strongly opposed to the proposed rule.[23] Some of these commenters took issue with our conclusions that the new programs do not differ fundamentally from traditional brokerage programs.[24] These and other commenters argued that the broker-dealers that would be affected by the rule are providing advisory services similar to, or the same as, those that investment advisers provide and thus should be subject to the Advisers Act.[25] Many of these commenters asserted that the adoption of the rule would deny investors important protections provided by the Act, in particular, the fiduciary duties and disclosure obligations to which advisers are held.[26] Another theme among many opponents of the rule was the perceived competitive implications for financial planners, which would generally be subject to the Act, while broker-dealers would not.[27]

Some opponents of the rule urged that the form of compensation remained a good indicator of whether an account should be treated as an advisory account.[28] Others, however, agreed with the Proposing Release that compensation was no longer a valid distinction.[29] Many commenters focused on whether and when advisory services can be considered "solely incidental to" brokerage and urged us to provide guidance on the meaning of the "solely incidental to" requirement.[30] In this regard, these and other commenters urged us to focus on how broker-dealers held themselves out to investors.[31]

2, 1999) (consent) (churning customer account and making unsuitable recommendations); *In the Matter of J.B. Hanauer & Co.*, Securities Exchange Act Release No. 41832 (Sept. 2, 1999) (consent) (churning customer accounts and making unsuitable recommendations); *In the Matter of John M. Reynolds*, Securities Exchange Act Release No. 30036 (Dec. 4, 1991) (engaging in excessive trading and purchasing unsuitable securities); *In the Matter of Victor G. Matl*, Securities Exchange Act Release No. 22395 (Sept. 10, 1985) (consent) (churning customer accounts and making unsuitable recommendations). Individual investors may also bring private claims. *See, e.g., Saxe* v. *E.F. Hutton & Company, Inc.*, 789 F.2d 105 (2d Cir. 1986).

[16] Proposing Release, *supra* note 5. In a companion release we are today adopting a temporary rule under which a broker-dealer providing non-discretionary advice to customers would be excluded from the definition of investment adviser under the Advisers Act regardless of the form its compensation takes, as long as the advice is solely incidental to the brokerage services. As a result of the adoption of this temporary rule, the staff no-action position announced in the Proposing Release has terminated.

[17] Investment Advisers Act Release No. 2278 (Aug. 18, 2004) [69 FR 51620 (Aug. 20, 2004)]. The reopened comment period closed on September 22, 2004. In our release reopening the comment period, we also noted that The Financial Planning Association had filed a petition for judicial review of the proposal. *Financial Planning Ass'n* v. *SEC*, No. 04–1242 (D.C. Cir.) (case docketed on July 20, 2004).

[18] These comment letters are generally available for viewing and downloading on the Internet at http://www.sec.gov/rules/proposed/s72599.shtml. Letters are otherwise available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549 (File No. S7–25–99).

[19] *See, e.g.*, Comment Letter of Merrill, Lynch, Pierce, Fenner & Smith Incorporated (Sept. 22, 2004) ("Merrill Lynch Sept. 22, 2004 Letter"); Comment Letter of Raymond James Financial, Inc. (Sept. 21, 2004); Comment Letter of Northwestern Mutual Investment Services, LLC (Sept. 22, 2004); Comment Letter of Smith Barney Citigroup (Jan. 14, 2000) ("Smith Barney Letter"). *See also* Comment letter of Securities Industry Association (Sept. 22, 2004) ("SIA Sept. 22, 2004 Letter") (representing broker-dealers).

[20] Comment Letter of Citigroup Global Markets Inc. (Sept. 22, 2004) ("CGMI Letter"); Comment Letter of Charles Schwab & Co. (Sept. 22, 2004) ("Charles Schwab Sept. 22, 2004 Letter"); Comment Letter of Securities Industry Association (Sept. 13, 2000); ("SIA Sept. 13, 2000 Letter"); Comment Letter of Securities Industry Association (Aug. 5, 2004).

[21] CGMI Letter, *supra* note 20, Merrill Lynch Sept. 22, 2004 Letter, *supra* note 19; Comment Letter of Securities Industry Association (Jan. 13, 2000).

[22] *E.g.*, Comment Letter of Hardy Callcott (Aug. 23, 2004); SIA Sept. 22, 2004 Letter, *supra* note 19.

[23] *E.g.*, Comment Letter of Carl Kunhardt (Dec. 28, 1999); Comment Letter of Pamela A. Jones (Jan. 4, 2000) ("Jones Letter"); Comment Letter of Investment Counsel Association of America (Jan. 12, 2000) ("ICAA Jan. 12, 2000 Letter") (representing SEC-registered investment advisers); Comment Letter of Consumer Federation of America (Jan. 13, 2000) ("CFA Jan. 13, 2000 Letter"); Comment Letter of The Financial Planning Association (Jan. 14, 2000) ("FPA Jan. 14, 2000 Letter") (representing financial planners); Comment Letter of AARP (Nov. 17, 2003) ("AARP Letter"); Comment Letter of PFPG Fee-Only Advisors (June 21, 2004); Comment Letter of Timothy M. Montague (Sept. 10, 2004); Comment Letter of William S. Hrank (Sept. 20, 2004); Comment Letter of Marilyn C. Dimitroff (Sept. 21, 2004) ("Dimitroff Letter").

[24] *E.g.*, FPA Jan. 14, 2000 Letter, *supra* note 23.

[25] *See, e.g.*, Comment Letter of Arthur V. von der Linden (May 10, 2000); CFA Jan. 13, 2000 Letter, *supra* note 23; FPA Jan. 14, 2000 Letter, *supra* note 23; ICAA Jan. 12, 2000 Letter, *supra* note 23.

[26] *See, e.g.*, Comment Letter of American Institute of Certified Public Accountants (Sept. 22, 2004) ("AICPA Sept. 22, 2004 Letter"); CFA Jan. 13, 2000 Letter, *supra* note 23; FPA Jan. 14, 2000 Letter, *supra* note 23.

[27] *See, e.g.*, Comment Letter of Dan Jamieson (June 1, 2000); Comment Letter of Joel P. Bruckenstein (May 31, 2000); Comment Letter of Margaret Lofaro (May 8, 2000); Comment Letter of Shawnee Barbour (Sept. 13, 2004); Comment Letter of Roselyn Wilkinson (Sept. 13, 2004); Comment Letter of Robert J. Lindner (Sept. 14, 2004); Comment Letter of Robert Lawson (Sept. 16, 2004); Comment Letter of Linda Patchett (Sept. 20, 2004) ("Patchett Letter"); Comment Letter of John Ellison (Sept. 20, 2004); Comment Letter of Connie Brezik (Sept. 18, 2004); Comment Letter of Keven M. Doll (Sept. 20, 2004); Comment Letter of Phoebe M. White (Sept. 20, 2004); Comment Letter of Eric G. Shisler (Sept. 20, 2004); Comment Letter of Jami M. Thornton (Sept. 20, 2004); *see also* Comment Letter of Consumer Federation of America (Feb. 28, 2000) ("CFA Feb. 28, 2000 Letter").

[28] Comment Letter of Investment Counsel Association of America (Sept. 22, 2004) ("ICAA Sept. 22, 2004 Letter"); CFA Feb. 28, 2000 Letter, *supra* note 27; Comment Letter of Federated Investors, Inc. (Jan. 14, 2000) ("Federated Letter").

[29] *See, e.g.*, Comment Letter of Gilmond & Gilmond Financial Consulting Associates, Ltd. (Dec. 31, 1999).

[30] AICPA Sept. 22, 2004 Letter, *supra* note 26; Comment Letter of The Financial Planning Association (June 21, 2004) ("FPA June 21, 2004 Letter"); Comment Letter of Consumer Federation of America (Nov. 4, 2004); ICAA Jan. 12, 2000 Letter, *supra* note 23.

[31] Comment Letter of National Association of Personal Financial Advisors (Sept. 21, 2004) (NAPFA Letter"); Comment Letter of Charles O'Connor (Sept. 14, 2004); Comment Letter of Abbas A. Heydri (Sept. 16, 2004) ("Heydri Letter"); Patchett Letter, *supra* note 27; Comment Letter of Henry L. Woodward (Sept. 21, 2004); Dimitroff Letter, *supra* note 23; Comment Letter of North American Securities Administrators Association, Inc. (Oct. 6, 2004) ("NASAA Letter"); AICPA Sept. 22, 2004 Letter, *supra* note 26; ICAA Sept. 22, 2004

Some commenters suggested that broker-dealers relying on the rule should be prohibited from advertising their advisory services entirely.[32] In a related vein, many commenters urged us to strengthen the disclosure required of broker-dealers availing themselves of the exception.[33]

II. Discussion of Reproposal

The many comments we received have caused us to re-consider our proposed rule. We share commenters' concern that investors are confused about the differences between brokerage and advisory accounts and, as discussed below, we are proposing stronger disclosure. We are requesting comment on whether broker-dealers have contributed to this confusion when they refer to their representatives as "financial advisors," "financial consultants" or similar titles, and we are requesting comment on this issue. We agree with the many commenters who urged us to develop better and clearer guidance on when a broker's advisory activities are "solely incidental to" its brokerage business, and are seeking additional comment on guidance we might provide.

We continue, however, to believe that fee-based brokerage has the potential to provide significant benefits to brokerage customers. Our reproposal therefore reflects our belief that when broker-dealers offer advisory services as part of the traditional package of brokerage services, broker-dealers ought not to be subject to the Advisers Act merely because they re-price those services. The reproposal also reflects our belief that broker-dealers should be permitted to offer both full-service brokerage and discount brokerage services without triggering application of the Advisers Act. The reproposal also reflects our belief that a broker-dealer providing discretionary advice would be deemed to be an investment adviser under the Advisers Act. We look forward to learning commenters' views on these matters.

A. Fee-Based Brokerage Programs

Commenters on our original proposal generally fell into two groups—one representing broker-dealers and the other representing investment advisers, including financial planners. These two groups viewed the development of fee-based brokerage accounts through different lenses, and came to entirely different conclusions. Advisers saw the introduction of fee-based brokerage programs as the culmination of a migration from a relationship primarily characterized by customers paying for brokerage transactions to one in which advisory services predominate—a shift they viewed as dramatic.[34] They held up broker-dealers" marketing of these accounts based on the quality of advisory services as evidence that these were, in essence, primarily advisory accounts and urged that we, therefore, treat them as advisory accounts.[35] Broker-dealers viewed the new fee-based programs as providing the same services, including investment advice, they have traditionally provided to customers.[36] While they acknowledged that these programs have generally been marketed based on the advice involved, some of these commenters pointed out that broker-dealers have long sold retail brokerage by promoting ancillary services such as advice.[37] They were concerned that a view of the broker-dealer exception that turned on whether full-service brokerage accounts were marketed to any extent based on the provision of advice would require that we treat all full-service accounts as advisory accounts. Broker-dealers did not view the change in the pricing of brokerage accounts as significant except insofar as it better aligns the interests of registered representatives with those of their customers.[38] We request further comment on these differing views of the practices of broker-dealers and the implications for our rulemaking. As discussed below, we believe that commenters have raised important issues that concern us and should concern all market participants. We are therefore reproposing the rule. Before we discuss the elements of the reproposed rule, however, we draw attention to five areas that we consider to be important to our decision whether to adopt a final rule.

1. History of the Broker-Dealer Exception

Broker-dealers have traditionally provided investment advice that is substantial in amount, variety, and importance to their customers.[39] This was well understood in 1940 when Congress passed the Advisers Act. The broker-dealer exception in the Act was designed not to except broker-dealers whose advice to customers is minor or insignificant, but rather to avoid additional and duplicative regulation of broker-dealers,[40] which were regulated under provisions of the Exchange Act that had been enacted six years earlier.[41] The exception also differentiated between advice provided by broker-dealers to customers as part of a package of traditional brokerage services[42] for

Letter, *supra* note 28; CFA Jan. 13, 2000 Letter, *supra* note 23; Jones Letter, *supra* note 23.

[32] *E.g.*, AARP Letter, *supra* note 23.

[33] *E.g.*, Comment Letter of the CFP Board (Jan. 13, 2000); FPA Jan. 14, 2004 Letter, *supra* note 23: FPA Letter June 21, 2004, *supra* note 30; ICAA Jan. 12, 2000 Letter, *supra* note 23. *See also* NAPFA Letter, *supra* note 31. Some commenters also took issue with the policy judgment underlying the rule, arguing that it departs from the design of the securities laws to protect investors. FPA Jan. 14, 2000 Letter, *supra* note 23; Comment Letter of the Financial Planning Association (June 24, 2004); Comment Letter of T. Rowe Price Associates, Inc. (Jan. 14, 2000) ("T. Rowe Price Jan. 14, 2000 Letter"). Other commenters challenged our authority to adopt the rule, arguing that it is inconsistent with the Congressional intent embodied in section 202(a)(11) of the Advisers Act. Comment Letter of The Financial Planning Association (Dec. 7, 2001) ("FPA Dec. 7, 2001 Letter"); CFA Jan. 13, 2000 Letter, *supra* note 23; Comment Letter of Joseph Capital Management, LLC (Aug. 30, 2004).

[34] *See, e.g.*, Federated Letter, *supra* note 28; ICAA Jan. 12, 2000 Letter, *supra* note 23; CFA Feb. 28, 2000 Letter, *supra* note 27; FPA Jan. 14, 2000 Letter, *supra* note 23; Comment Letter of Jared W. Jameson (Sept. 16, 2004); Comment Letter of Geoffrey F. Fosie (Sept. 22, 2004). *See also* CFA Jan. 13, 2000 Letter, *supra* note 23; Comment Letter of the Foundation for Fiduciary Studies (Sept. 12, 2004).

[35] *See, e.g.*, Comment Letter of Roy T. Diliberto (Aug. 24, 2004); Comment Letter of Don B. Akridge (Sept. 7, 2004); Comment Letter of William K. Dix, Jr. (Sept. 21, 2004) ("Dix Letter"). *See also* CFA Jan. 13, 2000 Letter, *supra* note 23.

[36] *See, e.g.*, Comment Letter of Paine Webber Incorporated (Jan. 14, 2000) ("Paine Webber Letter"); Comment Letter of U.S. Bancorp Piper Jaffray Inc. (Jan. 19, 2000) ("U.S. Bancorp Letter"); Comment Letter of Prudential Securities Incorporated (Jan. 31, 2000) ("Prudential Letter"); Merrill Lynch Sept. 22, 2004 Letter, *supra* note 19.

[37] *See, e.g.*, U.S. Bancorp Letter, *supra* note 36; Prudential Letter, *supra* note 36. One commenter opposed to the rule pointed to specific advertising campaigns as evidence that "over at least the last decade" broker-dealers have, in their view, inappropriately been permitted to market themselves as though their primary service offered was advice. CFA Jan. 13, 2000 Letter, *supra* note 23.

[38] *See, e.g.*, U.S. Bancorp Letter, *supra* note 36; Prudential Letter, *supra* note 36; CGMI Letter, *supra* note 20; Merrill Lynch Sept. 22, 2004 Letter, *supra* note 19; SIA Sept. 22, 2004 Letter, *supra* note 19.

[39] Charles F. Hodges, WALL STREET (1930) ("WALL STREET") at 253–85; Twentieth Century Fund, The SECURITY MARKETS ("SECURITY MARKET") (1935) 633–43.

[40] Research Department of the Illinois Legislative Council, *Statutory Regulation of Investment Advisers* (prepared by the Research Department of the Illinois Legislative Council) reprinted in *Investment Company Act: Hearings Before a Subcomm. of the Senate Committee on Banking and Currency*, at 1007 (1940), 76th Cong. 3d Sess.; *The Advisers Act: Hearings on H.R. 10065 Before a Subcomm. of the House Comm. on Interstate and Foreign Commerce*, 76th Cong., at 88 (1940) ("Hearings on H.R. 10065").

[41] 48 Stat. 881, Pub. L. 73–291 (June 6, 1934). Four years later in the Maloney Act, Congress amended the Exchange Act to authorize the Commission to register national securities associations. Pub. L. 75–719, 52 Stat. 1070 (June 25, 1938).

[42] Then, as now, brokerage services included services provided throughout the execution of a securities transaction, including providing research and advice prior to a decision to buy or sell, implementing that decision on the most advantageous terms and executing the transaction, arranging for delivery of securities by the seller and

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which customers paid fixed commissions "which was not covered by the Advisers Act,[43] and advice provided through broker-dealer's special advisory departments for which customers separately contracted and paid a fee "which was covered by the Act.[44] Although, as discussed above, the Advisers Act was written in such a way to cover fee-based programs because the fee would constitute "special compensation," it does not appear to have been Congress" intent to apply the Act to cover broker-dealers providing advice as part of the package of brokerage services they provide under fee-based brokerage programs.

The Advisers Act was enacted in an era when broker-dealers were paid fixed commission rates for the traditional package of services (including investment advice), and Congress understood "special compensation" to mean non-commission compensation.[45] There is no evidence that the "special compensation" requirement was included in section 202(a)(11)(C) for any purpose beyond providing an easy way of accomplishing the underlying goal of excepting only advice that was provided as part of the package of traditional brokerage services.[46] In particular, neither the legislative history of section 202(a)(11)(C) nor the broader history of the Advisers Act as a whole, considered in light of contemporaneous industry practice, suggests that, in 1940, Congress viewed the form of compensation for the services at issue—commission versus fee-based compensation—as having any independent relevance in terms of the advisory services the Act was intended to reach.

Thus, our reading of the legislative history in the context of brokerage industry practice at the time the Act was passed suggests that in drawing the line to determine when broker-dealers should be subject to the Advisers Act, we should focus our attention on the package of services offered by broker-dealers, including advisory services, rather than on the significance or importance of those advisory services within the context of that package. Because fee-based brokerage programs offer substantially the same package of services offered as part of traditional full service brokerage programs as they were understood in 1940, we believe that it would be appropriate for us to propose a rule allowing brokers to offer these programs without being subject to the Advisers Act.

In the Proposing Release, we expressed concern that, should these fee-based brokerage programs gain wide-spread acceptance, most full-service brokerage arrangements might eventually be subject to regulation under both the Exchange Act and Advisers Act if we were not to except from the Advisers Act broker-dealers offering these programs. The intervening years have substantiated that concern. Today fee-based brokerage accounts are offered by most larger broker-dealers, and hold over $254 billion of customer assets.[47] Industry observers expect that fee-based programs will continue to grow as broker-dealers move away from transaction-based brokerage relationships that provide unsteady sources of revenue.[48]

Would our failure to adopt this reproposed rule eventually result in the extension of the Advisers Act to most brokerage relationships? Would such a result be inconsistent with the intent of the Advisers Act, which was designed to fill a regulatory gap that permitted firms and individuals to engage in advisory activities without being regulated at the same time as it excepted broker-dealers from duplicative regulation?[49] We request comment on our reading of the legislative history of the broker-dealer exception. Do commenters agree that our reproposed rule is necessary to preserve the scope of the Advisers Act as Congress had intended it?

Would application of the Advisers Act to a potentially large number of brokerage accounts interfere with the market-making role of broker-dealers and the efficiency of the capital markets? For example, section 206(3) of the Advisers Act restricts the ability of advisers to engage in principal transactions with clients. How would such a restriction affect broker-dealers' market making and other principal activities? What would be the consequences to the liquidity of the securities markets?

2. Investor Protections

Many commenters opposing the proposed rule focused their arguments on additional investor protections that regulation under the Advisers Act provides and argued that the rule would harm investors.[50] Most of these comments assumed that clients of advisers received substantially more protections from the federal securities laws than do customers of broker-dealers.

To some extent, these comments amount to criticisms of the broker-dealer exception in section 202(a)(11)(C), which permits broker-dealers to provide advice without

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payment by the buyer, and maintaining custody of customer funds and securities. Exchange Act Release No. 27018 [54 FR 30087–88] (July 18, 1989). *See* Exchange Act section 28(e)(3), 15 U.S.C. 78bb(e)(3). *See also* generally WALL STREET, *supra* note 39. When we refer to "traditional brokerage programs" we mean those programs that offer traditional brokerage services for commissions. As a general matter, when we refer to "new fee-based programs" we mean those programs that offer traditional brokerage services for fees other than commissions. See supra notes 7—8 and accompanying text.

[43] *See* S. REP. NO. 76–1775, *supra* note 8, at 22; H.R. REP. NO. 76–2639, at 28, 76th Cong. 3d Sess. ("H.R. REP. NO. 76–2639"). *See also* Thomas P. Lemke & Gerald T. Lins, REGULATION OF INVESTMENT ADVISERS § 1:19 ("The exception in section 202(a)(11)(C) was included in the Advisers Act because broker-dealers routinely give investment advice as part of their brokerage activities, yet are already subject to extensive regulation under the 1934 Act and possibly state law"); Thomas P. Lemke, *Investment Advisers Act Issues for Broker-Dealers*, SECURITIES & COMMODITIES REGULATION at 214 (Dec. 9, 1987) ("While most broker-dealers initially will come within the definition of an investment adviser, it is clear that Congress did not intend brokerage activities to be regulated under the 1940 Act [citing S. REP. NO. 76–1775]. Rather, such activities were intended to be regulated under the 1934 Act without the additional and often duplicative requirements under the 1940 Act.").

[44] *See* Hearings on S. 3580, *supra* note 40, at 711 (testimony of Douglas T. Johnston, vice-president of Investment Counsel Association of America) ("The definition of 'investment adviser' as given in the bill * * * would include * * * certain investment banking and brokerage houses which maintain investment advisory departments and make charges for services rendered * * *"). The earliest Commission staff interpretations of the Advisers Act also reflect the same understanding, *i.e.*, that the Act was intended to cover broker-dealers only to the extent that they were offering investment advice as a distinct service for which they were specifically compensated. *See* Advisers Act Release No. 2, *supra* note 3 ("[T]hat portion of clause (C) which refers to 'special compensation' amounts to an equally clear recognition that a broker or dealer who is specially compensated for the rendition of advice should be considered an investment adviser and not be excluded from the purview of the Act merely because he is also engaged in effecting market transactions in securities. It is well known that many brokers and dealers have investment advisory departments which furnish investment advice for compensation in the same manner as does an investment adviser who operates solely in an advisory capacity.").

[45] At the time the Advisers Act was enacted, Congress understood "special compensation" to mean compensation *other than* commissions. S. REP. NO. 76–1775, *supra* note 8, at 22.

[46] Of course, the absence of "special compensation" was necessary but not sufficient for the section 202(a)(11)(C) exception. But the other requirement—that the advice be provided "solely incidental to" the conduct of the brokerage business—has always required a judgment based on the facts and circumstances and was not the sort of "bright-line" test that non-commission "special compensation" was.

[47] The Cerulli Edge, Managed Accounts Edition (3rd Quarter 2004) ("Cerulli Edge 3rd Quarter").

[48] Cerulli Edge 1st Quarter, *supra* note 7.

[49] *See* Hearings on S. 3580, *supra* note 40, at 716–18, 736–753 (Advisers Act filled a regulatory gap in which firms and individuals engaged in advisory activities without being regulated.).

[50] *See e.g.*, CFA Jan. 13, 2000 Letter, *supra* note 23; FPA Jan. 14, 2000 Letter, *supra* note 23; *see also* ICAA Jan. 12, 2000 Letter, *supra* note 23.

subjecting them to the Advisers Act. We acknowledge that there are differences between the regulatory frameworks provided by the Exchange Act and the Advisers Act, but Congress was well aware of these sorts of differences when it passed the Advisers Act and excepted broker-dealers from the definition of investment adviser.[51]

Moreover, the differences on which many commenters focused may not be as great as they asserted. Broker-dealers are subject to extensive oversight by the Commission and one or more self-regulatory organizations under the Exchange Act. The Exchange Act, Commission rules, and SRO rules provide substantial protections for broker-dealer customers that in many cases are more extensive than those provided by the Advisers Act and the rules thereunder.[52]

Many commenters asserted that the Commission, by providing the proposed exception, would relieve broker-dealers of the fiduciary responsibility to clients that is imposed by the Advisers Act.[53] In some cases, such as when broker-dealers assume positions of trust and confidence with their customers similar to those of advisers, broker-dealers have been held to similar standards.[54] However, broker-dealers often play roles substantially different from investment advisers and in such roles they should not be held to standards to which advisers are held. For example, an investor who engages a broker-dealer to sell certain stocks should not be heard to complain a week later that the broker-dealer should have advised him to hold on to those stocks in order to take advantage of a tax benefit. Thus we believe that broker-dealers and advisers should be held to similar standards depending not upon the statute under which they are registered, but upon the role they are playing.

We request comment generally on the investor protection implications of a rule excepting fee-based brokerage accounts from the Advisers Act. What investor protections would be lost or gained under the rule? Commenters should address how fee-based brokerage offers brokerage customers the potential for additional protections over commission-based brokerage. Are broker-dealers' and their representatives' interests better aligned with those of their customers in such arrangements? Would the realignment of economic incentives accomplish substantially more for these customers than application of an additional investment advisory regulatory regime with its attendant costs?

While fee-based brokerage accounts eliminate certain conflicts of interest that broker-dealer representatives have with their customers, we recognized

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[51] Many of the commenters focused on the conflicts under which brokers function. Congress, however, was well aware of these conflicts. *See, e.g.*, Hearings on S. 3580, *supra* note 40 at 736 ("Some of these organizations using the descriptive title of investment counsel were in reality dealers or brokers offering to give advice free in anticipation of sales and brokerage commissions on transactions executed upon such free advice"); REPORT ON INVESTMENT COUNSEL, INVESTMENT MANAGEMENT, INVESTMENT SUPERVISORY, AND INVESTMENT ADVISORY SERVICES (1939) (H.R. DOC. NO. 477) 23–25 (quoting testimony of investment advisers regarding "vital conflicts" in broker-dealers providing investment advice when they were at the same time intending to sell particular securities they owned); *Statutory Regulation of Investment Advisers, reprinted in* Hearings on S. 3580, *supra* note 40 at 1010 ("This might give rise to questions as to whether a counselor who is also a dealer or broker can be relied upon always to give unbiased advice."); SEC, REPORT ON THE FEASIBILITY AND ADVISABILITY OF THE COMPLETE SEGREGATION OF THE FUNCTIONS OF DEALER AND BROKER, AT XV (June 20, 1936) (submitted to Congress pursuant to section 11(e) of the Securities Exchange Act of 1934) ("A broker who trades for his own account or is financially interested in the distribution or accumulation of securities, may furnish his customers with investment advice inspired less by any consideration of their needs than by the exigencies of his own position."). Despite such conflicts, Congress nonetheless determined to except brokers providing investment advice from the Advisers Act as set out in section 202(a)(11)(C).

Contrary to the perception of many commenters, broker-dealers are under obligations to disclose conflicts of interest. Those obligations derive from many sources, including agency law, the shingle theory, antifraud provisions of the securities laws and the rules and regulations of the Commission and the SROs.

[52] Beginning in 1937, the Commission adopted rules to regulate broker-dealers' activities in the over-the-counter market. *See* Exchange Act Rule 15c1–1 [17 CFR 240.15c1–1], *et seq.* These rules, adopted under antifraud authority, complement other antifraud rules governing broker-dealers' activities. *See* Exchange Act Rule 10b–1 [17 CFR 240.10b–1], *et seq.* The Commission also has set out detailed requirements for information that broker-dealers must provide their customers at or before the completion of securities transactions. *See id.* And the Commission has adopted heightened sales practice and disclosure requirements for sales of penny stocks. *See* Exchange Act Rule 15g9–1 [17 CFR 240.15g9–1], *et seq.* In addition to the general rules governing the over-the-counter market, which were adopted in 1937, other rules have been adopted to prevent fraud and manipulation, as well as establish qualification standards for broker-dealers. *See* Exchange Act Rule 15c2–1 [17 CFR 240.15c2–1], *et seq.*, Rule 10b–5 [17 CFR 240.10b–5], Rules 15b7–1 [17 CFR 240.15b7–1], and Rule 19h–1 [17 CFR 240.19h–1]. The self-regulatory organizations ("SROs") have also adopted rules increasing their supervision of broker-dealers since 1940. For example, NASD established a clear suitability obligation for broker-dealers that recommend securities to investors, as well as extensive rules governing communications with the public, advertising standards for broker-dealers, and requirements for fair pricing in the over-the-counter market. *See* NASD Rule 2310, Rule 2210, and Rule 2440. As broker-dealers' business models continue to evolve, SROs continue to respond by adopting targeted new rules and providing other forms of guidance. Through these efforts, SROs can ensure that the sales practice requirements keep pace with their members' activities and address any resulting investor protection concerns. For example, recently NASD published a Notice to Members concerning fee-based compensation programs, reminding members that they must have reasonable grounds for believing that a fee-based programs, reminding members that they must have reasonable grounds for believing that a fee-based program is appropriate for a particular customer, taking into account the services provided, the cost, and customer preferences. *See* NASD Notice to Members 03–68 (Nov. 2003). Also, in February 2004, the NYSE filed with the Commission a rule proposal governing non-managed fee-based accounts. *See* SR–NYSE–2004–13.

The Exchange Act also provides significant investor protections, and, since 1940, the Exchange Act has been amended numerous times to, among other things, subject broker-dealers to increasingly detailed regulatory oversight. For example, in 1964, the Exchange Act was amended to provide for improved qualification and disciplinary procedures for registered broker-dealers and to expand substantially the responsibilities of the NASD under more intensive Commission oversight. Pub. L. No. 88–467, 78 Stat. 580, (Aug. 20, 1964). Later, the Securities Acts Amendments of 1975, considered the most significant securities legislation since the Exchange Act, end fixed commission rates, initiated action toward development of a national market system, and granted the Commission final authority in the adoption and amendment of SRO rules. Pub. L. No. 94–29, 89 Stat. 97 (June 4, 1975). In addition, the Penny Stock Reform Act of 1990 enhanced regulation of broker-dealers that sell penny stocks to investors. Pub. L. No. 101–429, 104 Stat. 931 (Oct. 15, 1990). More recently, the Gramm-Leach-Bliley Act of 1999 limited the extent to which commerical banks may act as brokers or dealers without broker-dealer registration. Pub. L. No. 106–102, 113 Stat. 1138 (Nov. 1, 1999).

[53] AICPA Sept. 22, 2004 Letter, *supra* note 26; CFA Jan. 13, 2000 Letter, *supra* note 23; FPA Jan. 14, 2000 Letter, *supra* note 23.

[54] *See, e.g., Arleen W. Hughes*, 27 S.E.C. 629 (1948) (noting that fiduciary requirements generally are not imposed upon broker-dealers who render investment advice as an incident to their brokerage unless they have placed themselves in a position of trust and confidence), *aff'd sub nom. Hughes* v. *SEC*, 174 F.2d 969 (D.C. Cir. 1949); *Leib* v. *Merrill Lynch, Pierce, Fenner & Smith, Inc.* 461 F. Supp. 951 (E.D. Mich. 1978), *aff'd*, 647 F. 2d. 165 (6th Cir. 1981) (recognizing that broker who has de facto control over non-discretionary account generally owes customer duties of a fiduciary nature; looking to customer's sophistication, and the degree of trust and confidence in the relationship, among other things, to determine duties owed); *Paine Webber, Jackson & Curtis, Inc.* v. *Adams*, 718 P.2d. 508 (Colo. 1986) (evidence "that a customer has placed trust and confidence in the broker" by giving practical control of account can be "indicative of the existence of a fiduciary relationship"); *MidAmerica Federal Savings & Loan* v. *Shearson/American Express*, 886 F.2d. 1249 (10th Cir. 1989) (fiduciary relationship existed where broker was in position of strength because it held its agent out as an expert); *SEC* v. *Ridenour*, 913 F.2d. 515 (8th Cir. 1990) (bond dealer owed fiduciary duty to customers with whom he had established a relationship of trust and confidence); C. Weiss, *A Review of the Historic Foundations of Broker-Dealer Liability for Breach of Fiduciary Duty*, 23 Iowa J. Corp. Law 65 (1997). *Cf. De Kwiatkowski* v. *Bear, Stearns & Co.*, 306 F.3d 1293, 1302–03, 1308–09 (2d Cir. 2002) (noting that brokers normally have no ongoing duty to monitor nondiscretionary accounts but that "special circumstances," such as a broker's de facto control over an unsophisticated client's account, a client's impaired faculties, or a closer-than-arms-length relationship between broker and client, might create extra-contractual duties).

that they create certain other conflicts. Fee-based brokerage accounts are not suitable for all broker-dealer customers, particularly those customers who rarely purchase or sell securities. Moreover, investors with large cash positions or investments in mutual funds (for which a customer may pay multiple fees) may wish to avoid them. In November 2003, the NASD issued a notice to members identifying these conflicts and indicating that NASD members should have supervisory procedures in place to determine whether a fee-based brokerage account is appropriate for a customer and to periodically review the customer's account to determine whether a fee-based account continues to be appropriate.[55] Would broker-dealers' lack of compliance with the NASD notice suggest that we ought not adopt this rule? On the other hand, does the NASD's action suggest that appropriate actions are being taken?

3. Package of Services

In our Proposing Release, we suggested that broker-dealers offering fee-based brokerage were merely re-pricing their existing brokerage accounts. Information provided to us by our staff indicates, however, that some broker-dealers today offer a different mix of services within the traditional package of services (including, for example, a different level of investment advice) to fee-based accounts than they offer to commission-based accounts. When brokers re-price traditional commission-based brokerage accounts, they create a different set of incentives for their registered representatives. Thus, it is not surprising to us, nor is it inconsistent with the design of the rule we are today reproposing, that customers with fee-based brokerage accounts may obtain a different level or quality of services, within the traditional package of services (including a different level or quality of advisory services), than do customers with commission-based brokerage accounts. Indeed, one of the aims of the Tully Committee, as articulated in its report, was to create incentives for brokers to improve the quality of the advisory services provided their customers.[56]

If commission-based brokerage accounts receive differing levels of service depending upon the extent to which customers trade securities, it would seem to follow that fee-based brokerage accounts would receive varying levels of service depending upon the amount of assets held in the accounts. We request comment on this observation. Should differences in the nature of services provided be relevant to our consideration in deciding whether to adopt the rule?

4. Competitive Implications

As we noted above, many financial planners expressed concern for the competitive implications of the rule because they would generally be subject to the Advisers Act, while broker-dealers would not.[57] Broker-dealers and investment advisers have historically provided similar advisory services and competed for similar clients seeking similar advice. The steps many commenters urged us to take—such as prohibiting broker-dealers from advertising advisory services entirely—would restrict the ability of broker-dealers to compete for customers based on advisory services the customers may be seeking.

Broker-dealers are subject to our oversight under the Exchange Act, as well as oversight by one or more self-regulatory organizations, to which they must pay membership dues. The SRO rules require broker-dealers to comply with numerous detailed regulatory requirements, as well as general requirements that brokers treat their customers fairly.[58] Although, as commenters pointed out, the Advisers Act contains some restrictions, and thus imposes some costs on investment advisers that are not a part of broker-dealer regulation, broker-dealer regulation is much more detailed and involves significantly more regulatory costs than investment adviser regulation.

We seek comment on the competitive implications of the rule for investment advisers as well as broker-dealers. To what extent should we be guided by those competitive considerations? To what extent should broker-dealers be permitted to compete for business based on the advisory services they provide that are incidental to their brokerage business?

5. Regulatory Approach

Our reproposed rule would deem broker-dealers offering fee-based brokerage accounts not to be investment advisers because they are not intended to be covered by the Advisers Act.[59] As a result, broker-dealers, at least with respect to accounts covered by the rule, would not be subject to any of the provisions of the Act. We request comment whether we should take an alternate approach under which we would use our authority in section 206A to exempt broker-dealers from provisions of the Act, such as the registration requirements, with respect to these accounts.[60] What advantages do commenters view this alternative approach as providing? Are there costs? If we were to adopt a rule based on this approach, from which provisions of the Act or rules thereunder, such as the registration requirements of section 203 of the Act, should broker-dealers offering fee-based brokerage accounts be exempt with respect to those accounts? For example, should broker-dealers offering fee-based accounts be exempted from the principal trading prohibitions in the Act?

B. Exception for Fee-Based Brokerage Accounts

Under reproposed rule 202(a)(11)–1(a), a broker-dealer providing

[55] NASD Notice to Members (Nov. 23, 2004). Our staff examinations of broker-dealers offering fee-based programs suggest that not all NASD members may be complying with the advice provided by this notice and may be in violation of NASD rules identified in the notice. The NASD is addressing these matters.

[56] *See* Tully Report, *supra* note 13, at 11.

[57] *See, e.g.*, Comment Letter of Dan Jamieson (June 1, 2000); Comment Letter of Joel P. Bruckenstein (May 31, 2000); Comment Letter of Margaret Lofaro (May 8, 2000); Comment Letter of Shawnee Barbour (Sept. 13, 2004); Comment Letter of Roselyn Wilkinson (Sept. 13, 2004); Comment Letter of Robert J. Lindner (Sept. 14, 2004); Comment Letter of Robert Lawson (Sept. 16, 2004); Patchett Letter, *supra* note 27; Comment Letter of John Ellison (Sept. 20, 2004); Comment Letter of Connie Brezik (Sept. 18, 2004); Comment Letter of Keven M. Doll (Sept. 20, 2004); Comment Letter of Phoebe M. White (Sept. 20, 2004); Comment Letter of Eric G. Shisler (Sept. 20, 2004); Comment Letter of Jami M. Thornton (Sept. 20, 2004); *see also* Comment Letter of Consumer Federation of America (Feb. 28, 2000) ("CFA Feb. 28, 2000 Letter").

[58] *See supra* note 52.

[59] We are reproposing rule 202(a)(11)–1 pursuant to our authority under section 202(a)(11)(F) to except "such other persons not within the intent of" the definition of "investment adviser" in section 202(a)(11). We are also relying on our authority under section 211(a) of the Act "to classify persons and matters within [our] jurisdiction and prescribe different requirements for different classes or persons or matters." A new classification we are making here is broker-dealers who provide investment advice solely incidental to traditional brokerage services for a fee—a group which, as discussed above, could not have existed at the time Congress enacted the Advisers Act because, in 1940, broker-dealers were paid *only* fixed commissions for traditional brokerage services. Such broker-dealers are therefore "other persons" within the meaning of section 202(a)(11)(F) or "different * * * persons" within the meaning of section 211(a). In addition, section 206A of the Act permits us to exempt persons, conditionally or unconditionally from any provision of the Act or our rules to the extent such exemption is "necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title."

[60] Under this approach, broker-dealers offering fee-based brokerage programs would be investment advisers within the meaning of section 202(a)(11) of the Act, although exempt from certain provisions of the Act, such as the registration provisions.

investment advice to its brokerage customers would not be required to treat those customers as advisory clients solely because of the form of the broker-dealer's compensation. The rule would be available to any broker-dealer registered under the Exchange Act that satisfies three conditions: (i) The broker-dealer must not exercise investment discretion over the account from which it receives special compensation; (ii) any investment advice must be solely incidental to the brokerage services provided to the account; and (iii) advertisements for and contracts, agreements, applications and other forms governing the account must contain certain prominent disclosures, including a statement that the account is a brokerage account and not an advisory account. These are similar requirements to those included in the proposed rule, except that we would expand the required customer disclosure.

1. Investment Discretion

Under the reproposed rule, a broker or dealer relying on the exception may not "exercise investment discretion," as that term is defined in section 3(a)(35) of the Exchange Act,[61] over the accounts from which it receives special compensation.[62] Discretionary accounts that are charged an asset-based fee or a flat fee would be considered advisory accounts because they bear a strong resemblance to traditional advisory accounts, and it is highly likely that investors will perceive such accounts to be advisory accounts. Fee-based discretionary accounts were clearly the type of accounts that Congress understood would be covered by the Advisers Act when it passed the Act in 1940.

Most broker-dealer commenters thought that the rule drew the appropriate line, although one commenter expressed concern that the rule's exclusion of fee-based discretionary accounts would provide a disincentive for brokers to offer a fee-based alternative to commission-based discretionary accounts that could be offered without subjecting the broker-dealer to the Advisers Act.[63] Many commenters opposed to the proposed rule were concerned that the Commission would, in effect, abandon the "bright-line" test that "special compensation" provided for when an account should be treated as an advisory account.[64]

As we discuss above, we do not believe that "special compensation" was included in section 202(a)(11)(C) for any purpose beyond readily identifying advice that was clearly not provided as part of the package of traditional brokerage services, *i.e.*, advice that was clearly not incidental to the brokerage services.[65] In 1940, broker-dealers were paid *only* fixed commissions for the traditional package of services (including investment advice) that Congress intended to except from coverage of the Act.[66] Because Congress understood "special compensation" to mean non-commission compensation,[67] the "special compensation" limitation in section 202(a)(11)(C) reliably identified advisory services that Congress intended the Advisers Act to cover. That is no longer true. Unlike in 1940, broker-dealers are no longer prohibited by SRO rules from charging a fee for the same package of brokerage services (including investment advice) that formerly could be paid for only by commissions and only recently have broker-dealers started charging these new sorts of fees. These developments could not have been foreseen in 1940, and the "bright line" that Congress identified 60 years ago has ceased to accomplish its original purpose. Permitting broker-dealers to provide nondiscretionary advice may provide a workable "bright line," and it will not operate to extend the exception beyond the intent of Congress because in all circumstances this advice must be solely incidental to the brokerage services provided.

We request comment on this condition of the rule. Is "discretionary authority" a workable "bright line" test? Are there alternate tests that would be more appropriate? What are they?

2. Solely Incidental To

Reproposed rule 202(a)(11)–1 would require that the advisory services provided in reliance on the exception must be solely incidental to the brokerage services provided.[68] The provision, which was included in our original proposal from 1999, was designed to preserve the "solely incidental to" requirement in section 202(a)(11)(C), although it is somewhat narrower in that it would require that advice the broker-dealer provides must be solely incidental to brokerage services provided by the broker-dealer to *each account* rather than the overall operations of the broker-dealer. Commenters did not disagree with this element, but urged that we provide more guidance on when advice is solely incidental to brokerage services. Section III of this Release includes a discussion of when advice is "solely incidental to" brokerage and requests comment on the application of this analysis to particular broker-dealer practices.

3. Customer Disclosure

We propose to require that all advertisements for an account excepted under rule 202(a)(11)–1(a) and all agreements, contracts, applications and other forms governing the operation of a fee-based brokerage account contain a prominent statement that the account is a brokerage account and not an advisory account. In addition, the disclosure must explain that, as a consequence, the customer's rights and the firm's duties and obligations to the customer, including the scope of the firm's fiduciary obligations, may differ. Finally, broker-dealers must identify an appropriate person at the firm with whom the customer can discuss the differences.

Our original proposal would have required broker-dealers to disclose only that the fee-based accounts are brokerage accounts. We received a great deal of comment that this disclosure was inadequate to permit customers and prospective customers to understand the differences between advisory and brokerage accounts, including the differences in fiduciary duties owed to investors by advisers and brokers.[69] In

[61] 15 U.S.C. 78c(a)(35). Under section 3(a)(35) of the Exchange Act, a person exercises "investment discretion" with respect to an account if, "directly or indirectly, such person (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even through some other person may have responsibility for such investment decisions, or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation of the provisions of this title and the rules and regulations thereunder."

[62] Rule 202(a)(11)–1(a)(1).

[63] Paine Webber Letter, *supra* note 36.

[64] T. Rowe Price Jan. 14, 2000 Letter, *supra* note 33; Federated Letter, *supra* note 28; FPA Jan. 14, 2000 Letter, *supra* note 23. *See also* FPA Dec. 7, 2001 Letter, *supra* note 33.

[65] *See supra* note 46.

[66] Until 1975, the New York Stock Exchange and the other stock exchanges required their members to charge a fixed commission on every transaction. *See generally* Securities Exchange Act Release No. 11203 (Jan. 23, 1975) [40 FR 7394 (Jan. 23, 1975)] (adopting Exchange Act rule 19b–3 [17 CFR 19b–3] which eliminated the fixed commission rate structure on national securities exchanges).

[67] S. REP. NO. 76–1775, *supra* note 8, at 22; H.R. REP. NO. 76–2639, *supra* note 43, at 28.

[68] Rule 202(a)(11)–1(a)(1)(ii).

[69] *E.g.*, ICAA Sept. 22, 2004 Letter, *supra* note 28; AICPA Sept. 22, 2004 Letter, *supra* note 26; FPA Jan. 14, 2000 Letter, *supra* note 23; ICAA Jan. 12,

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response, we have reproposed significantly expanded disclosure in order to focus investors on the differences between the two types of accounts.

We recognize that there may be a tension between the amount of information required in a legend and the likelihood of investors reading and understanding the information. Shorter disclosure may be more effective. Because it is impracticable to include all of the many possible differences between advisory and brokerage accounts in a brief disclosure, we have proposed an approach to encourage investors to discuss the differences with appropriate brokerage personnel. Is our proposed disclosure appropriate? Will it effectively serve its intended purposes? Should we require additional information to be disclosed? If so, what should that information be? Is the proposed disclosure too long to be practicable in an advertisement? If so, what should we omit? Will investors understand the terms we have used and their significance? If not, what terms should we use? Should materials specify who the appropriate person at their firm is who can discuss the differences between an advisory and a brokerage account? Should we designate the level of seniority the person should have? Given the complexity of the concepts involved, should we consider alternatives to disclosure? If so, what alternatives should we consider?

The legend would be required only on documents offering fee-based brokerage programs because only broker-dealers offering those programs would be relying on the rule. But many commenters suggested to us that the confusion between brokerage and advisory accounts is not limited to fee-based brokerage. If that is the case, what is the appropriate vehicle to address this confusion? For example, should we request the broker-dealer self regulatory organizations to consider disclosure requirements that have broader application, including requiring disclosure on broker-dealer documents that do not offer or govern fee-based brokerage accounts?

C. Discretionary Asset Management

As discussed above, the exception for broker-dealers offering fee-based brokerage accounts would be available only if the broker-dealer does not exercise discretionary authority over the account. We recognized in the Proposing Release the existence of a regulatory anomaly that the proposed rule would create. Broker-dealers that manage discretionary accounts for which they receive commissions or dealer-based compensation may not receive any "special compensation." If managing a discretionary account can be viewed as solely incidental to the brokerage business, then a broker-dealer paid through commissions or dealer-based compensation could rely on the statutory exception and need not treat the account as an advisory account. Under this view, a regulatory distinction would continue to be drawn based solely on the form the broker-dealer's compensation takes. This result seemed inconsistent with our intent in designing the proposed rule. In the Proposing Release, we requested comment on whether we should require broker-dealers to treat all discretionary accounts as advisory accounts, without regard to the form of the broker-dealer's compensation.[70]

Many broker-dealers who responded to this request for comment urged that we continue to permit broker-dealers offering discretionary brokerage accounts for commissions or dealer-based compensation to avail themselves of the statutory broker-dealer exception.[71] Some argued that these accounts were made available as an accommodation to customers who understood the nature of the accounts, and that any additional regulatory protections provided by the Advisers Act would be redundant to those already provided by broker-dealer regulation.[72] Many other commenters, however, including those representing investment advisers, argued that discretionary brokerage accounts are indistinguishable from advisory accounts and urged us to apply the Advisers Act and the rules thereunder to both.[73] Some, including one large broker-dealer, asserted that discretion was a key distinguishing feature of an advisory account and therefore all discretionary accounts should be regulated as advisory accounts.[74] Others argued that broker-dealers exercising discretionary authority would actually be providing advice that is not solely incidental to brokerage, and thus should not have available the broker-dealer exception in section 202(a)(11)(C).[75]

We have not previously interpreted the scope of section 202(a)(11)(C) to preclude a broker-dealer from exercising discretionary authority over the accounts of a limited number of its customers as long as the customers did not pay special compensation for these services. In 1978, however, we expressed concern that brokerage relationships "which include discretionary authority to act on a client's behalf have many of the characteristics of the relationships to which the protections of the Advisers Act are important," and we requested comment on whether we should take action to require that these accounts be treated as advisory accounts.[76] After considering the issue, we determined not to take action at that time on whether discretionary accounts should be treated as advisory accounts but explained that our staff would continue to examine the applicability of the federal securities laws to discretionary accounts.[77] We further stated that "the staff would continue to take the position that brokers or dealers who exercise discretion over a limited number of their customers' accounts, but do not receive special compensation for such services, can rely on the exception in section 202(a)(11)(C)."[78]

After reviewing the many comment letters we received on this matter, and exploring this issue anew in the context of this rulemaking, we are proposing a rule stating that discretionary investment advice, as that term is defined in section 3(a)(35) of the Exchange Act, is not "solely incidental

2000 Letter, *supra* note 23; Comment Letter of Walter R. Greenfield (Jan. 4, 2000).

[70] Proposing Release, *supra* note 5. The Commission received over 50 comment letters in response to this request for comments.

[71] *E.g.*, Comment Letter of Paine Webber Incorporated (Jan. 14, 2000) ("Paine Webber Letter"); Comment Letter of Smith Barney Citigroup (Jan. 14, 2000) ("Smith Barney Letter"); Comment Letter of First Dallas Securities" (Jan. 13, 2000) ("First Dallas Letter"); Comment Letter of Stephens, Inc. (Jan. 12, 2000) ("Stephens Letter"). *See also* Comment Letter of Securities Industry Association (Jan. 13, 2000); Comment Letter of National Association of Securities Dealers (Feb. 24, 2000). *But see* Comment Letter of Charles Schwab & Co. (Sept. 22, 2004); Comment Letter of TD Waterhouse Investor Services, Inc. (Sept. 22, 2004).

[72] *See* Stephens Letter, *supra* note 71; First Dallas Letter, *supra* note 71, Smith Barney Letter, *supra* note 71.

[73] *E.g.*, Comment Letter of T. Rowe Price Associates, Inc. (Jan. 14, 2000) ("T. Rowe Price Jan. 14, 2000 Letter"); FPA Jan. 14, 2000 Letter, *supra* note 23; Comment Letter of North American Securities Administrators Association, Inc. (Jan. 14, 2000) ("NASAA Jan. 14, 2000 Letter"); ICAA Jan. 12, 2000 Letter, *supra* note 23. *See also* AICPA Sept. 22, 2004 Letter, *supra* note 26.

[74] Charles Schwab Sept. 22, 2004 Letter, *supra* note 71. *See also* T. Rowe Price Jan. 14, 2000 Letter, *supra* note 73; NASAA Jan. 14, 2000 Letter, *supra* note 73; ICAA Jan. 12, 2000 Letter, *supra* note 30.

[75] *See, e.g.*, Comment Letter of AARP (Nov. 17, 2003) ("AARP Letter"); FPA Jan. 14, 2000 Letter, *supra* note 23; T. Rowe Price Jan. 14, 2000 Letter, *supra* note 73. *See also* ICAA Jan. 12, 2000 Letter, *supra* note 23; NASAA Jan. 14, 2000 Letter, *supra* note 73.

[76] Investment Advisers Act Release No. 626, *supra* note 5.

[77] *Applicability of the Investment Advisers Act to Certain Brokers and Dealers*, Investment Advisers Act Release No. 640 (Oct. 5, 1978) [43 FR 47176 (Oct. 13, 1978)] ("Advisers Act Release No. 640").

[78] *Id.*

to" brokerage services within the meaning of section 202(a)(11)(C). The exercise of investment discretion seems to us to be qualitatively distinct from simply providing advice as part of a package of brokerage services, because a broker-dealer with such discretion is not just a source of advice, but has authority to make investment decisions relating to the purchase or sale of securities on behalf of clients. In this way, discretionary accounts have a quintessentially supervisory or managerial character that we previously have recognized as a critical indicator of services that warrant the protection of the Advisers Act because of the "special trust and confidence inherent" in such relationships.[79]

Although we did not require that *all* discretionary accounts be treated as advisory accounts when the issue was presented in 1978, we and our staff have long acknowledged that a broker-dealer's exercise of investment discretion over customer accounts raises serious questions about whether such accounts must be treated as subject to the Advisers Act—even where no special compensation is received.[80] Since at least 1978, the staff has viewed the exercise of investment discretion in commission-based accounts as a critical factor in determining whether a broker-dealer could rely on the exception provided by section 202(a)(11)(C).[81] Indeed, broker-dealers have known for decades that "if the business of a broker or dealer consists almost exclusively of managing accounts on a discretionary basis, the [Division of Investment Management] would not regard such broker or dealer as providing investment advice solely incidental to his business as a broker or dealer and therefore the broker or dealer would not be eligible for the [exception] in section 202(a)(11)(C)."[82]

The rule we propose today would supersede this existing staff approach, under which a discretionary account is subject to the Advisers Act only if the broker-dealer has enough *other* discretionary accounts to trigger the Act. Under proposed rule 202(a)(11)–1(b), the exception provided by section 202(a)(11)(C) would be unavailable for any account over which a broker-dealer exercises investment discretion, without regard to how the broker-dealer handles other accounts. We believe that such an approach may be preferable for several reasons. First, it better ensures that the Advisers Act is applied where investors have the sort of relationship with a broker-dealer that we have long recognized the Act was intended to reach.[83] Second, it is consistent with the longstanding view, which would be codified in reproposed rule 202(a)(11)–1(c), that a broker-dealer is an investment adviser solely with respect to those accounts for which the broker-dealer provides services or receives compensation that subject the broker-dealer to the Advisers Act. Third, unlike the existing staff approach, the proposed rule provides a bright-line test for the availability of the section 202(a)(11)(C) exception. It thereby clarifies that provision at a time when the line between advisory and brokerage services is blurring and the original "bright line" of special compensation has ceased to function as a reliable indicator of the services the Act was designed to reach. Finally, the proposed interpretation would result in all discretionary accounts being treated as advisory accounts without regard to the form of broker compensation and would therefore be consistent with the design of reproposed rule 202(a)(11)–1 as a whole.

We understand that, on occasion, a broker-dealer may exercise limited discretion over a customer account for a brief period of time (*e.g.*, when a customer is on vacation). Should such an isolated or occasional exercise of discretion cause a broker-dealer to lose its ability to rely on the exception? Should we consider other exceptions?[84] Should we include any or all exceptions in the rule text?

We request comment on this interpretation, and the use of "discretionary advice" as a bright line test to identify those brokerage accounts that must be treated as advisory accounts. We propose to use the definition of investment discretion in section 3(a)(35) of the Exchange Act and we request comment on using this definition. Is some other definition more appropriate? If so, what definition should we use?

We understand that many broker-dealers today treat discretionary accounts as advisory accounts. Is this understanding correct? Do many broker-dealers also treat discretionary accounts as brokerage accounts? Do broker-dealers maintain both types of accounts, and if so, what are the determinative factors for classifying an account as an advisory or brokerage account? What impact on broker-dealers would our interpretation have? We are particularly interested in learning whether most broker-dealers that do not treat discretionary accounts as advisory accounts are already registered under the Advisers Act for other reasons.

We are also interested in understanding the impact on investors of these distinctions. As we acknowledged in the Proposing Release, investors are often confused by the differences between advisory and brokerage accounts. Would the distinction we propose to draw between discretionary and non-discretionary accounts resolve at least some of that that confusion?

Does the legislative history of section 202(a)(11)(C) support our proposed rule? Although in 1940 many broker-dealers exercised discretion over the accounts they serviced for a fee through separate advisory departments in their firms, broker-dealers were generally disinclined to accept such discretionary advisory accounts,[85] and the extent to which broker-dealers were exercising discretion over commission-based customer accounts outside of separate advisory departments is unclear. As a result, we are unable to conclude that in 1940 Congress would have understood investment discretion to be part of the traditional package of services broker-dealers offered for commissions. We are aware of nothing in the legislative history of section 202(a)(11)(C) (or of the Act as a whole) or in the brokerage practices in 1940 that would preclude our interpretation of that section as being unavailable for all accounts over which broker-dealers exercise investment discretion.[86] There is no

[79] *Adoption of Amendments to Rule 206A–1(T) under the Investment Advisers Act of 1940 Extending the Duration and Limiting the Scope of the Temporary Exemption from the Advisers Act for Certain Brokers and Dealers*, Investment Advisers Act Release No. 471 (Aug. 20, 1975) ("Advisers Act Release No. 471").

[80] *See supra* note 76 and accompanying text.

[81] Advisers Act Release No. 640, *supra* note 76.

[82] *Id.*

[83] Advisers Act Release No. 471, *supra* note 79.

[84] We note, for example, that NASD Rule 2510(d) sets forth certain exceptions to the NASD rule governing discretionary accounts (*e.g.*, discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed not subject to rules governing discretionary accounts).

[85] SECURITY MARKETS, *supra* note 39, at 649–650.

[86] In the decade preceding the enactment of the Advisers Act, both the New York Stock Exchange and the Commission promulgated measures designed to regulate and, in the case of the NYSE rules, to significantly limit the exercise of investment discretion by broker-dealers. The NYSE prohibited customers' men from handling discretionary accounts; with few exceptions, only partners were authorized to handle such accounts. SECURITY MARKETS, *supra* note 39, at 638–40. *See also Wall St. Problem in Customers' Men*, N.Y. Times, Jan. 14, 1934, at N7 ("[T]he Stock Exchange has approved rules prohibiting customers' men from handling discretionary accounts, which powers are now delegated with few exceptions, only to partners in Stock Exchange firms."). In

Continued

evidence that Congress directly considered this question, and, given the inherently managerial nature of investment discretion, we see no reason why Congress would have intended to exclude such services from the reach of the Advisers Act.

Commenters asserting that discretionary authority is not an appropriate means of drawing a line in the case of commission-based accounts should address whether it draws an appropriate line for fee-based accounts. Is reproposed rule 202(a)(11)–1 as a whole appropriate in light of our reliance in the rule on the distinction between discretionary and non-discretionary authority?

D. Discount Brokerage Programs

We are also reproposing, as part of rule 202(a)(11)–1, a provision that a broker-dealer will not be considered to have received special compensation solely because the broker-dealer charges a commission, mark-up, mark-down or similar fee for brokerage services that is greater than or less than one it charges another customer.[87] This provision is intended to keep a full-service broker-dealer from being subject to the Advisers Act solely because it also offers electronic trading or other forms of discount brokerage. Conversely, a discount broker-dealer would not be subject to the Act solely because it introduces a full-service brokerage program.

The rule, if adopted, would supersede staff interpretations under which a full-service broker-dealer is subject to the Advisers Act with respect to accounts for which it provided advice incidental to its brokerage business merely because it offers electronic trading or other form of discount brokerage.[88] These staff interpretations led to the odd result that a full-service broker-dealer cannot offer discount brokerage without treating its full-service brokerage accounts as advisory accounts even though the services offered to those accounts remained unchanged. Moreover, these staff interpretations may create disincentives for full-service broker-dealers to offer electronic or other types of discount brokerage, and thus may limit customers' choices of types of brokerage service, and may reduce competition in discount brokerage. The reproposed rule makes a broker-dealer's eligibility for the broker-dealer exception with respect to an account turn on the characteristics of that particular account and not of other accounts the broker-dealer may also service. Commenters discussing this aspect of the proposed rule generally supported it,[89] and we are reproposing it without change. Do commenters continue to support this provision? Should we consider any modifications to this provision?

E. Scope of Exception

Reproposed rule 202(a)(11)–1 would also provide that a broker-dealer that is registered under both the Exchange Act and the Advisers Act is an investment adviser solely with respect to those accounts for which it provides services or receives compensation that subject the broker or dealer to the Advisers Act.[90] This provision would codify our earlier interpretation of the Act that permits a broker-dealer registered under the Advisers Act to distinguish its brokerage customers from its advisory clients.[91] We received few comments regarding the scope of the proposed exception, which we are reproposing without change.

Finally, the Commission would interpret the broker-dealer exception as being available not only to a broker-dealer, but also to any of its registered representatives, *i.e.*, those employees and other persons whose investment advisory activities are subject to the control and supervision of the broker-dealer.[92] A registered representative who provides investment advice independent of his broker-dealer employer (*e.g.*, by establishing an independent financial planning practice or providing advisory services outside his capacity as a registered representative, without the control, knowledge and approval of his broker-dealer employer) could not rely on the exception because his investment advisory activities would not be solely incidental to the broker-dealer's business.[93]

III. Proposed Statement of Interpretive Position

Many commenters urged us to provide greater guidance on when advice is solely incidental to brokerage services, observing that, in the past, most questions arising under section 202(a)(11)(C) have involved the meaning of "special compensation."[94] A number of commenters offered suggestions of how we might further develop the interpretation of "solely incidental to." Some supported very narrow views of what "solely incidental to" means, suggesting that it should include only advice that is a minor or insignificant part of a broker-dealer's business,[95] or advice that is not marketed by the broker.[96] Because reliance on both the rule and statute turn on whether advice provided by a broker-dealer is solely incidental to the brokerage business (or, in the case of the rule, to the brokerage services provided to the account), it is a question of substantial significance to broker-dealers.

In general, we understand investment advice to be "solely incidental to" the conduct of a broker-dealer's business within the meaning of section 202(a)(11)(C) when the advisory services rendered to an account are in connection with and reasonably related to the brokerage services provided to that account. This understanding is consistent with the legislative history of the Advisers Act, which indicates Congress' intent to exclude broker-dealers providing advice as part of traditional brokerage services.[97] It is also consistent with the Commission's contemporaneous construction of the Advisers Act as excepting broker-dealers whose investment advice is given "solely as an incident of their regular business."[98]

1937, the Commission adopted Exchange Act Rule 15cl–7 [17 CFR 240.15cl–7], which deals with discretionary accounts maintained by broker-dealers, but does not distinguish between commission-based brokerage accounts and the advisory accounts broker-dealers serviced for a fee through their separate advisory departments.

[87] Rule 202(a)(11)– 1(a)(2).

[88] *See* Advisers Act Release No. 2, *supra* note 3.

[89] Federated Letter, *supra* note 28; Comment Letter of Charles Schwab & Co. (Jan. 14, 2000); Comment Letter of NASD (Feb. 24, 2000).

[90] Rule 202(a)(11)– 1(c).

[91] Advisers Act Release No. 626, *supra* note 5.

[92] The staff's views on this matter were set forth in Advisers Act Release No. 1092, *supra* note 2. *See also* Strevell No-Action Letter, *supra* note 9; Brent A. Neiser, SEC Staff No-Action Letter (pub. avail. Jan. 21, 1986) ("Neiser No-Action Letter").

[93] The staff's views on this matter were set forth in the Strevell No-Action Letter, *supra* note 9 and the Neiser No-Action Letter, *supra* note 92.

[94] *E.g.*, Comment Letter of Consumer Federation of America (Jan. 14, 2000); ICAA Jan. 12, 2000 Letter, *supra* note 23; T. Rowe Price Jan. 14, 2000 Letter, *supra* note 32; Comment Letter of Investment Company Institute (Jan. 14, 2000); U.S. Bancorp Letter, *supra* note 36; Letter of Connecticut Department of Banking (Jan. 20, 2000)("Connecticut Department of Banking"); Letter of Certified Financial Planner Board of Standards (Sept. 22, 2004); Charles Schwab Sept. 22, 2004 Letter, *supra* note 20; NASAA Letter, *supra* note 31.

[95] ICAA Jan 12, 2000 Letter, *supra* note 23, Comment Letter of T. Rowe Price Associates, Inc. (Sept. 22, 2004).

[96] CFA Jan. 13, 2000 Letter, *supra* note 23, Connecticut Department of Banking, *supra* note 94, ICAA Sept. 22, 2004 Letter, *supra* note 28.

[97] *See supra* notes 40–46 and accompanying text.

[98] *See* Investment Advisers Act Release No. 1 [11 FR 10996 (Sept. 23, 1940)] ("Release No. 1")(emphasis added). It is also consistent with how our staff has construed section 202(a)(11)(B) of the Act, which provides an exception for lawyers, accountants, engineers and teachers "whose performance of such services is incidental to the practice of [their] profession." *See* Hungerford,

We propose to read section 202(a)(11)(C) more broadly than some commenters suggest. Those commenters read the words "solely incidental" to mean that the advice provided must be only "incidental" in the sense of "minor," "insignificant," "periodic," "episodic," or "advice about specific securities."[99] This reading is based on the view that the statute excepts "solely incidental" advisory services instead of advisory services that are "solely incidental to" a broker-dealer's business, *i.e.*, advisory services that are "liable to happen as a consequence of" or "follow[] as a consequence" of the conduct of a broker-dealer's business.[100] Moreover, the view that only minor or insignificant advice is excepted by section 202(a)(11)(C) ignores the fact that the advice broker-dealers gave as part of their traditional brokerage services in 1940 was often substantial in amount and importance to the customer.[101] This has remained true throughout the following decades.[102] Indeed, the importance of the broker-dealer's role as advice-giver in connection with brokerage transactions has shaped how we and the self-regulatory organizations have regulated and continue to regulate broker-dealers.[103] On the other hand, some commenters would interpret "solely incidental to" a broker-dealer's business to permit broker-dealers to rely on section 202(a)(11)(C) broadly to provide any or all types of advisory services as part of a brokerage account. This interpretation would have the effect of negating any limitation inherent in the "solely incidental" standard, and we propose not to read "solely incidental to" so broadly. Do commenters agree with our view? Those who disagree with us should suggest alternative interpretive approaches that find support in the intent of Congress and the legislative history of the Advisers Act, and in contemporaneous industry practice.

Many commenters urged that we declare certain current practices to be inconsistent with advice being offered solely incidental to brokerage. They believed that the Advisers Act ought to apply more broadly to full-service brokerage that is, among other things, marketed based on advisory services.[104] Before we provide any interpretive guidance that could have an effect on brokerage practices, we believe it is appropriate and useful to seek additional comment from all interested persons.

The Commission is considering issuing an interpretive position or including some or all of its interpretations relating to "solely incidental to" in a rule when it acts on reproposed rule 202(a)(11)–1.[105] The interpretations would address the application of the "solely incidental to" requirement of section 202(a)(11)(C) of the Act and paragraph (a)(1)(ii) of rule 202(a)(11)–1 to certain common broker-dealer practices described below. Commenters should address whether, in their view, our proposed interpretations or any alternative interpretations find support in the Act or its legislative history. They should also address the costs and benefits of the proposed or any alternative interpretations. Where possible, commenters should quantify such costs and benefits. Should we apply the Advisers Act in the circumstances that we describe below in light of protections afforded investors by the Exchange Act?

A. Holding Out as an Investment Adviser

In the Proposing Release we expressed concern that many broker-dealers offering fee-based brokerage accounts have marketed them heavily based on the advisory services provided rather than securities transaction services,[106] and we expressed concern about whether investors would perceive these accounts to be advisory accounts

Aldrin, Nichols & Carter, SEC Staff No-Action Letter (Dec. 10, 1991)(accountant); Myers Krauss, & Stevens, SEC Staff No-Action Letter (Aug. 31, 1988)(lawyer); Jan L. Warner, Esq., SEC Staff No-Action Letter (Dec. 27, 1988)(lawyer); Hauk, Soule & Fasani, SEC Staff No-Action Letter (Feb. 20, 1986)(accountant); Trejo & Associates, SEC Staff No-Action Letter (Dec. 19, 1985)(accountant); Marvin Drabinsky, SEC Staff No-Action Letter (Oct. 3, 1984)(accountant); David A. Hendelberg, SEC Staff No-Action Letter (Apr. 5, 1984)(accountant); LaManna & Hohman, SEC Staff No-Action Letter (Feb. 18, 1983)(accountant); Pros. Inc., SEC Staff No-Action Letter (June 22, 1973)(lawyer).

[99] *See, e.g.*, Comment Letter of Consumer Federation of America (Sept. 4, 2000); ICAA Sept. 22, 2004 Letter, *supra* note 28.

[100] *See Compact Oxford English Dictionary* (2004) (available on the Internet *http://www.dictionary.com*) (listing as synonyms of "incidental to" the words "accompanying," "attendant," and "concomitant"). Prior to the Act's enactment, the term "incidental" was defined to include: "Liable to happen or to follow as a chance feature or incident." *Webster's New Int'l Dictionary* 1257 (unabridged 2d ed. 1934). The same dictionary defined "incident" to include "[d]ependent on, or appertaining to, another thing" or "directly and immediately pert[inent] to, or involved with, something else, though not an essential part of it." *Id.*; *cf.* Fowler, *A Dictionary of Modern English Usage* 264 (Oxford Press 1937)(stating that "while *incidental* is applied to side occurrences with stress on their independence of the main action," the word "incident"—particularly "with 'to' as the link"—"is mostly used in close combination with whatever word may represent the main action or subject" and "implies that, though not essential to it, [the side occurrences] not merely happen to arise in connection with [the main action] but may be expected to do so" (emphasis in original).

[101] *See supra* note 40–46 and accompanying text. It is also inconsistent with section 202(a)(11)(C) read as a whole. Following the broad description of the type of services rendered by advisers in paragraph (11)(*i.e.*, "advising others * * * as to the value of securities or as to the advisability of investing in, purchasing or selling securities"), the provision in subparagraph (C) excepts broker-dealers "whose performance of *such services* is solely incidental to the conduct of the broker-dealer's business and for no special compensation" (emphasis added). This structure also supports our conclusion that the words "solely incidental to" do not operate to limit the ways in which broker-dealers can amrket their services.

[102] *See, e.g.*, Robert Bendiner, *Current Quotations on Stockbrokers*, N.Y. TIMES, May 10, 1953, at SM19 ("[W]hen the Korean War began * * * [c]ustomers then wanted to know whether to expect confiscatory taxes that would reduce corporate profits, how price controls might effect their securities, and whether some businesses would be squeezed out entirely for lack of materials. 'You have to talk to them,' one broker said. 'Buying and selling is the least part of the service we give them for our commissions.' "); SEC, SPECIAL STUDY OF THE SECURITIES MARKETS (1963) at 330 ("SPECIAL STUDY") ("Both the volume and the variety of the written investment information and advice originated by broker-dealers, who for the most part furnish it free to their customers as part of their effort to sell securities, are impressive."); *id.* at 386 (terming investment advice furnished by broker-dealers an "integral part of their business of merchandising securities" even if only "incidental" to that business); *Interpretive Releases Relating to the Securities Exchange Act of 1934 and General Rules and Regulations Thereunder: Future Structure of Securities Markets* (Feb. 2, 1972) [37 FR 5286, 5290 (Mar. 14, 1972)] ("In our opinion, the providing of investment research is a fundamental element of the brokerage function for which the bona fide expenditure of the beneficiary's funds is completely appropriate, whether in the form of high commissions or outright cash payments."); TULLY REPORT, *supra* note 13, at 3 ("The most important role of the registered representative is, after all, to provide investment counsel to individual clients, not to generate transaction revenues.").

[103] Thus, for example, under the rules of self-regulatory organizations and consistent with Commission precedent, a broker must render advice that is based on a knowledge of the security involved and that is suitable for a customer in light of the customer's needs, financial circumstances, and investment objectives. *See* NASD Rule 2310; NYSE Rule 405. In addition, under certain circumstances, such as when a broker-dealer assumes a position of trust and confidence with its customer, it has been held to a fiduciary standard with its customer, akin to that of an adviser and a client. *See supra* note 54 and accompanying text.

[104] Letter of North American Securities Administrators Association, Inc. (Oct. 6, 2004) ("NASAA Letter"); AICPA Sept. 22, 2000 Letter, *supra* note 26; ICAA Sept. 22, 2004 Letter, *supra* note 28; Comment Letter of National Association of Personal Financial Advisors (Sept. 21, 2004) ("NAPFA Letter"); Comment Letter of Henry L. Woodward (Sept. 21, 2004); Dimitroff Letter, *supra* note 23; Patchett Letter, *supra* note 27; Heydri Letter, *supra* note 31; Comment Letter of Charles O'Connor (Sept. 14, 2004); Comment Letter of Consumer Federation of America (Jan. 13, 2000) ("CFA Jan. 13, 2000 Letter"); Comment Letter of Pamela A. Jones (Jan. 4, 2000).

[105] We note that reproposed rule 202(a)(11)–1 already contains one interpretation regarding the scope of section 202(a)(11)(C). Paragraph (c) of the rule explains that under the exception, a broker-dealer is an investment adviser only with respect to those accounts for which it provides services or receives compensation that subject the broker-dealer to the Advisers Act.

[106] Proposing Relese, *supra* note 5.

rather than brokerage accounts. In August 2004, when we reopened the comment period on proposed rule 202(a)(11)–1, we asked for comment on whether the rule should be unavailable to a broker-dealer that uses terms such as "investment advice" or "financial planning" to promote its services.[107]

A large number of commenters expressed substantial concern that broker-dealer marketing efforts contribute to investor confusion about the differences between broker-dealers and advisers, and urged us to deny broker-dealers the ability to rely on the broker-dealer exemption if they held themselves out based on their advisory services.[108] Some of these commenters asserted that any marketing of advisory services by a broker-dealer, whether for a fee-based account or an account paying commissions, is inconsistent with those services being solely incidental to the brokerage business. These commenters expressed the view that broker-dealers should stop calling their registered representatives "financial consultants," "financial advisors," or similar names.

We are addressing these concerns in our reproposal of rule 202(a)(11)–1 by proposing to require broker-dealers offering fee-based brokerage to include a prominent statement on all advertisements for, and contracts, agreements, applications and other forms governing fee-based brokerage accounts. The statement must disclose that the accounts are brokerage accounts and not advisory accounts, that, as a consequence, the customer's rights and the firm's duties and obligations to the customer, including the scope of the firm's fiduciary obligations, may differ, and must identify an appropriate person at the firm with whom the customer can discuss the differences.[109] Does this approach address investor confusion concerns? Will the disclosures make sense to investors if broker-dealers continue to refer to their registered representatives as "financial consultants" or "financial advisors"? Should we instead conclude that use by a broker-dealer of such terms is inconsistent with the broker-dealer exception?

The Advisers Act also provides an exception for lawyers and accountants, and our staff has viewed the availability of that exception as turning on whether the lawyer or accountant has held himself out as providing financial planning, pension consulting, or other financial advisory services.[110] Should we apply a similar standard to broker-dealers? Would such an approach address confusion among investors as to the differences between advisory accounts and brokerage accounts? On the other hand, would applying such an approach to broker-dealers ignore salient distinctions between broker-dealers and other professionals in terms of their advice-giving role?

B. Financial Planning Services

Financial planning services typically involve preparing a financial program for a client based on the client's financial circumstances and objectives. A financial planner generally seeks to address a wide spectrum of the client's long-term financial needs, including insurance, savings, and investments, taking into consideration anticipated retirement or other employee benefits.[111] A financial planner also may develop tax or estate plans for clients or refer clients to attorneys, accountants or other professionals. In most cases, financial planners who provide advice about the advisability of investing in securities, advice about market trends, or advice about retaining an investment manager are subject to the Advisers Act.[112]

The advisory services provided by financial planners and the context in which they are provided may extend beyond what Congress, in 1940, reasonably could have understood broker-dealers to have provided as an advisory service ancillary to their brokerage business.[113] We are concerned that some broker-dealers have promoted "financial planning" as a way of acquiring the confidence of customers to promote their brokerage services without actually providing any meaningful financial planning.[114]

We request comment on whether we should interpret financial planning as not solely incidental to the brokerage business. We understand that most broker-dealers that today offer financial planning services for a separate fee treat the customers receiving such services as advisory clients. Is our understanding correct? Should we limit our interpretation to circumstances where investors separately contract for financial planning services? If so, would such an approach discourage the use of separate contracts by broker-dealers? Should we limit our interpretation to circumstances where a separate fee is charged? Should our interpretation turn on whether the financial planning services are ongoing?

Many financial planners registered under both the Advisers Act and Exchange Act are compensated exclusively from commissions received on the sale of securities, including mutual fund shares. Would an interpretation that financial planning is incidental to brokerage business permit those many financial planners to withdraw their registration under the Advisers Act? Would an interpretation

[107] Investment Advisers Act Release No. 2278 (Aug. 19, 2004)[69 FR 51620 (Aug. 20, 2004)]. *See* Investment Advisers Act Release, *supra* note 2 (A lawyer or accountant who holds himself out to the public as providing financial planning, pension consulting, or other financial advisory services would not be able to rely on the exclusion in Section 202(a)(11)(B) of the Advisers Act.)

[108] *E.g.*, NASAA Letter, *supra* note 104; AICPA Letter, *supra* note 26; ICAA Sept. 22, 2004 Letter, *supra* note 28; Comment Letter of Financial Services Institute (Sept. 22, 2004); NAPFA Letter, *supra* note 104; FPA June 21, 2004 Letter, *supra* note 30; Joint Comment Letter of Consumer Federation of America, Certified Financial Planner Board of Standards, Investment Counsel Association of America and the National Association of Personal Financial Advisors (May 31, 2000); FPA Jan. 14, 2000 Letter, *supra* note 23); CFA Jan. 13, 2000 Letter, *supra* note 1104.

[109] Rule 202(a)(11)–1(a)(1)(iii).

[110] *See* Advisers Act Release No. 1092; *supra* note 2.

[111] *See* Jonathan R. Macey, *Regulation of Financial Planners: A White Paper Prepared for the Financial Planning Association* (Apr. 2002) at 5 ("In short, a financial planner develops plans that address all financial aspects of an individual's life. The breadth and scope of the advice given by financial planners is what distinguishes them from other, more specialized participants in the financial services industry. Unlike stock brokers, insurance salesmen, accountants, tax planners, lawyers, and trust and estate experts, financial planners may give advice on investments, savings, taxes, insurance, retirement, estate planning, trusts, and real estate. In addition to a broad rangae of technical advice, typically important components of financial planning are the initial assessment of a clinet's overall financial, familial, personal, and professional needs and goals as well as further monitoring and revision of the client's financial plan.").

[112] *See* Advisers Act Release No. 1092, *supra* note 2. In advisers Act Release No. 1092 we published the views of our staff as to the applicability of the Advisers Act to financial planners and other persons who provide investment advice as a component of other financial services.

[113] Our staff has expressed similar views in the past. *See* Townsend and Associates, SEC Staff No-Action Letter (Sept. 21, 1994) (advice is not incidental that is provided "as part of an overall plan that addresses the financial situation of a customer and formulates a financial plan.") *See also* Investment Management & Reserach, Inc., SEC Staff No-Action Letter (Jan. 27, 1977). It is also consistent with views expressed in two of the leading treatises on investment advisers, See Thomas P. Lemke & Gerald T. Lins, REGULATION OF INVESTMENT ADVISERS § 1:20 (2004); Clifford E. Kirsch, INVESTMENT ADVISER REGULATION (May 2004) at 2:5:1. It may, however, be inconsistent with statements made in a few of our staff's other letters. *See, e.g.*, Nathan & Lewis Securities, SEC Staff No-Action Letter (Mar. 3, 1988) ("Nathan & Lewis No-Action Letter"); Elmer D. Robinson, SEC Staff No-Action Letter (Dec. 6, 1985).

On the other hand, the brokerage business has evolved significantly since 1940, and it may be appropriate to consider financial planning to be part of the traditional package of services broadly understood.

[114] *In the Matter of Haight & Co., Inc.*, Securities Exchange Act Release No. 9082 (Feb. 19, 1971).

that yielded such a result serve to protect investors?

We recognize that full-service broker-dealers must consider some aspects of financial planning when determining that their recommendations are suitable.[115] We would not want our interpretation to interfere in any way with a broker's suitability analysis. In order to avoid this result, how should we draw the line between planning services that are incidental to brokerage and those that are not? Can such a line be drawn? Are there other ways to distinguish a broker-dealer's suitability analysis from an adviser's financial planning services?

At present we propose to address financial planning by issuing an interpretation stating that if a broker-dealer holds itself out as a financial planner or as providing financial planning services,[116] it cannot be considered to be giving advice that is solely incidental to brokerage. Is this approach workable? Should we also (or alternatively) attempt to identify specific types of financial planning services that would or would not be incidental to the brokerage business? We solicit comment on whether we should include any interpretation regarding financial planning in rule text. If so, are there any particular concerns raised by codification? If so, how should they be addressed? We solicit comment on these and other approaches we could take as well.

C. Wrap Fee Sponsorship

Broker-dealers often serve as sponsors of wrap fee programs, under which broker-dealers effect securities transactions for one or more portfolio managers, which may be independent investment advisers.[117] Although a "wrap fee" involves the receipt of "special compensation," such broker-dealers may have available the exception provided by rule 202(a)(11)–1 if, among other things, the portfolio manager selection and asset allocation services typically provided by the broker-dealer sponsor could be viewed as solely incidental to the business of brokerage.[118] However, we have not viewed the asset allocation or portfolio manager selection advice as incidental to the brokerage transactions initiated by the portfolio manager.[119] Does this interpretation continue to make sense? Should we re-affirm it? We understand that broker-dealer sponsors of wrap fee programs are today registered under the Advisers Act and treat wrap fee customers as advisory clients. Is our understanding correct?

D. Other Interpretive Questions

Finally, we request comment whether there are other interpretive questions that have arisen under section 202(a)(11)(C) and, in particular, whether there are any questions regarding any particular advisory service that we might address in an interpretive statement.

IV. General Request for Comment

The Commission requests comment on the rule and interpretations proposed in this release, suggestions for other additions to the rule and interpretations, and comment on other matters that might be affected by the proposals contained in this release. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission also requests information regarding the potential impact of the proposed rule and interpretations on the economy on an annual basis. Commenters should provide empirical data to support their views.

V. Cost Benefit Analysis

A. Background

The Commission is sensitive to the costs and benefits of its rules. Under the proposed rule, broker-dealers would not be deemed to be investment advisers with respect to accounts for which they receive asset-based fees, fixed fees, or similar non-commission compensation, provided that: (i) They do not exercise investment discretion over the account, (ii) their investment advice is solely incidental to the brokerage services provided to the account, and (iii) they make certain disclosures in their advertising and agreements for such accounts. The rule would also clarify that broker-dealers are not subject to the Advisers Act solely because, in addition to full-service brokerage services, they also offer discount brokerage services, including execution-only brokerage, for reduced commission rates. These provisions of the proposed rule are designed to permit broker-dealers to offer these new types of fee-based and discount brokerage programs without triggering regulation under the Advisers Act.

The proposed rule would also specify that broker-dealers exercising investment discretion over customer accounts are not providing advice that is solely incidental to their business as brokers or dealers, regardless of the form of compensation. Thus, broker-dealers providing discretionary brokerage would not be eligible for the Advisers Act broker-dealer exception with respect to discretionary accounts, and would be subject to the Act and its requirements for those accounts.

The Commission is also proposing to interpret the application of the "solely incidental to" requirement of section 202(a)(11)(C) of the Advisers Act to certain broker-dealer practices. A broker-dealer holding itself out as a financial planner would not be considered to be providing advice that is solely incidental to its brokerage services, and thus would be subject to the Advisers Act with respect to accounts offering such advisory services.

We have identified certain costs and benefits, which are discussed below, that may result from the proposed rule and interpretations.[120] We request comment on the costs and benefits of the proposed rule and interpretations.

B. Discussion

1. Fee-based and Discount Brokerage Accounts

a. Benefits

i. Avoidance of Compliance Costs

Proposed rule 202(a)(11)–1(a) would keep broker-dealers from being subject to the Advisers Act as a result of charging asset-based fees instead of commissions for accounts receiving the

[115] A broker must have a reasonable basis for believing that a recommendation to buy or sell a particular security is suitable for the broker's customer considering the customer's risk tolerance, other securities holdings, financial situation, financial needs, and investment objectives. *See supra* note 52.

[116] *See supra* note 110.

[117] Under some wrap fee programs, the broker-dealer sponsor retains discretionary authority and thus must treat its wrap fee customers as advisory clients because the broker-dealers receive special compensation and would not have available the exception provided by proposed rule 202(a)(11)–1, which is limited to non-discretionary accounts. Wrap fee programs are today often referred to as "separately managed accounts" or "separate accounts."

[118] With regard to portfolio manager selection, our staff has viewed this to be so regardless of whether such services were carried out through a wrap fee program or provided as separate services. *See* FPC Securities Corporation, SEC Staff No-Action Letter (Nov. 1, 1974)(staff viewed broker's advice about selection of investment advisers and monitoring advisers' performance not incidental to business of broker-dealer).

[119] We have viewed broker-sponsored wrap fee programs as being subject to the Advisers Act. *Disclosure by Investment Advisers Regarding Wrap Fee Programs,* Investment Advisers Act Release No. 1401 (Jan. 13, 1994) [59 FR 3033 (Jan. 20, 1994)], at n.2 (proposing amendments to Form ADV); Investment Advisers Act Release No. 1411 (Apr. 19, 1994)(adopting amendments to Form ADV)[59 FR 21657 (Apr. 26, 1994)].

[120] In 1999, our Proposing Release also analyzed the costs and benefits of our first proposal to keep broker-dealers from being subject to the Advisers Act solely as a result of re-pricing their full-service brokerage services. As discussed below, the comments on our 1999 proposal have informed our analysis in preparing this cost benefit analysis.

kinds of services they have traditionally provided to brokerage customers, or in the case of discount brokerage, as a result of charging different commission rates for full-service accounts. To the extent they offer fee-based brokerage programs that fit within the activities excepted under the new rule, broker-dealers would not be subject to the Advisers Act with respect to such accounts. Similarly, under the proposed rule, broker-dealers offering both full-service brokerage services and discount brokerage services would not be deemed to have received special compensation solely because they charge reduced commission rates for their discount services.

Broker-dealers relying on the proposed rule with respect to these fee-based and discount brokerage programs would benefit in the form of saved costs they would otherwise expend in connection with Advisers Act compliance.[121] Broker-dealers, even those already dually-registered as investment advisers, would benefit in the form of costs saved by not having to convert their fee-based and full-service brokerage accounts into advisory accounts. For example, these accounts would not be subject to brochure delivery or other disclosure requirements under the Advisers Act. Similarly, such accounts also would not be subject to the principal trading restrictions under the Act. Securities markets would also benefit because the rule would preserve the ability of broker-dealers to engage in principal transactions with these fee-based brokerage customers, and principal transactions are a major source of market liquidity.[122] Commenters responding to our Proposing Release noted a large increase in the number of fee-based brokerage programs in the years since the Proposing Release.[123] The benefits of these compliance cost savings and market liquidity are difficult to quantify.[124]

Other broker-dealers relying on the proposed rule would not be subject to the Advisers Act at all. For these broker-dealers whose fee-based or discount brokerage programs would otherwise require adviser registration, we believe the rule's benefits would be significant in terms of avoiding an increased regulatory burden incurred as a result of changing the way they charge for their brokerage services. For example, if not excepted under the proposed rule, these broker-dealers would be required to prepare, submit and update adviser registration statements,[125] and to prepare and distribute client disclosures under Part II of Form ADV.[126] These broker-dealers would also be required to modify their compliance programs to address the Advisers Act and its requirements,[127] and to establish codes of ethics required under the Act's rules.[128] Because the costs of satisfying these and other requirements under the Advisers Act vary from firm to firm depending on its size and complexity, they are difficult to quantify.

ii. Investor Benefits

By eliminating regulatory disincentives to re-pricing of brokerage services, proposed rule 202(a)(11)–1 is expected to yield benefits for individual investors as a result of such re-pricing. Under the fee-based programs discussed above, a broker-dealer's compensation does not depend on the number of transactions or the size of mark-ups or mark-downs charged, thus reducing incentives for the broker-dealer to churn accounts, recommend unsuitable securities, or engage in high-pressure sales tactics. As such, these programs may better align the interests of broker-dealers and their customers. The rule would also benefit customers by enabling them to choose from among these new programs and other traditional brokerage services to select the program best for them. While it is difficult to quantify the value of these benefits, we believe they are substantial.

b. Costs

While we believe the benefits of proposed rule 202(a)(11)–1(a) are substantial, we believe the incremental costs associated with this provision of the proposed rule are small. The only incremental cost associated with this provision of the rule would be the cost of adding a disclosure statement to the affected account agreements and advertisements. As discussed in our Paperwork Reduction Act analysis, we believe this cost is insignificant.[129] We believe the proposed disclosure is necessary to prevent investor confusion. Furthermore, the cost of the disclosure would be incurred only by those broker-dealers electing to rely on the rule.

Because it would only operate to except from the Advisers Act certain brokerage accounts, proposed rule 202(a)(11)–1(a) would not increase the regulatory burden borne by investment advisers. Some commenters responding to our Proposing Release argued the proposed exception would grant broker-dealers—who give investment advice without complying with the Advisers Act—a competitive advantage over investment advisers subject to the Advisers Act, thereby indirectly imposing costs on investment advisers. However, because the proposed rule would be restricted to investment advice which is solely incidental to brokerage services (and broker-dealers have long been subject to this solely incidental standard under section 202(a)(11)(C) of the Advisers Act), the rule would not establish new opportunities for broker-dealers to compete with advisers on the nature of their investment advice. Also, in providing this advice, broker-dealers would remain subject to their own costs of regulation under the Exchange Act.[130]

Some commenters responding to the Proposing Release additionally asserted the proposed exception would impose

[121] In the alternative, broker-dealers could revert to charging commissions instead of asset-based fees, and cease offering discount brokerage services, thereby avoiding compliance costs under the Advisers Act. Given the growing popularity of these accounts, however, as discussed *infra* note 123, and the fact that most broker-dealers offering these accounts have already established (or an affiliate has established) a compliance infrastructure under the Advisers Act, we expect that, absent the exception that would be provided under proposed rule 202(a)(11)–(1)(a), broker-dealers would continue offering fee-based accounts and treat the accounts as advisory accounts.

[122] *See* Section II.A.1. of this Release, *supra*.

[123] Although commenters on our Proposing Release did not quantify this increase, one consulting firm estimates that assets in fee-based brokerage programs grew by 33.7% from the second quarter of 2003 to the second quarter of 2004. Cerulli Edge 3rd Quarter, *supra* note 47.

[124] Commenters on our 1999 Proposing Release did not provide data quantifying the potential costs of treating such a large number of accounts as advisory accounts.

[125] Advisers registered with the Commission must prepare Part 1A of Form ADV and file it with the SEC on the IARD system. Since Part 1A requires advisers to answer basic questions about their businesses, and can be completed using information readily available to the registrant, costs to prepare the form are typically small, but for some larger registrants with complex operations and many employees and affiliates, the costs may be somewhat higher, and may include professional fees. Adviser registrants submitting their Form ADVs through the IARD are required to pay filing fees to the operator of the system which range from $150 to $1,100 initially and $100 to $550 annually. *See Designation of NASD Regulation, Inc. to Establish the Investment Adviser Registration Depository; Approval of IARD Fees*, Investment Advisers Act Release No. 1888 (July 28, 2000) [65 FR 47807 (Aug. 3, 2000)].

[126] Rule 204–3 [17 CFR 275.204–3].

[127] Rule 206(4)–7 [17 CFR 275.206(4)–7].

[128] Rule 204A–1 [17 CFR 275.204A–1].

[129] *See* Section VII.A. of this Release, *infra*. Broker-dealers would be required to include prominent statements that the account in question is a brokerage account, not an advisory account, and that, as a consequence, the customer's rights and the firm's duties and obligations to the customer, including the scope of the firm's fiduciary obligations, may differ. The firm would also be required to direct the customers to a person who can discuss with the customers the differences between the accounts.

[130] *See supra* note 58 and accompanying text.

costs on investors, who would not receive the same treatment afforded a client of an investment adviser under the Advisers Act. While these commenters argued that the fiduciary duties of an adviser outweigh the duties of a broker-dealer, their comments do not fully recognize the extent of broker-dealers' obligations.[131] Just as we do not believe that the congressional exception for certain broker-dealers from the Advisers Act harms investors, so too we do not believe that proposed rule 202(a)(11)–1(a) would result in investor harm. In addition, we have enhanced the proposed rule's disclosure requirements, and these would, at a minimum, put broker-dealer customers on inquiry as to the nature of the account.[132]

2. Discretionary Accounts

a. Benefits

Under proposed rule 202(a)(11)–1(b), broker-dealers providing discretionary investment advice would not be able to rely on the broker-dealer exception under the Advisers Act, and would be subject to the Act with respect to their discretionary accounts. Proposed rule 202(a)(11)–1(b) would benefit investors to the extent they are confused as to the nature of discretionary brokerage. As previously noted, in many respects discretionary brokerage relationships are difficult to distinguish from investment advisory relationships.[133] By definitively treating such accounts as advisory accounts, the proposed rule would promote understanding by investors of the nature of the service they are receiving. More importantly, we believe that it may ensure that accounts that have the supervisory or managerial character we have identified as warranting Advisers Act coverage are, in fact, covered.

b. Costs

Proposed rule 202(a)(11)–1(b) would entail costs for broker-dealers that maintain discretionary accounts, in the form of Advisers Act compliance costs for these accounts. These costs would be lower for dually-registered broker-dealers that have already established a compliance infrastructure under the Advisers Act (or that could shift affected accounts to an affiliated investment adviser), and would be higher for broker-dealers that would have to become newly-registered under the Advisers Act. Because these costs of compliance and registration would vary from firm to firm depending on its size and complexity, these costs are difficult to quantify.

For broker-dealers already dually-registered as investment advisers, the proposed rule would result in costs to treat discretionary accounts as advisory accounts. Based on staff experience, we believe that many dual registrants currently treat discretionary accounts as advisory accounts, and would be in compliance with the proposed rule without further action. To the extent that other dually-registered broker-dealers would be required to treat discretionary accounts as advisory accounts, they would incur costs associated with subjecting such accounts to the Advisers Act and its requirements.[134] For example, under the Advisers Act, they would be required to deliver brochures and make other required disclosures with respect to these accounts, and observe principal trading restrictions. Nonetheless, we believe these costs would be mitigated because as advisers, these broker-dealers already have systems in place to satisfy such requirements, and the costs are account-specific. Dually-registered broker dealers converting discretionary accounts may also incur additional documentation costs to execute new account agreements with affected clients.

In many instances, broker-dealers that are not dually registered are affiliated with investment advisers. Based on staff experience, we believe that many of these broker-dealers have refrained from engaging in the discretionary brokerage business, and have instead looked to their advisory affiliates to provide portfolio management to investors seeking this kind of service. Other broker-dealers that have not refrained from accepting discretionary brokerage services could implement the requirements of the proposed rule by shifting these customers to their advisory affiliates. In so doing, they would incur the lesser compliance costs of the types discussed above for dual registrants, rather than the greater costs discussed below for new registrants.

For broker-dealers whose maintenance of discretionary accounts would require them to register as investment advisers for the first time, the proposed rule would result in costs associated with registration under the Advisers Act and compliance with the Act's requirements. Although we acknowledge that the costs of registration and compliance under the Advisers Act are significant,[135] we believe that such costs would be mitigated by the fact that these firms could build upon the infrastructure they already have in place as broker-dealers, much of which overlaps with Advisers Act requirements. For example, these broker-dealers are already subject to rules requiring designation of a chief compliance officer, establishment and maintenance of written compliance procedures, maintenance of books and records, and oversight of employee personal securities trading.[136] These broker-dealers will ordinarily also be in compliance with the adviser custody rule.[137]

In addition, the number of broker-dealers that would be required to register as investment advisers as a result of the proposed rule should be small. Based on information submitted by broker-dealers on Form BD, approximately 40 percent of all broker-dealer firms engage exclusively in specialized types of broker-dealer activities that are extremely unlikely to involve discretionary customer accounts.[138] Although approximately

[131] As we discuss *supra* in notes 52—54 and accompanying text, broker-dealers are subject to their own obligations to disclose conflicts, and are subject to an extensive investor protection regime.

[132] *See supra* note 129.

[133] Indeed, it is in part this potential for confusion that counsels us to exclude discretionary accounts from the exception in proposed rule 202(a)(11)–1(a), above.

[134] As discussed below, there are approximately 900 dually-registered broker-dealers that engage in types of broker-dealer activities that might involve discretionary accounts. We do not collect data from broker-dealers on whether or how they maintain discretionary accounts for their customers, so we cannot estimate how many of these dual registrants would be affected by the proposed rule. The staff interpretations on which broker-dealers have relied to hold discretionary accounts not subject to the Advisers Act apply only to broker-dealers who hold a limited number of such accounts. To the extent that broker-dealers have limited their acceptance of discretionary accounts accordingly, there would be a correspondingly limited impact on broker-dealers if we adopt the proposed rule.

[135] As discussed above in Section V.B.1.a. of this Release, these costs include preparing and submitting Part 1 of Form ADV, the adviser registration form; preparing and distributing client disclosures under Part II of Form ADV; modifying their compliance programs to address the Advisers Act and its requirements, and establishing adviser codes of ethics.

[136] 136 *See, e.g.* NASD Conduct Rule 3013 (chief compliance officer); NASD Conduct Rule 3010(b) (compliance procedures); NASD Conduct Rule 3050 (personal trading); NASD Conduct Rule 3110 (books and records). *See also* Exchange Act rule 17a–3 [17 CFR 240.17a–3] (records to be maintained by brokers and dealers); Exchange Act rule 17a–4 [17 CFR 240.17a–4] (records to be preserved by brokers and dealers); Exchange Act rule 17a–7 [17 CFR 240.17a–7] (records of non-resident brokers and dealers); New York Stock Exchange Rule 342 (personal trading).

[137] Rule 206(4)–2. *See Custody of Funds or Securities of Clients by Investment Advisers*, Investment Advisers Act Rel. No. 2176 (Sept. 25, 2003) [68 F.R. 56692 (Oct. 1, 2003)] at n.23 and n.49, and accompanying text.

[138] These estimates are based on information reported on Form BD by broker-dealers whose registrations had been approved by the Commission as of December 15, 2004.

3,850 remaining broker-dealers engage in types of broker-dealer activities that might involve discretionary accounts, approximately 900 of these firms are already dually-registered as investment advisers, leaving a pool of 2,950 broker-dealers that are not registered advisers. Based on its experience, the staff believes it is rare for a broker-dealer that is not also dually-registered as an investment adviser to accept discretionary accounts, and the staff estimates that no more than five to ten percent of these 2,950 broker-dealers (or approximately 145–290 firms) maintain discretionary accounts.[139] We expect that several of these firms could convert all their discretionary accounts to nondiscretionary accounts, thereby avoiding the obligation to register under the Act.[140] We further estimate that one-third of these 145–290 firms that are not dually-registered have affiliations with investment advisers,[141] and would transfer these accounts to their advisory affiliates.[142]

3. Interpretation of "Solely Incidental"

The Commission is also reviewing the application of the "solely incidental to" requirement of section 202(a)(11)(C) of the Advisers Act to certain broker-dealer practices in three additional areas, as discussed below:

a. Holding Out as an Investment Adviser

In the Proposing Release we expressed concern that many broker-dealers offering fee-based brokerage accounts marketed them heavily based on the advisory services provided rather than securities transaction services, and we expressed concern about whether investors would perceive these accounts to be advisory accounts rather than brokerage accounts. As discussed above, proposed rule 202(a)(11)–1(a) is designed to address these concerns by requiring prominent disclosures putting investors on inquiry as to the differences between these types of accounts.

i. Benefits

Some commenters responding to our Proposing Release urged the Commission to formulate an advertising ban for fee-based brokerage accounts, arguing it would benefit investors by eliminating customer confusion as to the nature of these accounts. However, this benefit would be obtained at the cost of prohibiting broker-dealers from marketing themselves based on services they are legally authorized to provide. We believe our proposal to require disclosure with respect to these accounts may be a better way of addressing potential customer confusion.

ii. Costs

As discussed in Section V.B.1.b. of this Release, above, the costs of disclosures for fee-based accounts under proposed rule 202(a)(11)–1(a) would be insignificant. The marketing ban suggested by commenters, however, could effectively prohibit broker-dealers from marketing these accounts in a fashion designed to appeal to interested investors, unless these broker-dealers were willing to treat them as advisory accounts and forego the benefits of the proposed rule as described in Section V.B.1.a. of this Release, above. The cost of being unable to attract new fee-based account customers through marketing, though not readily susceptible to being quantified, could potentially be significant, given the popularity of fee-based accounts as demonstrated by their recent growth.[143]

iii. Holding Out

We also request comments on the potential benefits and costs of applying a "holding out" standard to broker-dealers, similar to the one our staff has applied to lawyers and accountants.[144] Would such an approach offer greater benefits by reducing investor confusion as to the differences between advisory accounts and brokerage accounts? Would it impose costs on broker-dealers, by denying them the ability to compete with investment advisers on the basis of various advisory services that broker-dealers otherwise provide to their customers without registering under the Advisers Act?

b. Financial Planning Services

The Commission is also requesting comment whether to interpret financial planning as not solely incidental to brokerage. Because full-service broker-dealers must consider aspects of financial planning when determining that their recommendations are suitable, we are requesting comment whether our interpretation should turn on whether a broker-dealer holds its financial planning or other advisory services out to clients and prospective clients.

i. Benefits

Customers who obtain financial plans from broker-dealers that hold themselves out as financial planners may be confused as to the nature of the financial planning services they receive. The proposed interpretation would clarify to these customers that the financial planning services they receive are governed by the Advisers Act and its rules.

ii. Costs

If we interpret the Advisers Act to require broker-dealers holding themselves out as financial planners to treat preparation of financial plans as an advisory activity, affected broker-dealers would incur costs to comply with the Advisers Act. These costs would be lower for dually-registered broker-dealers that have already established a compliance infrastructure under the Advisers Act (or that could shift affected accounts to an affiliated investment adviser), and would be higher for broker-dealers that would have to become newly-registered under the Advisers Act. Because the costs of compliance and registration vary from firm to firm depending on its size and complexity, these costs are difficult to quantify.

To the extent that dually-registered broker-dealers would be required to treat financial planning as an advisory activity,[145] they would incur costs

[139] 139 We do not collect data from these broker-dealer firms specifically addressing whether they maintain discretionary accounts.

[140] We expect that the discretionary basis of these accounts has been a matter of convenience for the account customers, but that in the future, the broker-dealer and the customer would agree that the broker-dealer will obtain customer approvals before effecting transactions for these accounts. These broker-dealers would incur limited costs to contact these customers and, if necessary, change their account agreements from discretionary ones to nondiscretionary ones.

[141] 141 For the group of 2,950 broker-dealers, approximately one-third currently report on Form BD that they are affiliated with an investment advisory organization. For purposes of this estimate, we infer that the same one-third affiliation rate will apply in the case of the 145–290 broker-dealers that we estimate accept discretionary accounts.

[142] 142 For these firms that transfer their discretionary accounts to advisory affiliates, costs would be similar to those faced by dual registrants in converting discretionary accounts from brokerage accounts to advisory accounts.

For Paperwork Reduction Act purposes, we have estimated that 220 broker-dealers that are not dually-registered have discretionary brokerage accounts. This is approximately the midpoint of the range discussed above. We have further estimated that 50 of these firms would convert all their discretionary brokerage accounts to nondiscretionary accounts; that 75 firms would transfer all their discretionary accounts to existing advisory affiliates; and that the remaining 95 firms would register under the Advisers Act. We have requested comments on our assumptions in reaching this estimate. *See infra* 162—166, and accompanying text.

[143] *See supra* note 123.

[144] *See supra* note 110, and accompanying text.

[145] Approximately 320 dually-registered broker-dealers report on their Form ADVs that they provide financial planning services. This represents approximately one-third of all dually-registered broker-dealers. We do not collect data that would allow us to determine how many of these 320 broker-dealers actually hold themselves out as financial planners.

associated with subjecting such activities to the Advisers Act and its requirements (similar to the costs to dual registrants of our discretionary accounts proposal, as discussed in Section V.B.2.b. of this Release, above). For example, under the Advisers Act, they would be required to deliver brochures and make other required disclosures with respect to financial planning clients, and observe principal trading restrictions. Nonetheless, we believe these costs would be mitigated because as advisers, these broker-dealers already have systems in place to satisfy such requirements, and the costs are account-specific. These dually-registered broker dealers may also incur additional documentation costs to execute new account agreements with financial planning clients.

In many instances, broker-dealers that are not dually registered are affiliated with investment advisers, as discussed above. These broker-dealers could shift financial planning clients to their advisory affiliates. In so doing, they would incur the lesser compliance costs of the types discussed above for dual registrants, rather than the greater costs discussed below for new registrants.

For broker-dealers whose financial planning activities would require them to register as investment advisers for the first time, the proposed rule would result in costs associated with registration under the Advisers Act and compliance with the Act's requirements. Although we acknowledge (as discussed above in connection with discretionary accounts) that the costs of registration and compliance under the Advisers Act are significant,[146] we believe that such costs would be mitigated by the fact that these firms could build upon the infrastructure they already have in place as broker-dealers, much of which overlaps with Advisers Act requirements. For example, these broker-dealers are already subject to rules requiring designation of a chief compliance officer, establishment and maintenance of written compliance procedures, maintenance of books and records, and oversight of employee personal securities trading.[147] These broker-dealers will ordinarily also be in compliance with the adviser custody rule.[148]

[146] As discussed in Section V.B.2.b. of this Release, *supra*, these costs include preparing and submitting Part 1 of Form ADV, the adviser registration form; preparing and distributing client disclosures under Part II of Form ADV; modifying their compliance programs to address the Advisers Act and its requirements, and establishing adviser codes of ethics.

[147] *See supra* note 136.

[148] *See supra* note 137.

We do not collect data from broker-dealers describing whether they hold themselves out as financial planners, so it is difficult to estimate the extent to which broker-dealers would be required to register under the proposed interpretation. Based on information submitted by broker-dealers on Form BD, approximately 40 percent of all broker-dealer firms engage exclusively in specialized types of broker-dealer activities that are extremely unlikely to involve any financial planning activities.[149] Of the approximately 3,850 remaining broker-dealers that engage in types of broker-dealer activities that might involve financial planning, approximately 900 are already dually-registered as investment advisers, and approximately 1,000 others are affiliated with investment advisers and could shift financial planning clients to the affiliates instead of registering. We do not collect data that would allow us to determine how many of the remaining 1,950 broker-dealers hold themselves out as financial planners. As discussed above, among dually-registered broker-dealers, only one-third report providing financial planning services (although this does not necessarily mean that they also hold themselves out as financial planners).[150] Applying the same ratio to these remaining 1,950 broker-dealers would yield 650 firms, but it seems likely the ratio would be significantly lower for firms that are not dual registrants, and even lower for those that hold themselves out as financial planners. Further, it seems likely some portion of these broker-dealers would find that the costs of registration outweigh the benefits to the firm of holding themselves out as financial planners, and would cease doing so.[151]

c. Wrap Fee Sponsorship

We are proposing to re-affirm our current interpretation regarding wrap program sponsorship. Since this would not change existing obligations or relationships, no new costs or benefits would result.

[149] *See supra* note 138.

[150] *See supra* note 145.

[151] For Paperwork Reduction Act purposes, we have estimated that 100 broker-dealers would register, and requested comment on our assumptions in reaching this estimate. The estimate is based on assumptions that approximately ten percent of the 1,950 broker-dealers (or 195) currently hold themselves out as financial planners, and that approximately half of the 195 would choose to stop holding themselves out rather than register under the Advisers Act. *See infra* notes 167–168, and accompanying text.

C. Request for Comment

The Commission requests comments on the costs and benefits identified in this release.

• Are there other costs or benefits that may result from the proposed rule and interpretation?

We request commenters to identify, discuss, analyze, and supply relevant data regarding these or any additional costs and benefits. In particular, we request data regarding the following:

• How many broker-dealers would be required to register under the Advisers Act absent proposed rule 202(a)(11)–1(a)? How many would not face new registration obligations, but would be required (absent proposed rule 202(a)(11)–1(a)) to begin treating these accounts as advisory accounts, or arrange for brokerage accounts to be shifted to advisory affiliates to be handled under the Advisers Act? What amount of costs would each of these different groups of broker-dealers incur?

• What is the value of the benefits we have identified under proposed rule 202(a)(11)–1(a) for investors, including better alignment between their interests and the interests of their broker-dealers and greater choice in paying for brokerage services? What is the value of liquidity that would be made available in the securities markets if the principal trading restrictions of the Advisers Act did not apply to fee-based accounts under rule 202(a)(11)–1(a)?

• What proportion of broker-dealers currently treat their discretionary accounts as advisory accounts? How many broker-dealers would be required to register under the Advisers Act as a consequence of proposed rule 202(a)(11)–1(b)? How many would not face new registration obligations, but would be required to begin treating these accounts as advisory accounts, or arrange for brokerage accounts to be shifted to advisory affiliates to be handled under the Advisers Act? In preparing our estimates of the number of broker-dealers that would be affected by proposed rule 202(a)(11)–1(b), have we drawn appropriate inferences from the limited data available to us? What amount of costs would each of these different groups of broker-dealers incur?

• What proportion of broker-dealers that currently hold themselves out as financial planners treat financial planning as an advisory activity? How many would be required to register as a consequence of the proposed financial planning interpretation? How many would not face new registration obligations, but would be required to begin treating these accounts as advisory accounts, or arrange for brokerage accounts to be shifted to advisory affiliates to be handled under the Advisers Act? In preparing our estimates of the number of broker-dealers that would be affected by the proposed interpretation, have we drawn appropriate inferences from the limited data available to us? What amount of costs would each of these different groups of broker-dealers incur?

VI. Effects on Competition, Efficiency and Capital Formation

Section 202(c) of the Advisers Act mandates that the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[152]

A. Fee-Based and Discount Brokerage Programs

Proposed rule 202(11)(a)–1(a) would provide that a broker-dealer providing nondiscretionary advice that is incidental to its brokerage services can retain its exception from the Advisers Act regardless of whether it charges an asset-based or fixed fee (rather than commissions, mark-ups, or mark-downs) for its services. The proposed rule would also provide that broker-dealers are not subject to the Act solely because in addition to offering full-service brokerage they offer discount brokerage services, including execution-only brokerage, for reduced commission rates.[153]

Proposed rule 202(11)(a)–1(a) is not expected to negatively affect competition. Many commenters addressing our Proposing Release raised concerns that the proposed rule would grant broker-dealers who give investment advice without registering under the Advisers Act a competitive advantage over investment advisers subject to the Advisers Act. However, as discussed in Section II.A.1. of this Release, above, broker-dealers have historically provided advisory services to their brokerage customers. As discussed in Section II.A.2 of this Release, above, broker-dealers do so subject to the cost implications of compliance with broker-dealer regulation. Because the proposed rule would not change the types of advice broker-dealers may provide (which advice must continue to be solely incidental to brokerage) or materially change their compliance costs, it is not expected not create a competitive advantage.

Proposed rule 202(a)(11)–1(a) could increase efficiency by removing impediments to fee-based brokerage programs. Fee-based brokerage programs, as we discuss above, respond to changes in the market place for retail brokerage, and concerns that we have long held about the incentives that commission-based compensation provides for broker-dealers to churn accounts, recommend unsuitable securities, and engage in aggressive marketing.[154] The availability of fee-based brokerage programs may better align the interests of broker-dealers and their customers. The availability of fee-based and discount brokerage programs should also enable brokerage customers to choose these new programs when they represent a more efficient alternative than commission-based brokerage.

If proposed rule 202(a)(11)–1(a) has any affect on capital formation, it would be indirect, and positive. By removing impediments to fee-based and discount brokerage programs which may be more desirable for customers than commission-based programs, the proposed rule may open the door to greater investor participation in the securities markets.

B. Discretionary Brokerage and Financial Planning

Proposed rule 202(a)(11)–1(b) would specify that broker-dealers exercising investment discretion over customer accounts are not providing advice that is solely incidental to their business as a brokers or dealers. The Commission is also proposing an interpretation under which broker-dealers holding themselves out as financial planners would not be considered to be providing advice that is solely incidental to brokerage. Thus, broker-dealers providing discretionary brokerage or holding themselves out as financial planners would not be eligible for the Advisers Act broker-dealer exception with respect to these activities, and would be subject to the Act and its requirements for them.

The proposed rule and interpretation would not negatively affect competition. Some broker-dealers would be required to begin treating discretionary or financial planning customers as clients under the Advisers Act. However, as discussed above, we believe the majority of broker-dealers already apply the Advisers Act to these relationships, so we expect the effects of the proposed rule and interpretation will not be widespread.[155] If the proposed rule and interpretation were adopted and remaining firms began applying the Advisers Act to these relationships as a result, they would be competing on a more even footing with broker-dealers who already do so. We do not believe the proposed rule and interpretation would have any effect on efficiency or capital formation.

VII. Paperwork Reduction Act

Proposed rule 202(a)(11)–1(a) contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[156] The title of this new collection is "Rule 202(a)(11)–1 under the Investment Advisers Act of 1940—Certain Broker-Dealers Deemed Not To Be Investment Advisers," and the Commission has submitted it to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. OMB has approved, and subsequently extended, this collection under control number 3235–0532 (expiring on October 31, 2006).

Additionally, rule 202(a)(11)–1(b) would have the effect of requiring certain broker-dealers providing discretionary brokerage to register under the Advisers Act. The Commission's proposed interpretation of section 202(a)(11)(C) of the Advisers Act would also have the effect of requiring certain broker-dealers to register under the Advisers Act if they hold themselves out as financial planners. The proposed rule and interpretation would therefore increase the number of respondents under several existing collections of information, and, correspondingly, increase the annual aggregate burden under those existing collections of information. The Commission is submitting to OMB, in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11, the existing collections of information for which the annual aggregate burden would likely increase as a result of proposed rule 202(a)(11)–1(b) and the proposed interpretation. The titles of the affected collections of information are: "Form ADV," "Form ADV–W and Rule 203–2," "Rule 203–3 and Form ADV–H," "Form ADV–NR," "Rule 204–2," "Rule 204–3," "Rule 204A–1," "Rule 206(4)–3," "Rule 206(4)–4," "Rule 206(4)–6," and "Rule 206(4)–7," all under the Advisers Act. The existing rules that would be affected by

[152] 15 U.S.C. 80b–2(c).

[153] Rule 202(a)(11)–1(c) further provides that a registered broker-dealer is an investment adviser solely with respect to those accounts for which it provides services or receives compensation that subjects it to the Advisers Act.

[154] *See supra* notes 13–16 and accompanying text.

[155] *See supra* Sections V.B.2.b and V.B.3.b.ii. of this Release.

[156] 44 U.S.C. 3501 to 3520.

proposed rule 202(a)(11)–1(b) and the proposed interpretation contain currently approved collection of information numbers under OMB control numbers 3235–0049, 3235–0313, 3235–0538, 3235–0240, 3235–0278, 3235–0047, 3235–0596, 3253–0242, 3235–0345, 3235–0571 and 3235–0585, respectively.

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.

A. Certain Broker-Dealers Deemed Not To Be Investment Advisers

Under proposed rule 202(a)(11)–1(a), broker-dealers would be deemed not to be "investment advisers" as defined in the Advisers Act with respect to certain accounts. With respect to these accounts, such broker-dealers would not be subject to the provisions of the Advisers Act, including the various registration, disclosure and recordkeeping requirements under the Act. Under proposed rule 202(a)(11)–1(a), a broker-dealer would not be deemed to be an investment adviser with respect to an account for which it receives special compensation, provided that: (i) It does not exercise investment discretion over the account, (ii) its investment advice is solely incidental to the brokerage services provided to the account, and (iii) it makes certain disclosures in its advertising and agreements for such accounts.

In the Proposing Release, we noted that broker-dealers taking advantage of the proposed exception would need to maintain certain records that establish their eligibility to do so, but that rules under the Exchange Act already require the maintenance of those records.[157] Therefore, we concluded that this facet of the proposed exception would not increase the recordkeeping burden for any broker-dealer.

To rely on the proposed rule with respect to a particular brokerage account, advertisements [158] and contracts or agreements for the account would be required to contain a disclosure, including a prominent statement that the account in question is a brokerage account, not an advisory account. This disclosure must explain that the customer's rights and the firm's duties and obligations to the customer, including the scope of the firm's fiduciary obligations, may differ. The firm would also be required to identify an appropriate person at the firm with whom the customer can discuss the differences.[159] This information is necessary to prevent customers and prospective customers from mistakenly believing that the account is an advisory account subject to the Advisers Act, and will be used to assist customers in making an informed decision on whether to establish an account. The collection of information requirement under the proposed rule is mandatory. In general, the information collected pursuant to the proposed rule would be held by the broker-dealers. Staff of the Commission, self-regulatory organizations, and other securities regulatory authorities would gain possession of the information only upon request. Any collected information received by the Commission would be kept confidential subject to the provisions of the Freedom of Information Act [5 U.S.C. 552].

The burden to comply with this provision of the proposed rule would be insignificant. In preparing model contracts and advertisements, for example, compliance officials would be required to verify that the appropriate disclosure is made. In the Proposing Release, we estimated that the average annual burden for ensuring compliance is five minutes per broker-dealer taking advantage of the proposed rule.[160] We estimated that if all of the approximately 8,100 broker-dealers registered with us took advantage of the rule, the total estimated annual burden would be 673 hours.[161] As proposed in 1999, the rule only required a prominent statement that the account is a brokerage account. The rule we are proposing today modifies this provision to require that the prominent statement also indicate that the account is not an advisory account; that the firm's obligations with respect to such accounts may differ; and that, as a consequence, the customer's rights and the firm's duties and obligations to the customer, including the scope of the firm's fiduciary obligations, may differ. The firm would also be required to identify an appropriate person at the firm with whom the customer can discuss the differences. However, this modified disclosure will not increase the estimated paperwork burden for this collection.

B. Broker-Dealers Providing Discretionary Advice or Financial Plans

As discussed above, under proposed rule 202(a)(11)–1(b), broker-dealers providing discretionary advice will be deemed advisers subject to the Advisers Act for their discretionary accounts. Broker-dealers holding themselves out as financial planners would, under the Commission's proposed interpretation of section 202(a)(11)(C) of the Advisers Act, be deemed advisers subject to the Advisers Act with respect to their financial planning clients. This proposed rule and proposed interpretation would therefore increase the number of respondents under the existing collections of information identified above, and, correspondingly, increase the annual aggregate burden under those existing collections of information. All of these collections of information are mandatory, and respondents in each case are investment advisers registered with us, except that (i) respondents to Form ADV are also investment advisers applying for registration with us; (ii) respondents to Form ADV–NR are non-resident general partners or managing agents of registered advisers; (iii) respondents to rule 204A–1 include "access persons" of an adviser registered with us, who must submit reports of their personal trading to their advisory firms; (iv) respondents to rule 206(4)–3 are advisers who pay cash fees to persons who solicit clients for the adviser; (v) respondents to rule 206(4)–4 are advisers with certain disciplinary histories or a financial condition that is reasonably likely to affect contractual commitments; and (vi) respondents to rule 206(4)–6 are only those SEC-registered advisers that vote their clients' securities. Unless otherwise noted below, responses are not kept confidential.

We cannot quantify with precision the number of broker-dealers that will be new registrants with the Commission under the Advisers Act if proposed rule 202(a)(11)–1(b) is adopted. Based on information submitted by broker-dealers on Form BD, approximately 40 percent of all broker-dealer firms engage exclusively in specialized types of broker-dealer activities that are extremely unlikely to involve

[157] *See* Proposing Release at Section IV. Specifically, the proposed rule would limit its application to accounts over which a broker-dealer does not exercise investment discretion. Proposed rule 202(a)(11)–1(a)(1)(i). The proposed rule would also require a prominent statement be made in agreements governing the accounts to which the rule applies. Rule 202(a)(11)–1(a)(1)(ii). Under Exchange Act rules, broker-dealers are already required to maintain all "evidence of the granting of discretionary authority given in any respect of any account" [17 CFR 240.17a–4(b)(6)] and all "written agreements * * * with respect to any account" [17 CFR 240.17a–4(b)(7)].

[158] As discussed in the Proposing Release, broker-dealers already are required to maintain records regarding their advertisements under existing self-regulatory organizations' rules.

[159] Rule 202(a)(11)–1(a)(1)(iii).

[160] *See* Proposing Release.

[161] 0.083 hours × 8,100 broker-dealers = 673 hours.

discretionary customer accounts.[162] Although approximately 3,850 remaining broker-dealers engage in types of broker-dealer activities that might involve discretionary accounts, approximately 900 of these firms are already dually-registered as investment advisers, leaving a pool of 2,950 broker-dealers. Based on its experience, staff believes it is rare for a broker-dealer that is not also dually-registered as an investment adviser to accept discretionary accounts, and staff estimates that no more than five to ten percent of these 2,950 broker-dealers (or approximately 145–295 firms) maintain discretionary accounts.[163] Of those 220 broker-dealers (which is the midpoint of the range), we estimate approximately 50 will have so few discretionary accounts that they will make a business decision to cease to offer them and transform existing accounts into nondiscretionary accounts to avoid having to register under the Act.[164] We further estimate that one-third of these 220 broker-dealers, or 75 firms, will transfer their discretionary accounts to existing investment advisory affiliates.[165] Thus, for purpose of this analysis, we have estimated 95 new firms would be required to register with the SEC as investment advisers as a result of proposed rule 202(a)(11)–1(b).[166]

In addition, we cannot quantify with precision the number of broker-dealers that would be new registrants with the Commission under the Advisers Act if the Commission adopts its proposed interpretation of section 202(a)(11)(C) of the Advisers Act concerning broker-dealers that hold themselves out as financial planners. Based on information submitted by broker-dealers on Form BD, approximately 40 percent of all broker-dealer firms engage exclusively in specialized types of broker-dealer activities that are extremely unlikely to involve any financial planning activities.[167] Of the approximately 3,850 remaining broker-dealers that engage in types of broker-dealer activities that might involve financial planning, approximately 900 are already dually-registered as investment advisers, and approximately 1,000 others are affiliated with investment advisers and could shift financial planning clients to the affiliates instead of registering. We do not collect data that would allow us to determine how many of the remaining 1,950 broker-dealers hold themselves out as financial planners. For purposes of the following analysis, we estimate that 10 percent of these firms, or 195 broker-dealers, hold themselves out as financial planners.[168] Further, for purposes of the following analysis, we estimate that approximately half of these 195 broker-dealers would find that the costs of registration outweigh the benefits to the firm of holding themselves out as financial planners, and would cease doing so. Thus, for purposes of this analysis, we have estimated 100 new firms would be required to register with the SEC as investment advisers as a result of the proposed interpretation.

We request comment on the number of broker-dealers that would be subject to the applicable collections of information as a result of proposed rule 202(a)(11)–1(b) and the Commission's proposed interpretation of section 202(a)(11)(C) of the Advisers Act.[169]

1. Form ADV

Form ADV is the investment adviser registration form. The collection of information under Form ADV is necessary to provide advisory clients, prospective clients, and the Commission with information about the adviser, its business, and its conflicts of interest. Rule 203–1 requires every person applying for investment adviser registration with the Commission to file Form ADV. Rule 204–1 requires each SEC-registered adviser to file amendments to Form ADV at least annually, and requires advisers to submit electronic filings through the IARD. This collection of information is found at 17 CFR 275.203–1, 275.204–1, and 279.1. The currently approved collection of information in Form ADV is 102,653 hours.[170] We estimate that 195 new respondents will file one complete Form ADV and one amendment annually, and comply with Form ADV requirements relating to delivery of the adviser code of ethics. Accordingly, we estimate the proposed rule and interpretation would increase the annual aggregate information collection burden under Form ADV by 5,840 hours[171] for a total of 108,493 hours.

2. Form ADV–W and Rule 203–2

Rule 203–2 requires every person withdrawing from investment adviser registration with the Commission to file Form ADV–W. The collection of information is necessary to apprise the Commission of advisers who are no longer operating as registered advisers. This collection of information is found at 17 CFR 275.203–2 and 17 CFR 279.2. The currently approved collection of information in Form ADV–W is 578 hours. We estimate that the 195 broker-dealer/advisers that would be new registrants will withdraw from SEC registration at a rate of approximately 16 percent per year, the same rate as other registered advisers, and will file for partial and full withdrawals at the same rates as other registered advisers, with approximately half of the filings being full withdrawals and half being partial withdrawals. Accordingly, we estimate the proposed rule and interpretation would increase the annual aggregate information collection burden under

[162] These estimates are based on information reported on Form BD by broker-dealers whose registrations had been approved by the Commission as of December 15, 2004.

[163] We do not collect data from these broker-dealer firms specifically addressing whether they maintain discretionary accounts.

[164] We expect that the discretionary basis of these accounts has been a matter of convenience for the account customers, but that on a going-forward basis, the broker-dealer and the customer will agree that the broker-dealer will obtain customer approvals before effecting transactions for these accounts.

[165] For the group of 2,950 broker-dealers that might potentially maintain discretionary accounts subjecting them to adviser registration under the rule, approximately one-third currently report on Form BD that they are affiliated with an investment advisory organization. For purposes of this estimate, we infer that the same one-third affiliation rate will apply in the case of the 145–295 broker-dealers that we estimate accept discretionary accounts.

[166] 220 broker-dealers − 50 converting to nondiscretionary accounts − 75 transferring discretionary accounts to existing investment adviser affiliates = 95 broker-dealers.

[167] *See supra* note 162.

[168] Among dually-registered broker-dealers, only one-third report providing financial planning services (although this does not necessarily mean that they also hold themselves out as financial planners). *See supra* note 145. Applying the same ratio to these remaining 1,950 broker-dealers would yield 650 firms, but it seems likely the ratio would be significantly lower for firms that are not dual registrants, and even lower for those that hold themselves out as financial planners. Accordingly, for this analysis, we estimate that 10 percent of these 1,950 broker-dealers hold themselves out as financial planners.

[169] For purposes of the following analyses, we have assumed that all 195 of these broker-dealers will register with the Commission. However, some may be ineligible to register with us as a result of section 203A of the Advisers Act [15 U.S.C. 80b–3A], which generally prohibits investment advisers from registering with the Commission unless they have at least $25 million of client assets under management. We request public comment on how many of these broker-dealers will be ineligible to register with the Commission.

[170] We have previously submitted to OMB a request to increase the number of respondents to this collection. *See Registration Under the Advisers Act of Certain Hedge Fund Advisers*, Investment Advisers Act Release No. 2333 (Dec. 2, 2004) [69 FR 72,054 (Dec. 10, 2004)]. OMB has not yet approved this request.

[171] 195 filings of the complete form at 22.25 hours each, plus 195 amendments at 0.75 hours each, plus 6.7 hours for each of the 195 broker-dealer/advisers to deliver copies of their codes of ethics to 10 percent of their 670 clients annually who request it, at 0.1 hours per response. $(195 \times 22.25) + (195 \times 0.75) + (195 \times (670 \times 0.1) \times 0.1) = 5{,}840$.

Form ADV–W and rule 203–2 by 16 hours [172] for a total of 594 hours.

3. Rule 203–3 and Form ADV–H

Rule 203–3 requires that advisers requesting either a temporary or continuing hardship exemption submit the request on Form ADV–H. An adviser requesting a temporary hardship exemption is required to file Form ADV–H, providing a brief explanation of the nature and extent of the temporary technical difficulties preventing it from submitting a required filing electronically. Form ADV–H requires an adviser requesting a continuing hardship exemption to indicate the reasons the adviser is unable to submit electronic filings without undue burden and expense. Continuing hardship exemptions are available only to advisers that are small entities. The collection of information is necessary to provide the Commission with information about the basis of the adviser's hardship. This collection of information is found at 17 CFR 275.203–3, and 279.3. The currently approved collection of information in Form ADV–H is 11 hours. We estimate that approximately one broker-dealer/adviser among the new registrants would file for a temporary hardship exemption and one would file for a continuing exception. Accordingly, we estimate the proposed rule and interpretation would increase the annual aggregate information collection burden under Form ADV-H and rule 203–3 by 2 hours [173] for a total of 13 hours.

4. Form ADV–NR

Non-resident general partners or managing agents of SEC-registered investment advisers must make a one-time filing of Form ADV–NR with the Commission. Form ADV–NR requires these non-resident general partners or managing agents to furnish us with a written irrevocable consent and power of attorney that designates the Commission as an agent for service of process, and that stipulates and agrees that any civil suit or action against such person may be commenced by service of process on the Commission. The collection of information is necessary for us to obtain appropriate consent to permit the Commission and other parties to bring actions against non-resident partners or agents for violations of the federal securities laws. This collection of information is found at 17 CFR 279.4. The currently approved collection of information in Form ADV–NR is 17 hours. We estimate that approximately one broker-dealer/adviser among the new registrants would make this filing. Accordingly, we estimate the proposed rule and interpretation would increase the annual aggregate information collection burden under Form ADV–NR by one hour [174] for a total of 18 hours.

5. Rule 204–2

Rule 204–2 requires SEC-registered investment advisers to maintain copies of certain books and records relating to their advisory business. The collection of information under rule 204–2 is necessary for the Commission staff to use in its examination and oversight program. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.[175] The records that an adviser must keep in accordance with rule 204–2 must generally be retained for not less than five years.[176] This collection of information is found at 17 CFR 275.204–2. The currently approved collection of information for rule 204–2 is 1,724,870 hours, or 191.78 hours per registered adviser. We estimate that all 195 broker-dealer/advisers that would be new registrants would maintain copies of records under the requirements of rule 204–2. Accordingly, we estimate the proposed rule and interpretation would increase the annual aggregate information collection burden under rule 204–2 by 37,397 hours [177] for a total of 1,762,267 hours.

6. Rule 204–3

Rule 204–3, the "brochure rule," requires an investment adviser to deliver to prospective clients a disclosure statement containing specified information as to the business, practices and background of the adviser. Rule 204–3 also requires that an investment adviser deliver, or offer, its brochure on an annual basis to existing clients in order to provide them with current information about the adviser. The collection of information is necessary to assist clients in determining whether to retain, or continue employing, the adviser. This collection of information is found at 17 CFR 275.204–3. The currently approved collection of information for rule 204–3 is 6,089,293 hours, or 694 hours per registered adviser, assuming each adviser has on average 670 clients. We estimate that all 195 broker-dealer/advisers that would be new registrants will provide brochures as required by rule 204–3. Accordingly, we estimate the proposed rule and interpretation would increase the annual aggregate information collection burden under rule 204–3 by 135,330 hours [178] for a total of 6,224,623 hours. We note that the average number of clients per adviser reflects a small number of advisers who have thousands of clients, while the typical SEC-registered adviser has approximately 76 clients. We request comments on the number of advisory clients of the average broker-dealer registering because the firm maintains discretionary brokerage accounts for customers or holds itself out to its financial planning customers.

7. Rule 204A–1

Rule 204A–1 requires SEC-registered investment advisers to adopt codes of ethics setting forth standards of conduct expected of their advisory personnel and addressing conflicts that arise from personal securities trading by their personnel, and requiring advisers' "access persons" to report their personal securities transactions. The collection of information under rule 204A–1 is necessary to establish standards of business conduct for supervised persons of investment advisers and to facilitate investment advisers' efforts to prevent fraudulent personal trading by their supervised persons. This collection of information is found at 17 CFR 275.204A–1. The currently approved collection of information for rule 204A–1 is 1,060,842 hours, or 117.95 hours per registered adviser. We estimate that all 195 broker-dealer/advisers that would be new registrants will adopt codes of ethics under the requirements of rule 204A–1 and require personal securities transaction reporting by their "access persons." Accordingly, we estimate the proposed rule and interpretation would increase the annual aggregate information collection burden under rule 204A–1 by 23,000 hours [179] for a total of 1,083,842 hours.

8. Rule 206(4)–3

Rule 206(4)–3 requires advisers who pay cash fees to persons who solicit clients for the adviser to observe certain procedures in connection with solicitation activity. The collection of

[172] 32 filings (195 × 0.16), consisting of 16 full withdrawals at 0.75 hours each and 16 partial withdrawals at 0.25 hours each. (16 × 0.75) + (16 × 0.25) = 16.

[173] 2 filings at 1 hour each.

[174] 1 filing at 1 hour each.

[175] *See* section 210(b) of the Advisers Act [15 U.S.C. 80b–10(b)].

[176] *See* rule 204–2(e).

[177] 195 broker-dealer/advisers × 191.78 hours per adviser = 37,397 hours.

[178] 195 broker-dealer/advisers × 694 hours per adviser = 135,330.

[179] 195 broker-dealer/advisers × 117.95 hours per adviser annually = 23,000.

information under rule 206(4)–3 is necessary to inform advisory clients about the nature of a solicitor's financial interest in the recommendation of an investment adviser, so the client may consider the solicitor's potential bias, and to protect investors against solicitation activities being carried out in a manner inconsistent with the adviser's fiduciary duties. This collection of information is found at 17 CFR 275.206(4)–3. The currently approved collection of information for rule 206(4)–3 is 12,355 hours. We estimate that approximately 20 percent of the 195 broker-dealer/advisers that would be new registrants would be subject to the cash solicitation rule, the same rate as other registered advisers. Accordingly, we estimate the proposed rule and interpretation would increase the annual aggregate information collection burden under rule 206(4)–3 by 275 hours [180] for a total of 12,630 hours.

9. Rule 206(4)–4

Rule 206(4)–4 requires registered investment advisers to disclose to clients and prospective clients certain disciplinary history or a financial condition that is reasonably likely to affect contractual commitments. This collection of information is necessary for clients and prospective clients in choosing an adviser or continuing to employ an adviser. This collection of information is found at 17 CFR 275.206(4)–4. The currently approved collection of information for rule 206(4)–4 is 11,383 hours. We estimate that approximately 17.3 percent of the 195 broker-dealer/advisers that would be new registrants would be subject to rule 206(4)–4, the same rate as other registered advisers. Accordingly, we estimate the proposed rule and interpretation would increase the annual aggregate information collection burden under rule 206(4)–4 by 255 hours [181] for a total of 11,638 hours.

10. Rule 206(4)–6

Rule 206(4)–6 requires an investment adviser that votes client securities to adopt written policies reasonably designed to ensure that the adviser votes in the best interests of clients, and requires the adviser to disclose to clients information about those policies and procedures. This collection of information is necessary to permit advisory clients to assess their adviser's voting policies and procedures and to monitor the adviser's performance of its voting responsibilities. This collection of information is found at 17 CFR 275.206(4)–6. The currently approved collection of information for rule 206(4)–6 is 119,873 hours. We estimate that all 195 broker-dealer/advisers that would be new registrants would vote their clients' securities. Accordingly, we estimate the proposed rule and interpretation would increase the annual aggregate information collection burden under rule 206(4)–6 by 3,257 hours [182] for a total of 123,130 hours.

11. Rule 206(4)–7

Rule 206(4)–7 requires each registered investment adviser to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act, review those policies and procedures annually, and designate an individual to serve as chief compliance officer. This collection of information under rule 206(4)–7 is necessary to ensure that investment advisers maintain comprehensive internal programs that promote the advisers' compliance with the Advisers Act. This collection of information is found at 17 CFR 275.206(4)–7. The currently approved collection of information for rule 206(4)–7 is 701,200 hours, or 80 hours annually per registered adviser. We estimate all 195 broker-dealer/advisers that would be new registrants would be required to maintain compliance programs under rule 206(4)–7. Accordingly, we estimate the proposed rule and interpretation would increase the annual aggregate information collection burden under rule 206(4)–7 by 15,600 hours [183] for a total of 716,800 hours.

12. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments with respect to the collections described in Section VII.B. of this Release to:

• Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;

• Evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information;

• Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and

• Determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements described in Section VII.B. of this Release should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, Washington, DC 20503, and also should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609 with reference to File No. S7–25–99. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives the comment within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–25–99, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

VIII. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis ("IRFA") in accordance with section 3(a) of the Regulatory Flexibility Act.[184] It relates to proposed rule 202(a)(11)–1, and to the Commission's proposal to interpret the application of the "solely incidental to" requirement of section 202(a)(11)(C) of the Act to certain broker-dealer practices.

A. Need for the Rule and Amendments

Sections I through III of this Release describe the reasons for and objectives of proposed rule 202(a)(11)–1. As discussed in detail above, proposed rule 202(a)(11)–1(a) is designed to permit broker-dealers to offer new types of accounts, which charge asset-based fees for full-service brokerage services or make discounts available for execution services, without unnecessarily triggering regulation under the Advisers

[180] 39 respondents (195 × 0.2) × 7.04 hours annually per respondent = 275.

[181] 34 respondents (195 × 0.173) × 7.5 hours annually per respondent = 255.

[182] We estimate that 195 broker-dealer/advisers would spend 10 hours each annually documenting their voting policies and procedures, and would provide copies of those policies and procedures to 10 percent of their 670 clients annually at 0.1 hours per response. (195 × 10) + 195 × (0.1 × 67) = 3,257.

[183] 195 broker-dealer/advisers at 80 hours per adviser annually = 15,600.

[184] 5 U.S.C. 603(a).

Act. Proposed rule 202(a)(11)–1(b) would subject all discretionary brokerage accounts to the Advisers Act. Under the proposed interpretation, the Commission would not consider broker-dealers holding themselves out as financial planners to be providing advice that is "solely incidental to" brokerage; these broker-dealers thus would be subject to the Investment Advisers Act with respect to accounts including a financial plan.

B. Objectives and Legal Basis

Sections II through III of this Release discuss the objectives of the proposed rule and interpretation. As we discuss in detail above, these objectives include fostering the availability of fee-based and discount brokerage programs to brokerage customers and reducing investor confusion as to whether they are receiving brokerage services or advisory services. Section IX of this Release lists the statutory authority for the proposed rule and rule amendments.

C. Small Entities

The proposed rule and interpretation under the Advisers Act would apply to all brokers-dealers registered with the Commission, including small entities. Under Commission rules, for purposes of the Regulatory Flexibility Act, a broker-dealer generally is a small entity if it had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared and it is not affiliated with any person (other than a natural person) that is not a small entity.[185]

The Commission estimates that as of December 31, 2003, approximately 905 Commission-registered broker-dealers were small entities.[186] The Commission assumes for purposes of this IRFA that all of these small entities could rely on the exceptions provided by rule 202(a)(11)–1(a), although it is not clear how many would actually do so. Additionally, it is not clear how many of these small entities would be affected by proposed rule 202(a)(11)–1(b), which provides that discretionary brokerage accounts are not exempt from the Advisers Act, or by the proposed interpretation of section 202(a)(11)(C), which would subject broker-dealers that hold themselves out as financial planners to the Advisers Act with respect to accounts including a financial plan. Therefore, for purposes of this IRFA, the Commission also assumes that all of these small entities could be affected by the proposed rule and interpretation.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The provisions of proposed rule 202(a)(11)–1(a), pertaining to the new types of brokerage accounts, would impose no new reporting or recordkeeping requirements, and would not materially alter the time required for broker-dealers to comply with the Commission's rules. Proposed rule 202(a)(11)–1(a) is designed to prevent unnecessary regulatory burdens from being imposed on broker-dealers. Broker-dealers taking advantage of the proposed rule with respect to fee-based brokerage accounts would be required to make certain disclosures to customers and potential customers in advertising and contractual materials. Under Exchange Act rules, however, broker-dealers are already required to maintain these documents as "written agreements * * * with respect to any account."[187]

Under proposed rule 202(a)(11)–1(b), advice provided by a broker-dealer to accounts over which it has investment discretion would be outside the broker-dealer exception from the Advisers Act. Under the proposed interpretation of section 202(a)(11)(C), broker-dealers that hold themselves out as financial planners would be subject to the Advisers Act with respect to financial planning clients. Thus, broker-dealers providing discretionary advice or holding themselves out as financial planners would be subject to the Advisers Act. Although some broker-dealers providing discretionary accounts or holding themselves out as financial planners are already registered as investment advisers, the proposed rule and interpretation would result in other broker-dealers having to newly register as advisers, and would subject these brokers to the reporting, recordkeeping, and other compliance requirements under the Advisers Act.[188] For these broker-dealers, registration under the Advisers Act and compliance with its requirements would constitute new reporting, recordkeeping, and other compliance requirements. For broker-dealers already registered as investment advisers, the proposed rule and interpretation would require that broker-dealers treat affected accounts as advisory accounts. Thus, for these broker-dealers, the proposed rule and interpretation would impose new reporting, recordkeeping, and other compliance requirements with respect to these accounts.

Small entities registered with the Commission as broker-dealers would be subject to these new reporting, recordkeeping, and other compliance requirements to the same extent as larger broker-dealers. In developing these requirements over the years, we have analyzed the extent to which they would have a significant impact on a substantial number of small entities, and included flexibility wherever possible in light of the requirements' objectives, to reduce the corresponding burdens imposed.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate or conflict with the proposed rule or interpretation.

F. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any adverse impact on small entities.[189] In connection with the proposed rule, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for such small entities.

With respect to the first alternative, the Commission presently believes that establishment of differing compliance or reporting requirements or timetables for small entities would be inappropriate in these circumstances. The provision of proposed rule 202(a)(11)–1(a) requiring prominent disclosures to customers and potential customers is designed to

[185] 17 CFR 240.0–10(c).

[186] This estimate is based on the most recent data available, taken from information provided by broker-dealers in Form X–17A–5 Financial and Operational Combined Uniform Single Reports filed pursuant to Section 17 of the Exchange Act and Rule 17a–5 thereunder.

[187] 17 CFR 240.17a–4(b)(7). As previously discussed, although proposed rule 202(a)(11)–1(a) would also limit its application to accounts that a broker-dealer does not exercise investment discretion over, under Exchange Act rules, broker-dealers are already currently required to maintain all "evidence of the granting of discretionary authority given in any respect of any account." 17 CFR 240.17a–4(b)(6). Thus, this provision of the proposed rule would not create an additional recordkeeping requirement for broker-dealers.

[188] For Paperwork Reduction Act purposes, we have estimated that approximately 195 broker-dealers could be required to register as investment advisers as a result of the proposed rule and interpretation. *See supra* Section VII.B. of this Release.

[189] 5 U.S.C. 603(c).

prevent investors from being confused about the nature of the services they are receiving. To specify less prominent disclosures for small entities would only serve to diminish this investor protection to customers of small broker-dealers. Such a course would be inconsistent with the purposes of the Advisers Act. With respect to rule 202(a)(11)–1(b) and the proposed interpretation of section 202(a)(11)(C), the compliance and recordkeeping requirements are those generally applicable to any adviser registered under the Act. In developing these requirements over the years, the Commission has analyzed the extent to which they would have a significant impact on a substantial number of small entities, and included flexibility wherever possible in light of the requirements' objectives, to reduce the corresponding burdens imposed. It would be inconsistent with this design, and contrary to its purpose, to create special rules for small broker-dealers who would be subject to the Act as a result of proposed rule 202(a)(11)–1(b) or the proposed interpretation of section 202(a)(11)(C).

With respect to the second alternative, the Commission presently believes that clarification, consolidation, or simplification of the compliance and recordkeeping requirements under proposed rule 202(a)(11)–1 for small entities unacceptably compromises the investor protections of the rule. As discussed above, the rule's prominent disclosure requirement is designed to prevent investor confusion. We believe this requirement is already adequately clear and simple for those seeking to make use of the rule's exception for fee-based accounts. To further consolidate this requirement would potentially impede our objective of preventing investor confusion. With respect to rule 202(a)(11)–1(b) and the proposed interpretation of section 202(a)(11)(C), clarification, consolidation, or simplification would involve modification of the compliance and recordkeeping requirements generally applicable to registered investment advisers under the Act. As discussed above in connection with the first alternative, the Commission, in developing these requirements over the years, has included as much flexibility as can be introduced in light of the investor protection objectives underlying them.

With respect to the third alternative, the Commission presently believes that the compliance requirements contained in the proposed rule and the proposed interpretation already appropriately use performance standards instead of design standards. The proposed rule and interpretation are crafted to make regulation under the Advisers Act turn on the services offered by a broker-dealer rather than strictly on the type of compensation involved. Thus, eligibility for proposed rule 202(a)(11)–1(a)'s exception hinges on the services offered by the broker-dealer. Likewise, the treatment of discretionary accounts as advisory accounts under proposed rule 202(a)(11)–1(b), as well as the treatment of financial planning under the proposed "holding out" interpretation of section 202(a)(11)(C), also focus on the activities offered. The reporting, recordkeeping, and other compliance requirements stemming from these provisions of the proposed rule and interpretation are triggered by the performance of the entity in question, including small businesses.

Finally, with respect to the fourth alternative, the Commission presently believes that exempting small entities would be inappropriate. To the extent proposed rule 202(a)(11)–1(a) eliminates unnecessary regulatory burdens that might otherwise be imposed on broker-dealers, small entities, as well as large entities, will benefit from the rule. Small broker-dealers should be permitted to enjoy this benefit to the same extent as larger broker-dealers. Furthermore, the Commission believes the provisions of proposed rule 202(a)(11)–1(b) concluding that broker-dealers providing discretionary brokerage may not rely on the Adviser Act's broker-dealer exception for those accounts, and the proposed interpretation of section 202(a)(11)(C) that broker-dealers holding themselves out as financial planners may not rely on the exception with respect to accounts that include a financial plan, should apply to small entities to the same extent as larger ones. This proposed provision and interpretation are grounded in the view that such advice is not solely incidental to brokerage. Because the protections of the Advisers Act are intended to apply equally to clients of both large and small advisory firms, it would be inconsistent with the purposes of the Advisers Act to exempt small entities further from the rule.

IX. Statutory Authority

We are proposing rule 202(a)(11)–1 based on our authority set forth in section 202(a)(11)(F) of the Advisers Act, which expressly allows the Commission to except persons—in addition to those already excepted by sections 202(a)(11)(A)–(E)—that the definition of investment adviser was not intended to cover.[190] We are also acting pursuant to section 211(a) of the Advisers Act, which gives us the authority to classify, by rule, persons and matter within our jurisdiction and to prescribe different requirements for different classes of persons, as necessary or appropriate to the exercise of our authority under the Act. Additionally, section 206A of the Advisers Act authorizes us, by rules and regulations, to exempt any person or transaction, or any class or classes of persons or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes of the Act.

Text of Rule

List of Subjects in 17 CFR Part 275

Investment advisers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 continues to read as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

2. Section 275.202(a)(11)–1 is added to read as follows:

§ 275.202(a)(11)–1 Certain broker-dealers.

(a) A broker or dealer registered with the Commission under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) (the "Exchange Act"):

(1) Will not be deemed to be an investment adviser based solely on its receipt of special compensation, provided that:

(i) The broker or dealer does not exercise investment discretion, as that term is defined in section 3(a)(35) of the Exchange Act (15 U.S.C. 78c(a)(35)), over accounts from which it receives special compensation;

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[190] Because we are proposing to use our authority under section 202(a)(11)(F), broker-dealers relying on the rule would not be subject to state adviser statutes. Section 203A(b)(1)(B) of the Act provides that "[n]o law of any State or political subdivision thereof requiring the registration, licensing, or qualification as an investment adviser or supervised person of an investment adviser shall apply to any person * * * that is not registered under [the Advisers Act] *because that person is excepted from the definition of an investment adviser under section 202(a)(11).*" (emphasis added).

(ii) Any investment advice provided by the broker or dealer with respect to accounts from which it receives special compensation is solely incidental to the brokerage services provided to those accounts; and

(iii) Advertisements for, and contracts, agreements, applications and other forms governing, accounts for which the broker or dealer receives special compensation include a prominent statement that the accounts are brokerage accounts and not advisory accounts; that, as a consequence, the customer's rights and firm's duties and obligations to the customer, including the scope of the firm's fiduciary obligations, may differ; and must identify an appropriate person at the firm with whom the customer can discuss the differences.

(2) Will not be deemed to have received special compensation solely because the broker or dealer charges a commission, mark-up, mark-down or similar fee for brokerage services that is greater than or less than one it charges another customer.

(b) A broker or dealer that exercises investment discretion, as that term is defined in section 3(a)(35) of the Exchange Act (15 U.S.C. 78c(a)(35)), over customer accounts provides advice that is not solely incidental to the conduct of its business as a broker or dealer within the meaning of section 202(a)(11)(C) of the Advisers Act (15 U.S.C 80b–2(a)(11)(C)).

(c) A broker or dealer registered with the Commission under section 15 of the Exchange Act is an investment adviser solely with respect to those accounts for which it provides services or receives compensation that subject the broker or dealer to the Advisers Act.

Dated: January 6, 2005.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 05–603 Filed 1–13–05; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Friday,

January 14, 2005

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 900, 1150, etc.

Exemption of Organic Handlers From Assessments for Market Promotion Activities Under Marketing Order Programs and Exemption of Organic Producers From Assessment by Research and Promotion Programs; Final Rules

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1150, 1160, 1205, 1206, 1207, 1209, 1210, 1215, 1216, 1218, 1219, 1220, 1230, 1240, 1250, 1260, and 1280

[Docket No. PY–02–006]

RIN 0581–AC15

Exempting Organic Producers From Assessment by Research and Promotion Programs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends all 17 commodity research and promotion orders and/or rules and regulations to exempt any person receiving and handling solely 100 percent organic products from paying assessments to any research and promotion program administered by the Agricultural Marketing Service (AMS). To obtain an exemption, the person must operate under an approved organic system plan authorized by the National Organic Program (NOP) and produce and market only products that are eligible for a 100 percent organic label under the NOP. A separate final rule to exempt any person producing and marketing solely 100 percent organic products from paying assessments for market promotion activities under certain marketing order programs administered by AMS is also being published in today's **Federal Register**.

DATES: Effective February 14, 2005.

FOR FURTHER INFORMATION CONTACT: Angela C. Snyder, Office of the Deputy Administrator, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW.; STOP 0256, Room 3932–South; Washington, DC 20250; (202) 720–4476 or (760) 386–0424; (202) 720–5631 (fax); or e-mail at *organicassessment@usda.gov*.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Proposed Rule and Invitation for Comments on Proposed Amendments: Published April 26, 2004 [69 FR 22689]; Proposed Rule; Extension of Comment Period: Published May 26, 2004 [69 FR 29907].

Executive Order 12866

This rule has been determined to be "not significant" for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Commodity Promotion, Research, and Information Act of 1996; Cotton Research and Promotion Act; Dairy Production Stabilization Act of 1983; Egg Research and Consumer Information Act; Fluid Milk Promotion Act of 1990; Hass Avocado Promotion, Research, and Information Act of 2000; Honey Research, Promotion, and Consumer Information Act; Mushroom Promotion, Research, and Consumer Information Act of 1990; Popcorn Promotion, Research, and Consumer Information Act; Pork Promotion, Research, and Consumer Information Act of 1985; Potato Research and Promotion Act; Soybean Promotion, Research, and Consumer Information Act; and Watermelon Research and Promotion Act provide that administrative proceedings must be exhausted before parties may file suit in court. Under these acts, any person subject to an order may file a petition with the Secretary of Agriculture stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. The petitioner is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary will make a ruling on the petition. The acts provide that the district courts of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of the Beef Promotion and Research Act of 1985.

Background

Section 10607 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171)—known as the 2002 Farm Bill—amended Section 501 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7401) (FAIR Act) on May 13, 2002. The amendment exempts any person that produces and markets solely 100 percent organic products, and that does not produce any conventional or nonorganic products, from paying assessments under a commodity promotion law with respect to any agricultural commodity that is produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). USDA has implemented National Organic Program (NOP) requirements at 7 CFR part 205 to carry out the intent of the OFPA.

The Farm Bill text reads as follows: "Notwithstanding any provision of a commodity promotion law, a person that produces and markets solely 100 percent organic products, and that does not produce any conventional or nonorganic products, shall be exempt from the payment of an assessment under a commodity promotion law with respect to any agricultural commodity that is produced on a certified organic farm (as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502))."

On April 26, 2004, a proposed rule was published in the **Federal Register** [69 FR 22690] inviting comments on a proposal to amend the orders and/or rules and regulations of the 16 research and promotion programs for which the U.S. Department of Agriculture has oversight. These amendments would establish a provision for organic producers and marketers meeting the specified criteria and procedures to be exempt from paying assessments under research and promotion programs.

Interested parties were provided 30 days to comment on the proposed amendments. At the request of a commenter, the comment period was extended by an additional 30 days to June 25, 2004 [69 FR 29907, published May 26, 2004].

Summary of Changes From the Proposed Rule

This final rule differs from the proposed rule in a number of respects.

• This final rule covers a new program for mangos that was implemented following publication of the proposed rule. Accordingly, a new Subpart C is added to 7 CFR part 1206.

• This final rule clarifies that, for the purpose of obtaining an assessment exemption, a person must operate under an NOP-approved organic system plan and must produce and market only commodities eligible for a "100 percent organic" label under the NOP (7 CFR part 205.300–205.311). This applies to all commodities produced and marketed by the person, not only those covered by the applicable research and promotion program under which the exemption is sought.

• This final rule considers any assessment payer, for the purpose of obtaining an exemption, to be the person that produces and markets the commodity. Accordingly, the regulatory text has been modified as appropriate to reflect this, and the definition of "produce" as proposed has been deleted. Therefore, persons other than producers are no longer required to alter a product. In addition, we have added a provision wherein products produced and marketed under an organic system plan but not sold, labeled, or represented as organic would not disqualify producers from exemption.

- An effective date is specified in the regulatory text of each program providing that the exemption will apply at the next assessable period following issuance of the Certificate of Exemption.
- Other changes made in the final rule include more specific language concerning the application form, clarifying the information required of importers, and a change from 30 to 60 days for boards and councils to grant or deny exemption requests during the first 6 months following the final rule's effective date.
- Miscellaneous changes to some programs' regulatory text were also made for clarity.

Summary of Comments

We received 132 timely comments from individuals, conventional and organic farmers, industry organizations, research and promotion boards, organic trade organizations, a law firm, and a State department of agriculture. We also received 25 comments from organic farmers past the close of the comment period, but these did not raise any new issues.

Of the 132 comments timely submitted, 9 were from conventional farmers, 96 were from organic farmers, 11 were from industry organizations, 4 were from organic organizations, 7 were from research and promotion boards, 1 was from an organic cooperative, 1 was from a State department of agriculture, 2 were from individuals, and 1 was from a law firm on behalf of an organic dairy. Of the timely comments, we received 89 form letters.

The comments largely fall into two broad categories. One category addresses issues of assessment exemption eligibility and application of the FAIR Act. The other category addresses administrative and procedural issues.

Issues of Eligibility and Application of the FAIR Act

Definition of Produce: The Farm Bill language states that any eligible person who produces and markets solely 100 percent organic products and meets the other specified requirements would be exempt from the applicable assessments. For the purpose of the proposed rule, we defined *produce* to mean "to grow or produce food, feed, livestock, or fiber *or* to receive food, feed, livestock, or fiber and alter that product by means of feeding, slaughtering, or processing."

Some commenters stated that the definition of "produce" in the proposed rule was overly broad, not supported by statutory authority, and that it illegally expanded the application of the exemption to persons not intended to receive the exemption by including processing activities, either by processors or importers. Other commenters said that importers should not be exempt because the altering or processing would be done after the assessment is paid, because assessments are collected by the U.S. Customs Service at the time of entry into the country. In addition, commenters argued that someone who meets the "produce" definition should do so for all of the exempt product; *e.g.*, an importer who imports 10,000 pounds of 100 percent organic beef and processes 2 pounds should not be exempt from the entire assessment.

Still other commenters commended AMS for recognizing that Congress intended to exempt not just producers but also handlers, first handlers, processors, importers, exporters, feeders, and seed stock producers.

The Farm Bill refers to "persons who produce," not "producers." Therefore, any person who produces—whether a producer, importer, processor, or other entity—would qualify for exemption, assuming all of the specified criteria are met. We have reevaluated the definition of produce and determined that the phrase "produces and markets" should apply to the function the person performs that compels the payment of an assessment. In other words, for producers and seed stock producers, produce and market means to produce the commodity. For handlers and first handlers, produce and market means to handle the commodity; for importers, to import the commodity; for processors, to process; for feeders, to produce by feeding; and for exporters, to export. The regulatory text was changed accordingly, and we removed the definition of produce that appeared in the proposed rule.

Solely 100 Percent Organic: The Farm Bill language states that in order to be eligible for exemption, the person must produce and market solely 100 percent organic products and must not produce any conventional or nonorganic products. The proposed rule was drafted to state that whatever the person produces must be 100 percent organic—not just the commodity for which the exemption is sought.

Some commenters encouraged narrow interpretation of the exemption—that persons must meet the 100 percent definition for everything produced and that split operations should not qualify for the exemption. However, numerous commenters, including form letter submitters, said that a producer should only have to be certified as 100 percent organic for the commodity for which the exemption is sought. They also stated that by referencing the Organic Foods Production Act (OFPA), Congress did not limit exemptions for approved split operations because Congress has determined that a split operation may produce 100 percent certified organic products. A few commenters said that rendering a certified organic farmer who produces *any* non-organic commodity ineligible for exemption would be in conflict with the OFPA and Congressional intent.

Furthermore, a large number of commenters, including form letter submitters, wrote that Congress' use of "100 percent organic" meant that the person's entire product line must be certified as organically produced and handled and did not refer to the labeling provisions that distinguish between the organic products bearing various percentages of organic ingredients.

One commenter said that fluid milk can only be classified as 95 percent or more organic due to the addition of vitamins and that Congress did not intend to exclude fluid milk processors, and a number of commenters, including form letter submitters, said this demonstrated that the rule was drawn too narrowly.

The Farm Bill language requires that a person must produce and market solely 100 percent organic products in order to receive the exemption. Because of the construction of the language, we deem "100 percent organic" to mean the labeling term described under the NOP and "solely 100 percent organic products" to mean every product in the person's farm or operation. Therefore, our determination is that to be exempt, a person must produce only products eligible to be labeled as "100 percent organic," and this applies to all commodities, not just the commodity for which the exemption is sought. To be clear, this means that split operations will not qualify for exemption. However, handlers, first handlers, and processors who receive only 100 percent organic products from split operations will still qualify for exemption, provided they themselves are not certified as split operations.

A small number of commenters stated that some provision should be made to exempt organic farms in transition. They provided two examples. In the first example, a certified organic farmer purchases 200 acres of adjacent land on which conventional hay is currently grown. The farmer begins to transition the land to make it eligible for organic certification. During the 3 years that the land is transitioning to become eligible, the hay may not be sold as organically produced, and the farmer would lose the exemption if the hay is sold conventionally. In the second example, a 100 percent organic farm expands its operation by converting some non-organic crop land to organic. Under NOP rules, the land must be farmed organically for 3 years to complete the transition, and during that time, the farmer would not be eligible for the exemption.

Under the proposed rule, transitional farms, though not specifically mentioned, were ineligible for exemption because they are split operations and did not produce 100 percent organic products, and this is also reflected in the final rule. In the first example, the farmer would be certified under NOP as a split operation for 3 years until the transition is complete. Regardless of whether the hay is sold, it could not be labeled or marketed as 100 percent organic during the 3-year transition period. Since the farmer must have NOP certification and meet the threshold of *solely* 100 percent organic, the farmer would not be eligible for exemption until the entire farm or operation was converted to organic production. In the second example, the farmer owns non-organic crop land and would be certified as a split-farm operation, therefore making the farmer ineligible for exemption. Once the 3-year transition is complete and the entire operation is certified, the farmer would be eligible for exemption.

A large number of commenters, including form letter submitters, said that an organic producer may be forced to sell an animal conventionally because of using antibiotics or pesticides or maintaining a buffer area. They said that, in isolated instances and for humane purposes, an organic producer may administer antibiotic treatment. However, that treatment would prevent the animal from being sold as organic. They also said that organic producers may be ordered to use chemicals as part of a mandatory disease treatment program, and those products cannot be sold as organic for 3 years. Furthermore, they said that under NOP rules, an organic operation must maintain a buffer area between the organic farm's crops and any neighboring non-organic fields, and crops harvested from a buffer zone cannot be marketed as organic. These commenters said that because isolated use of antibiotics and pesticides would not cause the organic producer to lose NOP certification and because buffer areas are required by NOP rules, organic producers should not lose their exemption as the result of conventional sales under these circumstances. Our determination is that if the products were produced organically, a conventional sale of those organic products would not nullify a person's exemption from assessment. Under the NOP, organic farmers do not lose certification on their organic farms if they must sell products conventionally, and we have taken the same view. Therefore, we have determined that as long as the person maintains NOP certification, producers (including seed stock producers and feeders) will still meet the threshold of solely 100 percent organic for exemption if: (1) They give an animal antibiotic treatment or use pesticides or chemicals as a result of mandatory programs and market the resulting product as conventional, and/or (2) they sell products from a buffer area; provided they maintain NOP certification and are not a split operation. The regulatory language of those programs that assess producers, seed stock producers, and feeders (beef, blueberries, cotton, dairy, eggs, Hass avocados, honey, lamb, mushrooms, peanuts, pork, potatoes, soybeans, and watermelons) was changed accordingly.

However, to be consistent with the requirement to market solely 100 percent organic products, handlers, processors, and other assessment payers who also are producers may not handle, process, or otherwise market their nonorganic production, other than to sell it to another handler or processor. The regulatory language was changed accordingly. Handlers are assessed under the watermelon program, first handlers are assessed under the lamb and mango programs, and processors are assessed under the fluid milk and popcorn programs. Only handlers, first handlers, and processors that handle or process solely 100 percent organic products from certified producers are eligible for exemption. Moreover, if a handler or processor receives products from producers who produce both 100 percent organic and conventional products, products from buffer zones, or products treated with antibiotics or pesticides, that handler or processor is not eligible for exemption. To be exempt, these handlers or processors must receive and handle or process solely 100 percent organic products. The producers from whom they receive products can grow other products conventionally, provided all of the products the handler or processor receives are eligible to be labeled as 100 percent organic. However, a handler or processor who is also a producer under the NOP may not sell products from buffer zones or treated with antibiotics or pesticides under mandatory programs and still maintain exemption eligibility.

Administrative and Procedural Issues

Effective Date and Initial Coverage: One commenter believed that the rule should specify that the exemption is not retroactive. As provided in this final rule, the exemption is not retroactive, but the regulatory text was changed to clarify the effective date. The exemption will apply at the next assessable period following issuance of the Certificate of Exemption. For some applicants, it will be the next month; for others, the next fiscal year, and each program's regulatory language addresses specifics.

Application: A number of commenters, including form letter submitters, said that persons should not have to apply for exemption but instead should only have to present the certificate from the USDA-accredited certifying agent. These commenters said that the certificate contains sufficient information to permit boards to determine exemption eligibility, and no additional paperwork should be required.

Several of these commenters commended USDA for proposing reporting requirements that would solely use the certification documents from a USDA-accredited certifier to satisfy the eligibility requirements of "100 percent organic" as defined by the NOP. The commenters are correct that the certificate from a USDA-accredited certifying agent indicates whether the person's farm or operation is certified as operating under an organic system plan. However, the application provides additional information that is necessary for boards to determine whether the person meets the threshold for *solely* 100 percent organic and other specified criteria.

Commenters also stated that they agreed with the proposed rule that the application should include only the following: Name, address, a copy of the organic exemption certificate, and a signed declaration that the farmer meets the qualifications for exemption. They said that if the form requires information beyond what is addressed in the regulatory text, the public must have a chance to comment. While the proposed regulatory text addressed the information requested on the form as "name, address, copy of the organic certificate, and a signed certification * * *," the supplementary information of the proposed rule outlined this information in greater detail. This included the applicant's name, the name and address of the company, telephone and fax numbers, a copy of the organic certification, and a signed certification that the person meets the qualification for exemption.

Herein, we are clarifying that some additional information is needed on the form that is part of the person's signed certification. This includes a list of commodities marketed by the applicant, and assertions that the applicant is certified, produces solely 100 percent organic products, and is not a split operation. Also, the form asks for an e-mail address, but this is optional. The proposed rule estimated that this form would take 30 minutes to complete, and the information that was not specifically itemized was and remains included in the paperwork burden estimate.

These commenters also said that in requiring farmers to certify that they produce solely 100 percent organic products, the potential for confusion exists because this terminology differs from the typical language used by certifying agents. As part of their application, organic persons must submit a copy of their certification from a USDA-accredited certifying agent. The boards will evaluate the remainder of the application to determine whether or not the person meets the threshold of *solely* 100 percent organic, though it should be readily apparent whether the applicant qualifies. Therefore, no changes were made.

In response to one comment, we amended the regulatory text to reflect that the information required from importer applicants is the same as that required from other applicants. While that was the intent of the proposed rule, the regulatory text reflected slightly different requirements.

We did not adopt a recommendation from several commenters that would require persons to submit, in lieu of an application, a notice of eligibility to the applicable board, along with any materials necessary to demonstrate that eligibility. The commenters also suggested that persons with less than $5,000 in income be required to file an affidavit and notify the board of any change in eligibility within 30 days. Our determination is that the notice of eligibility or affidavit would virtually be the same burden as the application. Moreover, not only is the application minimally burdensome, but it is also necessary for boards to annually determine an applicant's eligibility and to verify compliance.

One commenter drafted a form and suggested its use by applicants, and an industry organization suggested a three-part form with copies going to the producer, purchaser, and State council. The information requested on this form was, in our view, not sufficient to determine whether the applicant met the criteria for exemption. Therefore, we did not adopt this suggestion.

Several commenters said that the certification process must be tightly controlled to prevent abuse. We believe that the process is sufficiently controlled between the application, documentation, and compliance measures. Furthermore, the exemption process is consistent with the process used by those programs with *de minimis* exemptions.

One commenter said that the paperwork associated with the exemptions will be costly to the boards and divert funds from promotion and research and activities. Our response is that while there will be some expense involved in administering the exemption, we have taken steps to simplify and standardize the boards' processes and minimize costs.

Requirement to Reapply Annually: The proposed rule required that the exempt person must reapply on an annual basis.

One commenter supported annual recertification, but a number of commenters said that annual recertification is overly burdensome because NOP certificates are good until suspended, surrendered, or revoked. These commenters said that this requirement is unnecessary if the organic certificate is used. Instead, the burden should be on the farmer to notify the boards of any change in status and then repay any assessments owed. Some commenters urged AMS to provide strong language for revoking the exemption when its requirements are no longer satisfied.

We reviewed this issue and did not remove the requirement to reapply annually because we believe that in order for boards to maintain compliance, an annual application is necessary. Boards must keep up with assessment payers' evolving operations, and an annual application is preferable to relying on exempt parties to notify boards of any changes. Without an annual application, persons who thought they were exempt but should not have been could end up owing a significant amount of outstanding assessments. The burden of reapplying annually is negligible compared to the benefits of exemption. Furthermore, this requirement is consistent with existing rules and regulations specifying that those who apply for exemption for *de minimis* reasons must do so every year.

We did not adopt a suggestion from one commenter that, in lieu of annual recertification, the research and promotion boards take the money they have collected from organic producers and use it to send notifications to collecting handlers (or other parties that collect assessments from the assessment payer) and to include information about the organic exemption in all future literature about commodity checkoff programs. Notification will be made to the industry as a whole through this rule and a news release, and exempt persons are required to notify any person who collects and remits their assessments, if applicable, of their exempt status.

Deadline for Granting Exemptions: The proposed rule stated that the boards/councils will grant or deny applications for exemption within 30 days.

A handful of commenters said that the 30-day deadline for granting exemptions is too short. Instead, boards should have 60 days to grant exemptions. We reviewed this recommendation and are maintaining the 30-day deadline. This timeframe was included to ensure that qualifying persons receive the organic exemption in a timely manner. Moreover, there should be no deliberation based on the information that is requested on the form; it should be readily apparent whether or not applicants qualify. However, we recognize that boards may need additional time up-front to establish procedures. To that end, we amended the rule to allow boards 60 days to grant exemptions within the first 6 months of this rule's effective date. After 6 months, the timeframe will revert to 30 days.

Notification of Denial: One commenter said that the rule should specify in writing that farmers who are denied the exemption are timely notified in writing. The regulatory language was amended to reflect that persons denied the exemption will be notified in writing within the same timeframe as those granted the exemption.

An organic organization said that the rule should clarify that a person meeting the requirements of the application is presumed to be exempt and should further clarify the circumstances under which the applicant could be denied exemption. To clarify, any person meeting all criteria will be granted the exemption. Reasons for denial include lack of NOP certification, failure to meet the definition of person, or failure to meet the threshold of solely 100 percent organic.

In addition, we described an appeals process in the supplementary information.

Recordkeeping: One commenter said that the rule should include a requirement to maintain exemption records for a term that is consistent with the term required for keeping records for compliance audits, and three commenters (one research and promotion board and two industry organizations) said that the rule should specify that boards and recordkeepers must maintain records for 7 years for compliance purposes. We did not adopt either of these suggestions because the individual orders and/or regulations already address recordkeeping requirements, and the 7-year period is beyond the 2 years generally specified.

Two commenters said that the rule should specify an obligation to make available all records necessary to verify compliance, but we did not incorporate this suggestion. Recordkeeping requirements are already spelled out in the various orders and/or regulations, and specifying an obligation to make these documents available would be redundant.

Collecting Handlers: A few commenters wanted to replace the provisions requiring the person to provide a copy of the exemption certificate to each person responsible for collecting and remitting the assessment. Instead, the person would be required to provide a correctly completed original and numbered exemption certificate at the time of sale from a book of certificates obtained from the board. We did not adopt this suggestion because we believe it is unnecessary and would put undue burden on the exempt person and the boards.

Several commenters said that for the beef program, the collecting point (the one who reports to the State beef council) should list cattle on the monthly remittance report like they would report another State of origin. We reviewed this recommendation and determined that no change was needed in the rule. Instead, the boards will develop guidance or instructions for collecting handlers or whatever party is responsible for collecting and remitting assessments to report to the boards any commodity that was not assessed because of the organic exemption. This reporting would be handled on existing handler or remittance forms and would not add additional paperwork burden.

One commenter said that the rule should specify that any watermelon handler that handles both organic and non-organic products cannot exempt any part of the assessments collected from the producer, nor from that handler's portion of the assessment for either organic or non-organic product. In response to this comment, we did not amend the rule. Under the watermelon program, handlers are assessed in addition to producers and importers. In the case of a producer selling to a handler, the producer pays an assessment on watermelons produced, which the handler collects and remits, and the handler also pays an assessment on watermelons handled. To be exempt, the producer must meet the specified criteria; likewise, for the handler to be exempt, the handler must meet the specified criteria. If the producer is exempt but the handler is not, the handler must pay assessments on all products handled. In no case, though, would the handler have to remit an assessment from an exempt producer on watermelons produced by that producer.

One commenter said that specific reporting procedures need to be included for producers and collecting points to ensure that organic and nonorganic commodities are not mixed and that only certified organic commodities are subject to the exemption. In response to this comment, we did not make any changes to the rule. Persons are exempt under this rule, not commodities. Since only persons certified as 100 percent organic can be exempt, there should be no question of mixing organic and nonorganic commodities in terms of the exemption.

Compliance: A number of commenters said that AMS and NOP should work in active cooperation with the boards on compliance. Another commenter said that sellers, purchasers, and handlers should be able to access full disclosure of animals that have been exempt from assessment; to that end, USDA should maintain a database indicating the name and address of any exempt person and the period of exemption. A number of commenters said that the rule should require USDA to provide quarterly updates to boards showing farmers certified as organic and those whose certification has been revoked. We are not establishing a database for public access, but we concur that we should assist the boards' compliance efforts. Therefore, while no change was made to the regulatory text, we will share with the boards information in some form as appropriate for the boards to maintain an effective compliance program.

We did not adopt suggestions from commenters to specify that a person claiming organic exemption is subject to a board audit or to urge board staff to conduct regular audits. Since the boards already have the authority to conduct audits to maintain or verify compliance, it was unnecessary to articulate this in the regulatory text.

Harmonized Tariff Schedule (HTS) Numbers: One commenter asked for clarification on the process by which a board issued an HTS classification to an importer, while another said that the rule should specify that boards should consult with the U.S. Customs Service to establish an HTS number. However, no changes were made to the rule. AMS will work with the boards to establish HTS numbers, and we do not believe the process needs to be articulated in the regulatory text.

State Programs: A commenter expressed concern that organic farmers could incorrectly believe that they are also exempt from paying assessments required by State law. Similarly, other commenters said that it should be the boards' responsibility to inform the exempt person that the exemption only covers national program assessments and not a State program authorized by State law and that the certificate of exemption should clearly state that the person is not exempt under any State law. We did not adopt these suggestions. The 17 programs affected by this exemption are identified in this final rule as the only programs for which an organic exemption can be obtained, and we do not believe it is necessary to articulate this in the regulatory text.

Other Comments: We did not adopt a suggestion from several commenters that the rule state that the exemption is granted to the person and not the commodity. We believe the rule is clear that persons are exempt from paying assessments, not that commodities are exempt from being assessed.

One commenter expressed concern about the administration and implementation of the exemption and said that there should be one governing body controlling certification and exemption requirements. This commenter suggested that the boards would best be able to spot forgeries and should therefore be the designated governing body. We determined that no changes to the rule are necessary. The proposed rule specified that the boards or their designees administer the exemption. The reason designees are included is that in the beef program, the Qualified State Beef Councils are responsible for receiving assessments, and the Board only receives assessments directly in cases where there is no State beef council.

Other commenters said that the rule should specify that the exempt organic person cannot be owned or affiliated with a person who pays assessments to a research and promotion board, nor can they be affiliated with a person who produces conventional products. In response to these comments, one commenter stated that nothing in the law permits USDA to make distinctions based on corporate structure. We reviewed these comments. The Farm Bill specifies that the exemption is granted to persons that produce and market solely 100 percent organic products, and a person can be an individual, group of individuals, corporation, association, cooperative, or other business entity. Therefore, no changes were made to the rule.

A commenter said that the rule should more strictly and accurately specify and define those who qualify and do not qualify. However, we did not believe any changes to the rule were necessary in light of the comment discussion, supplementary information, and examples contained herein addressing eligibility.

We did not adopt a suggestion from one commenter to address importers in the dairy regulations (7 CFR part 1105). Separate rulemaking to assess importers under the dairy promotion and research program is not finalized. Consequently, we cannot address the organic exemption for importers under the dairy promotion and research regulations until a final rule has been issued and importers become subject to assessment.

We incorporated, with modification as necessary, certain editorial comments concerning regulatory text to correct and consolidate references to assessment payers and clarify provisions in 7 CFR part 1240.

We incorporated, with modification as necessary, a comment concerning regulatory text in 7 CFR part 1260 to clarify that the board or a State beef council receives assessments under the beef promotion and research program.

Provisions of This Rule

The FAIR Act amendment covers research and promotion programs established under either free-standing legislation (beef, cotton, eggs, fluid milk, dairy, Hass avocados, honey, mushrooms, popcorn, pork, potatoes, soybeans, and watermelons) or the Commodity Promotion, Research, and Information Act of 1996 (blueberries, lamb, mangos, and peanuts).

When the proposed rule on this organic exemption was issued, rulemaking to establish a mango program was ongoing. A second proposed rule on the Mango Promotion, Research and Information Order was published in the October 9, 2003, issue of the **Federal Register** [68 FR 58556]. In November 2003, first handlers and importers of mangos voted to approve a national mango promotion, research, and information order. A final rule was published on October 4, 2004 [69 FR 59120], and the mango promotion, research, and information program became effective November 4, 2004, and was codified at 7 CFR part 1206. The proposed rule on the organic exemption outlined that if the mango program were finalized, provisions similar to those proposed for Hass avocados (7 CFR part 1219) would be added to exempt persons producing and marketing solely 100 percent organic products from paying assessments under a mango research and promotion program. Consequently, a new Subpart C was added to 7 CFR part 1206 to establish rules and regulations addressing how eligible organic first handlers and importers of mangos would obtain an exemption.

Wholly industry-funded and -operated and charged with creating and expanding markets for the agricultural commodities they represent, these programs are overseen by AMS, including review of budgets, plans, and projects. Producers, handlers, importers, and/or others in the marketing chain pay assessments to these commodity boards to fund the programs. Industries voluntarily request these programs. Research and promotion programs allow industries to establish, finance, and carry out coordinated programs of research, producer and consumer education, and promotion to improve, maintain, and develop markets for their commodities.

Under this proposal, language would be added to the orders, plans, and/or regulations of each program specifying the criteria for identifying persons eligible to obtain an assessment exemption and procedures for applying for an exemption. The provision would be tailored to each of the 17 programs, all of which have structural and operational distinctions. The result would be some procedural differences between the programs' regulatory language. For example, under the cotton program, producers would be required to reapply for exemption every year on or before the beginning of the crop year [*see* § 1205.519(b)]. Under the watermelon program, however, producers and handlers would reapply for exemption on or before January 1 of each year [*see* § 1210.516(b)].

Who Is Eligible for Exemption

To be eligible for an exemption, the person must be subject to an assessment under a research and promotion program administered by AMS. Of the 17 research and promotion programs covered under this proposed rule, 14 assess producers. Most of these programs also assess other entities, including handlers, first handlers, importers, exporters, feeders, and seed stock producers. One program assesses first handlers and importers, and two programs assess processors.

The FAIR Act amendment specifies that to be exempt from a commodity promotion assessment, a person—meaning an individual, group of individuals, corporation, association, cooperative, or other business entity—must produce and market solely 100 percent organic products and must not produce any nonorganic or conventional products. For purposes of this rule, *produce and market* means the function the person performs requiring the payment of an assessment. For producers and seed stock producers, it means to produce the commodity; for handlers and first handlers, it means to handle; for importers, it means to import; for processors, it means to process; for feeders, to produce by feeding; and for exporters, to export.

Regardless, to be exempt, all persons must possess certification from a USDA-accredited certifying agent and certify that the farm or handling operation meets the requirements of 100 percent organic as defined in 7 CFR part 205 and other specified criteria. Exemption eligibility is based on a three-prong test: (1) The person must be a certified organic producer or operator; (2) the person must be eligible to label all products as 100 percent organic as described in 7 CFR part 205; and (3) the 100 percent organic labeling eligibility applies to every commodity the person produces and markets.

Selling an organic product in the conventional marketplace does not nullify the exemption eligibility of a producer, seed stock producer, or feeder. A person who produces and markets agricultural commodities under an approved organic system plan and is not a split operation as described under the NOP will not be disqualified from exemption when the agricultural commodities produced and marketed under the plan are not sold, labeled, or represented as organic. In other words, if products are certified as 100 percent organic, a person who sells some of these products in the conventional marketplace is not disqualified from the exemption. There could be a variety of reasons why a producer, seed stock producer, or feeder would sell organic products through conventional channels. These include lack of demand for organic products or lack of sufficient organic markets.

Examples

- A farmer grows 100 percent organic soybeans and 100 percent organic corn. The farmer is eligible for exemption under the soybean promotion, research, and consumer information program.
- A farmer grows 100 percent organic soybeans and conventional corn. While the farmer's soybean land may be certified as operating under an organic system plan, the farmer is a split operation and is therefore not eligible for exemption under the soybean promotion, research, and consumer information program because the farmer's production is not solely 100 percent organic.
- An importer imports only 100 percent organic boxed beef. The importer is eligible for exemption under the beef promotion and research program.
- A farmer grows 100 percent organic soybeans but, because of a State-mandated disease eradication program, must sell the affected soybeans conventionally for the next 3 years. Assuming the farmer remains certified, the farmer is eligible for exemption under the soybean promotion, research, and consumer information program, even during the 3-year period.
- A watermelon handler receives solely 100 percent organic watermelons. One of the handler's producers is required by the State government to spray all or a portion of the watermelons with chemicals to eradicate a disease. The producer maintains NOP certification during the 3-year period in which the watermelons must be sold conventionally, during which time the handler handles this producer's watermelons. The handler is not eligible for exemption.
- A certified producer grows soybeans which are 100 percent organic. The producer purchases neighboring land that has grown conventional soybeans and plans to farm that land organically. Under NOP rules, it will be 3 years before that newly acquired land can be certified. The producer is not eligible for exemption under the soybean promotion, research, and consumer information program because the producer does not meet the threshold of *solely* 100 percent organic.
- A watermelon handler receives solely 100 percent organic watermelons from a watermelon producer who also grows conventional products and is certified under NOP as a split farm operation. The handler handles only 100 percent organic products. The handler is eligible for exemption.
- A fluid milk processor processes organic milk, but the milk does not meet the threshold of 100 percent organic as defined under NOP because of the addition of vitamins. The fluid milk processor is not eligible for exemption.

Procedures

According to the 2002 Farm Bill, any person that produces and markets solely 100 percent organic products, and that does not produce any conventional or non-organic products, is exempt from paying assessments under a commodity promotion law with respect to any agricultural commodity that is produced on a certified organic farm as defined in 7 CFR 205. Produce and market means the function the person performs that requires the payment of assessment. For producers, produce and market means to produce the commodity. For handlers, it means to handle; for importers, to import; for processors, to process; etc.

To be exempt from paying assessments under a research and promotion program administered by AMS, the person would submit an application—"Organic Exemption Request Form"—to the applicable board or council. The form would need to be submitted to the board, council, or other party designated by the board or council prior to or during the initial applicable assessment period and annually thereafter as long as the applicant continues to be eligible for the exemption. This application would include the applicant's name, name and address of the company, telephone and fax numbers, a copy of the applicant's organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent under the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. This signed declaration includes additional information necessary to demonstrate eligibility.

If the applicant complies with these requirements and is eligible for an assessment exemption, the board or council would approve the exemption and notify the applicant. For the first 6 months following the rule's effective date, boards or councils will have 60 days to approve the exemption request. After that, boards or councils will have 30 days to approve the exemption request.

If the application is disapproved, the board or council would notify the applicant of the reason(s) for disapproval within the same timeframe. Applicants may appeal if a board or council does not approve their exemption requests. The first appeal level would be the board or council. If the applicant is still not satisfied with the decision made by the committee or board on appeal, the applicant may appeal to USDA. All decisions of USDA will be final.

For the purpose of assuring fair and consistent treatment of all persons applying for organic assessment exemptions, USDA has the right to review any decision made by the boards or councils.

Most of the programs require that the person responsible for remitting assessments on behalf of the exempt party maintain a record of that party's exemption. In most cases, this is a handler maintaining a record of an exempt producer.

Paperwork Reduction Act

The provisions of the proposed rule were carefully reviewed, and every effort was made to minimize information collection requirements and still ensure effective administration of the exemption. In accordance with OMB regulations [5 CFR 1320], which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by this rule were submitted to OMB as a reinstatement with change under control number 0581–0217.

This action will enable organic producers and marketers to apply for exemption under the following 17 research and promotion programs: 7 CFR parts 1150, 1160, 1205, 1206, 1207, 1209, 1210, 1215, 1216, 1218, 1219, 1220, 1230, 1240, 1250, 1260, and 1280. Producers and marketers include producers, handlers, first handlers, processors, exporters, feeders, and seed stock producers.

Form AMS–15, Organic Exemption Request Form, was described in the proposed rule as requiring the applicant's name, name and address of the company, telephone and fax numbers, a copy of the applicant's organic farm or organic handling certificate provided by a USDA-accredited certifying agent under the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. This signed certification includes providing certain additional information. This is a list of commodities marketed by the applicant and assertions that the applicant is not a split operation and produces and markets only products eligible to be labeled as 100 percent organic. Also, the form asks for an e-mail address, but this is optional.

As a result of comments received, the Organic Exemption Request Form was modified to eliminate some information that was part of the signed certification that we no longer deemed applicable and add some information that was determined to be necessary. This revised information has no affect on the burden or description of the form.

Title: Organic Producer and Marketer Exemption from Assessment Under Research and Promotion Programs

OMB Number: 0581–0217.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: The information collection requirements in this request are essential to carry out the intent of the 2002 Farm Bill in exempting from assessment persons who produce and market solely 100 percent organic products.

The request for approval of the new information collection is as follows:

Form AMS–15, Organic Exemption Request Form:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Eligible Certified Organic Producers and Marketers.

Estimated Number of Respondents: 2,165.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,082.5 hours.

Most of the programs require that the person responsible for remitting assessments on behalf of the exempt party maintain a record of that party's exemption. In most cases, this is a handler maintaining a record of an exempt producer. The burdens on these persons for such recordkeeping requirements are included in the information collection requests previously approved for all of the programs—Hass avocados under OMB control number 0581–0197, beef and pork under 0590–0001, lamb under 0581–0198, mangos under 0581–0209, and the rest under 0581–0093.

The information collection will be used only by authorized representatives of USDA, including AMS staff, and authorized representatives of the boards and councils or their designees. Authorized representatives of the boards and councils (or their designees) will be the primary users of the information, and AMS will be the secondary user.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), the Agricultural Marketing Service (AMS) has examined the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

As previously mentioned, producers, handlers, first handlers, processors, importers, exporters, feeders, and seed stock producers pay assessments to the national boards or councils that administer various commodity research and promotion programs, or in some cases to other parties designated by a board or council to collect assessments. Initiated as a result of the 2002 Farm Bill, which amended Section 501 of the Federal Agricultural Improvement and Reform Act of 1996 (FAIR Act), this rule exempts from assessment those entities that produce and market solely 100 percent organic products.

To obtain the exemption, eligible producers, handlers, first handlers, processors, importers, exporters, feeders, and seed stock producers must submit a request for exemption to the appropriate board or council on a form. While the rule imposes certain reporting and recordkeeping requirements on these entities, the form requires the minimum information necessary to effectively administer the exemption provision, and its use is necessary for compliance purposes.

In preparing its initial regulatory flexibility analysis, AMS attempted to identify the entities that would be affected by the proposed rule and to examine the potential impact on such entities. However, information was not available to allow AMS to determine whether any importers would be covered by this proposed rule under the beef and pork programs. In addition, information was not available to allow AMS to identify the respondents under the lamb program as producers, first handlers, feeders, exporters, and seed stock producers, so AMS addressed the lamb program in the aggregate to determine the economic impact. Because a provision for mangos was included in this final rule, information on mangos was obtained and used to prepare the final regulatory flexibility analysis.

The estimated respondents providing new information to the boards or councils and the burden associated with the information collections is as follows. There would be an estimated 2,165 respondents providing new information to the boards or councils under the following programs:

Beef: 167 producers, number of importers unknown (167 total).

Blueberries: 7 producers, 0 importers (7 total).

Cotton: 100 producers, 10 importers (110 total).

Dairy: 600 producers.

Eggs: 0 producers.

Fluid milk: 0 processors.

Hass avocados: 60 producers, 0 importers (60 total).

Honey: 10 producers, 0 importers (10 total).

Lamb: 40 respondents (including producers, first handlers, feeders, seed stock producers, and exporters).

Mangos: 1 first handler, 5 importers (6 total).

Mushrooms: 2 producers, 0 importers (2 total).

Peanuts: 54 producers.

Popcorn: 0 processors.

Pork: 18 producers, number of importers unknown (18 total).

Potatoes: 35 producers, 0 importers (35 total).

Soybeans: 1,028 producers.

Watermelons: 27 producers, 1 handler, 0 importers (28 total).

No respondents were identified for the fluid milk, popcorn, and egg programs. The fluid milk and egg programs exempt smaller entities from assessment—fluid milk processors processing 3 million pounds or less during the first month of the fiscal period and egg producers owning 75,000 or fewer laying hens. Among assessment payers, no solely 100 percent organic processors or producers are known; if they exist, they are already exempt for *de minimis* reasons. No popcorn processors that produce (as defined in this rule) solely 100 percent organic product were identified because of the current nature of the popcorn industry.

The burden associated with the information collection would be $10,825.00 for all respondents, or $5.00 per respondent. These totals have been estimated by multiplying the burden hours associated with the exemption request form by $10.00 per hour, a sum deemed to be reasonable should the respondents be compensated for their time.

Under the 17 research and promotion programs, those assessed pay assessments to the boards and councils that administer the programs. The total annual collections and assessment rates for each board or council are as follows:

Beef: $83.6 million; $1 per head.

Blueberries: $1.5 million; $12 per ton.
Cotton: $65.2 million; $1 per bale plus 0.5 percent of the value of the lint in each bale.
Dairy: $255.0 million; 15 cents per cwt.
Eggs: $19.7 million; 10 cents per 30-dozen case of eggs.
Fluid milk: $106.2 million; 20 cents per cwt.
Hass avocados: $16.3 million; 2.5 cents per pound.
Honey: $3.6 million; 1 cent per pound.
Lamb: $3.5 million; $0.005 per pound of live weight, $0.30 per head on lambs purchased for slaughter.
Mangos: $2.5 million; 0.5 cents per pound.
Mushrooms: $1.7 million; .002 cents per pound.
Peanuts: $6.7 million; 1 percent of the value of the peanuts.
Popcorn: $558,000; 6 cents per cwt.
Pork: $47.8 million; 0.40 percent of the market value.
Potatoes: $8.6 million; 2 cents per cwt.
Soybeans: $77.8 million; ½ of 1 percent of the net market value.
Watermelons: $1.5 million; 2 cents per cwt for domestic watermelons produced, 2 cents per cwt for domestic watermelons first handled, 4 cents per cwt for imported watermelons.

The Small Business Administration [13 CFR 121.201] defines small agricultural producers as those having annual receipts of $750,000 or less annually and small agricultural-service firms as those having annual receipts of $5 million or less. These include producers, feeders, and seed stock producers. Importers, exporters, handlers, and first handlers would be considered agricultural service firms. Using these criteria, most if not all of the agricultural producers and agricultural service firms covered by this rule would be considered small businesses.

This rule allows producers and marketers of solely 100 percent organic products to request an exemption from paying assessments. These exemptions were estimated by multiplying the exempt volume by the assessment rate, and the amounts for exempt entities would be as follows:

Beef: producers—$15,197; importers—unknown.
Blueberries: producers—$5,833; importers—$0 ($5,833 total).
Cotton: producers—$52,000; importers—$25,000 ($77,000 total).
Dairy: producers—$1.33 million.
Eggs: producers—$0.
Fluid milk: processors—$0.
Hass avocados: producers—$91,000; importers—$0 ($91,000 total).
Honey: producers—$11,174; importers—$0 ($11,174 total).
Lamb: $2,987 total (includes producers, first handlers, feeders, seed stock producers, and exporters).
Mangos: $30,000 (includes first handlers and importers).
Mushrooms: producers—$14,400; importers—$0 ($14,400 total).
Peanuts: producers—$18,690.
Popcorn: processors—$0.
Pork: producers—$966; importers—unknown.
Potatoes: producers—$45,000; importers—$0 ($45,000 total).
Soybeans: producers—$40,273.
Watermelons: producers—$17,890; handlers—$950; importers—$0 ($18,840 total).

Therefore, the estimated net economic impact of this rule on the respondents is as follows:

Program	Paperwork burden costs	Exemption from assessments	Net amount
Beef	$835	$15,197	$14,362
Blueberries	35	5,833	5,798
Cotton	550	77,000	76,450
Dairy	3,000	1,330,000	1,327,000
Eggs	0	0	0
Fluid milk	0	0	0
Hass avocados	300	91,000	90,700
Honey	50	11,174	11,124
Lamb	200	2,987	2,787
Mangos	60	30,000	29,940
Mushrooms	10	14,400	14,390
Peanuts	270	18,690	18,420
Popcorn	0	0	0
Pork	90	966	876
Potatoes	175	45,000	44,825
Soybeans	5,140	40,273	35,133
Watermelons	140	18,840	18,700
Total	10,825	1,701,360	1,690,505

Based on the above figures, this rule should have only a beneficial economic effect on small entities.

Reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

With regard to alternatives, the FAIR Act required USDA to take this action, which will lessen the assessment costs for persons who produce and market solely 100 percent organic products. In drafting the exemption procedures, every effort has been made to minimize the burden on the persons impacted and to simplify the process. The anticipated assessment reductions for eligible persons are expected to greatly outweigh the costs related to the additional reporting.

List of Subjects

7 CFR Part 1150

Dairy products, Reporting and recordkeeping requirements, Research.

7 CFR Part 1160

Fluid milk products, Milk, Promotion.

7 CFR Part 1205

Advertising, Agricultural Research, Cotton, Reporting and recordkeeping requirements.

7 CFR Part 1206

Administrative practice and procedure, Advertising, Consumer information, Mangos, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

7 CFR Part 1207

Advertising, Agricultural research, Potatoes, Reporting and recordkeeping requirements.

7 CFR Part 1209

Advertising, Agricultural Research, Marketing agreements, Mushrooms, Reporting and recordkeeping requirements.

7 CFR Part 1210

Administrative practice and procedure, Advertising, Agricultural research, Reporting and recordkeeping requirements, Watermelons.

7 CFR Part 1215

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Popcorn, Promotion, Reporting and recordkeeping requirements.

7 CFR Part 1216

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Peanut promotion, Reporting and recordkeeping requirements.

7 CFR Part 1218

Administrative practice and procedure, Advertising, Blueberries, Consumer information, Marketing agreements, Blueberry promotion, Reporting and recordkeeping requirements.

7 CFR Part 1219

Administrative practice and procedure, Advertising, Consumer information, Hass avocados, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

7 CFR Part 1240

Advertising, Agricultural research, Honey, Imports, Reporting and recordkeeping requirements.

7 CFR Part 1250

Administrative practice and procedure, Advertising, Agricultural research, Eggs and egg products, Reporting and recordkeeping requirements.

7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreements, Meat and meat products, Reporting and recordkeeping requirements.

7 CFR Part 1280

Administrative practice and procedure, Advertising, Consumer information, Lamb and lamb products, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR parts 1150, 1160, 1205, 1206, 1207, 1209, 1210, 1215, 1216, 1218, 1219, 1220, 1230, 1240, 1250, 1260, and 1280 are amended as follows:

PART 1150—DAIRY PROMOTION

■ 1. The authority citation for part 1150 is revised to read as follows:

Authority: 7 U.S.C. 4501–4514 and 7 U.S.C. 7401.

■ 2. Add a new § 1150.157 to read as follows:

§ 1150.157 Assessment exemption.

(a) A producer described in § 1150.152 (a) and (b) who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (h) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for an exemption under this section, a producer pursuant to § 1150.152 (a) and (b) shall submit a request for exemption to the Board on a form provided by the Board at any time initially and annually thereafter on or before July 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified in paragraph (a) of this section for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If a producer described in § 1150.152 (a) and (b) complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer described in paragraph (c) of this section shall provide a copy of the Certificate of Exemption to each person responsible for remitting assessments to the Board on behalf of the producer pursuant to § 1150.152.

(f) The person responsible for remitting assessments to the Board pursuant to § 1150.152 shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board pursuant to § 1150.172.

(g) The exemption will apply not later than the last day of the month following the Certificate of Exemption issuance date.

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

PART 1160—FLUID MILK PROMOTION

■ 3. The authority citation for part 1160 is revised to read as follows:

Authority: 7 U.S.C. 6401–6417 and 7 U.S.C. 7401.

■ 4. In § 1160.211, paragraph (a)(1) is revised to read as follows:

§ 1160.211 Assessments.

(a)(1) Each fluid milk processor shall pay to the Board or its designated agent an assessment of $.20 per hundredweight of fluid milk products processed and marketed commercially in consumer-type packages in the

United States by such fluid milk processor. Any fluid milk processor who markets milk of its own production directly to consumers as prescribed under section 113(g) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(g)), and not exempt under § 1160.108 or § 1160.215, shall also pay the assessment under this subpart. The Secretary shall have the authority to receive assessments on behalf of the Board.

* * * * *

■ 5. A new § 1160.215 is added to read as follows:

§ 1160.215 Assessment exemption.

(a) No assessment shall be required on fluid milk products exported from the United States.

(b) A fluid milk processor described in § 1160.211(a) who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; processes only products that are eligible to be labeled as 100 percent organic under the NOP; and is not a split operation shall be exempt from the payment of assessments.

(c) To apply for an assessment exemption, a fluid milk processor described in § 1160.211(a) shall submit a request for exemption to the Board on a form provided by the Board at any time initially and annually thereafter on or before July 1 as long as the fluid milk processor continues to be eligible for the assessment exemption.

(d) The request shall include the following: The fluid milk processor's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified in paragraph (b) of this section for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(e) The Board will grant an assessment exemption to any fluid milk processor meeting the criteria in § 1160.215(b) and issue a Certificate of Exemption to the fluid milk processor. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(f) The exemption will apply not later than the last day of the month following the Certificate of Exemption issuance date.

PART 1205—COTTON RESEARCH AND PROMOTION

■ 6. The authority citation for part 1205 is revised to read as follows:

Authority: 7 U.S.C. 2101–2118 and 7 U.S.C. 7401.

■ 7. A new § 1205.519 is added to read as follows:

§ 1205.519 Organic exemption.

(a) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (h) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for an exemption under this section, an eligible cotton producer shall submit a request for exemption to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before the beginning of the crop year as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: The producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified in paragraph (a) of this section for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If the producer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells cotton. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic cotton and 100 percent organic cotton products—on a form provided by the Board—at any time initially and annually thereafter as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic cotton and cotton products bearing this HTS classification assigned by the Board will not be subject to assessments.

(g) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

PART 1206—MANGO PROMOTION, RESEARCH, AND INFORMATION

■ 8. The authority citation for part 1206 is revised to read as follows:

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 9. Add a new Subpart C—Rules and Regulations to read as follows:

Subpart C—Rules and Regulations

§ 1206.200 Terms defined.

Unless otherwise defined in this subpart, the definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart A—Mango Promotion, Research, and Information Order.

§ 1206.201 Definitions.

Organic Act means section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

§ 1206.202 Exemption for organic mangos.

(a) A first handler who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, handles only products that are eligible to be labeled as 100 percent organic under the NOP, and is not a split operation shall be exempt from the payment of assessments.

(b) To obtain this exemption, an eligible first handler shall submit a request for exemption to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before the beginning of the fiscal period as long as the first handler continues to be eligible for the exemption.

(c) The request shall include the following: The first handler's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in the Organic Act, a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If the first handler complies with the requirements of paragraph (a) of this section, the Board will grant an assessment exemption and shall issue a Certificate of Exemption to the first handler. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic mangos—on a form provided by the Board—at any time initially and annually thereafter on or before the beginning of the fiscal period as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of first handlers in paragraph (c). If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer within the applicable timeframe. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic mangos bearing this HTS classification assigned by the Board will not be subject to assessments.

(f) The exemption will apply immediately following the issuance of the certificate of exemption.

PART 1207—POTATO RESEARCH AND PROMOTION

■ 10. The authority citation for part 1207 is revised to read as follows:

Authority: 7 U.S.C. 2611–2627 and 7 U.S.C. 7401.

■ 11. A new § 1207.514 is added to read as follows:

§ 1207.514 Exemption for organic potatoes.

(a) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (h) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for an exemption under this section, the producer shall submit a request for exemption to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before July 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: The producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified in paragraph (a) of this section for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If the producer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells potatoes. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic potatoes, potato products, and seed potatoes—on a form provided by the Board—at any time initially and annually thereafter on or before July 1 as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic potatoes, potato products, and seed potatoes bearing this HTS classification assigned by the Board will not be subject to assessments.

(g) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION

■ 12. The authority citation for part 1209 is revised to read as follows:

Authority: 7 U.S.C. 6101–6112 and 7 U.S.C. 7401.

■ 13. In § 1209.52, revise paragraph (a) to read as follows:

§ 1209.52 Exemption from assessment.

(a) The following persons shall be exempt from assessments under this part:

(1) A person who produces or imports, on average, 500,000 pounds or less of mushrooms annually; and

(2) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in § 1209.252(a)(2)(vi); and is not a split operation; and

(3) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation.

* * * * *

■ 14. In § 1209.252, revise paragraph (a) to read as follows:

§ 1209.252 Exemption procedures.

(a) *Types of exemptions and requirements.* (1) Any person who produces or imports, on average, 500,000 pounds or less of mushrooms annually and who desires to claim an exemption from assessments during a fiscal year shall apply to the Council, on a form provided by the Council, for a Certificate of Exemption. The producer or importer shall certify that the person's production or importation of mushrooms shall not exceed 500,000 pounds, on average, for the fiscal year for which the exemption is claimed. An average shall be calculated by averaging a person's estimated production or importation for the fiscal year for which an exemption is claimed with the person's production or importation in the preceding fiscal year.

(2) To apply for an exemption for organic mushrooms:

(i) An eligible mushroom producer shall submit a request for exemption to the Council—on a form provided by the Council—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption.

(ii) The request shall include the following: The producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Council and with the approval of the Secretary.

(iii) If the producer complies with the requirements of § 1209.52 (a)(2), the Council will grant the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Council will have 60 days to approve the exemption request; after August 15, 2005, the Council will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(iv) An eligible importer may submit documentation to the Council and request an exemption from assessment on 100 percent organic mushrooms—on a form provided by the Council—at any time initially and annually thereafter on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers. If the importer complies with the requirements of this section, the Council will grant the exemption and issue a Certificate of Exemption to the importer. The Council will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic mushrooms bearing this HTS classification assigned by the Council will not be subject to assessments.

(v) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(vi) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

* * * * *

PART 1210—WATERMELON RESEARCH AND PROMOTION

■ 15. The authority citation for part 1210 is revised to read as follows:

Authority: 7 U.S.C. 4901–4916 and 7 U.S.C. 7401.

■ 16. A new § 1210.516 is added to read as follows:

§ 1210.516 Exemption for organic watermelons.

(a) A producer who produces only products that are eligible to be labeled as 100 percent organic under the National Organic Program (NOP) (7 CFR part 205), except as provided for in paragraph (h) of this section, or a handler who handles only products that are eligible to be labeled as 100 percent organic under the NOP; and who operates under an approved NOP system plan, and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for this exemption, the producer or handler shall submit the request to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the producer or handler continues to be eligible for the exemption.

(c) The request shall include the following: The applicant's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If the producer or handler complies with the requirements of this section, the Board will approve the exemption and issue a Certificate of Exemption to the producer or handler. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells watermelons. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) An importer imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic watermelons. The importer may request the exemption—on a form provided by the Board—at any time initially and annually thereafter on or before January 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers and handlers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic watermelons bearing this HTS classification assigned by the Board will not be subject to assessments.

(g) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

PART 1215—POPCORN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

■ 17. The authority citation for part 1215 is revised to read as follows:

Authority: 7 U.S.C. 7481–7491 and 7 U.S.C. 7401.

■ 18. Section 1215.52 is revised to read as follows:

§ 1215.52 Exemption from assessment.

(a) Persons that process and distribute 4 million pounds or less of popcorn annually, based on the previous year, shall be exempted from assessment.

(b) Persons that operate under an approved National Organic Program (NOP) (7 CFR part 205) system plan; process only products that are eligible to be labeled as 100 percent organic under the NOP; and are not split operations shall be exempt from the payment of assessments.

(c) To claim an exemption, persons shall apply to the Board, in the form and manner prescribed in the rules and regulations.

■ 19. Section 1215.300 is amended by:

■ (a) Revising paragraphs (b) and (c);

■ (b) Redesignating paragraph (d) as paragraph (f);

■ (c) Adding new paragraphs (d) and (e).

The revisions read as follows:

§ 1215.300 Exemption procedures.

* * * * *

(b) Persons that process solely 100 percent organic products and that do not process any conventional or nonorganic products as provided in § 1215.52 paragraph (b) of this part may apply for an exemption by submitting a request for exemption to the Board on a form provided by the Board at any time initially. The request shall include the following: The applicant's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(c) Upon receipt of an application, the Board shall determine whether an exemption may be granted and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(d) Any person who desires to renew the exemption from assessments for a subsequent fiscal year shall reapply to the Board by January 1 of that year.

(e) The exemption will apply at the first reporting period following the issuance of the Certificate of Exemption.

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PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION

■ 20. The authority citation for part 1216 is revised to read as follows:

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 21. Section 1216.56 is added to read as follows:

§ 1216.56 Exemption for organic peanuts.

(a) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (g) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) In order to apply for this exemption, an eligible peanut producer shall submit a request for exemption to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before August 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: The producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If the producer complies with the requirements of this section, the Board will approve the exemption and issue a

Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for approval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells peanuts. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) The exemption will apply at the first reporting period following the issuance of the Certificate of Exemption.

(g) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION

■ 22. The authority citation for part 1218 is revised to read as follows:

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 23. Section 1218.53 is amended by redesignating paragraphs (b) through (e) as (h) through (k), adding new paragraphs (b) through (g), and revising paragraph (a) to read as follows:

§ 1218.53 Exemption procedures.

(a) Any producer who produces less than 2,000 pounds of blueberries annually shall be exempt from the payment of assessments. Such producer may apply to the USACBC—on a form provided by the USACBC—for a certificate of exemption. Such producer shall certify that the producer's production of blueberries shall be less than 2,000 pounds for the fiscal year for which the exemption is claimed.

(b) Any importer who imports less than 2,000 pounds of fresh and frozen blueberries annually shall be exempt from the payment of assessments. Such importer may apply to the USACBC—on a form provided by the USACBC—for a certificate of exemption. Such importer shall certify that the importer's importation of fresh and frozen blueberries shall not exceed 2,000 pounds for the fiscal year for which the exemption is claimed.

(c) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (g) of this section; and is not a split operation shall be exempt from the payment of assessments.

(d) To apply for this exemption, a producer shall submit a request for exemption to the USACBC—on a form provided by the USACBC—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption. The request shall include the following: The producer's name and address, with a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 CFR part 205), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary. If a producer complies with the requirements in paragraph (c) of this section, the USACBC will grant an assessment exemption and issue a certification of exemption to the producer. For exemption requests received on or before August 15, 2005, the USACBC will have 60 days to approve the exemption request; after August 15, 2005, the USACBC will have 30 days to approve the exemption request. If the application is disapproved, the USACBC will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic fresh and frozen blueberries—on a form provided by the USACBC—at any time initially and annually thereafter on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (d) of this section. If the importer complies with the requirements of this section, the USACBC will grant the exemption and issue a Certificate of Exemption to the importer. The USACBC will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic fresh and frozen blueberries bearing this HTS classification assigned by the USACBC will not be subject to assessments.

(f) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(g) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

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PART 1219—HASS AVOCADO PROMOTION, RESEARCH, AND INFORMATION

■ 24. The authority citation for part 1219 is revised to read as follows:

Authority: 7 U.S.C. 7801–7813 and 7 U.S.C. 7401.

■ 25. In part 1219, add a new Subpart C—Rules and Regulations to read as follows:

Subpart C—Rules and Regulations

§ 1219.200 Terms defined.

Unless otherwise defined in this subpart, the definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart A—Hass Avocado Promotion, Research, and Information Order of this part.

§ 1219.201 Definitions.

Organic Act means section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

§ 1219.202 Exemption for organic Hass avocados.

(a) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; only produces products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (h) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To obtain this exemption, an eligible Hass avocado producer shall submit a request for exemption to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before November 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in the Organic Act, a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If the producer complies with the requirements of paragraph (a) of this section, the Board will grant an assessment exemption and shall issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells Hass avocados. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic Hass avocados—on a form provided by the Board—at any time initially and annually thereafter on or before November 1 as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic Hass avocados bearing this HTS classification assigned by the Board will not be subject to assessments.

(g) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

■ 26. The authority citation for part 1220 is revised to read as follows:

Authority: 7 U.S.C. 6301–6311 and 7 U.S.C. 7401.

■ 27. A new § 1220.302 is added to read as follows:

§ 1220.302 Exemption.

(a) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (g) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for an exemption under this section, the producer shall submit the request to the Board or other party as designated by the Board—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If the producer complies with the requirements of this section, the Board or designee will grant the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each first purchaser. The first purchaser shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) The exemption will apply at the first reporting period following the issuance of the exemption.

(g) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

■ 28. The authority citation for part 1230 is revised to read as follows:

Authority: 7 U.S.C. 4801–4819 and 7 U.S.C. 7401.

■ 29. A new § 1230.102 is added to read as follows:

§ 1230.102 Exemption.

(a) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (i) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for an exemption under this section, the producer shall submit the request to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If the producer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each person responsible for collecting and remitting the assessment to the Board.

(f) The person responsible for collecting and remitting the assessment to the Board shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(g) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic porcine animals or pork and pork products—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic porcine animals or pork and pork products bearing this HTS classification assigned by the Board will not be subject to assessments.

(h) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(i) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION

■ 30. The authority citation for part 1240 continues to read as follows:

Authority: 7 U.S.C. 4601–4612 and 7 U.S.C. 7401.

■ 31. Section 1240.42 is amended by:

■ (a) Redesignating paragraph (d) as paragraph (e).

■ (b) Revising paragraph (c).

■ (c) Adding new paragraph (d).

The revisions read as follows:

§ 1240.42 Exemption from assessment.

* * * * *

(c) If, after a person has been exempt from paying assessments for any year pursuant to this section, and the person no longer meets the requirements of paragraphs (a) and (b) of this section for exemption, the person shall file a report with the Board in the form and manner prescribed by the Board and pay an assessment on or before March 15 of the subsequent year on all honey or honey products produced or imported by such person during the year for which the person claimed the exemption.

(d) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in § 1240.114 (f); and is not a split operation shall be exempt from the payment of assessments. An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments.

* * * * *

■ 32. Amend § 1240.50 by revising paragraph (d) to read as follows:

§ 1240.50 Reports.

* * * * *

(d) For persons who have an exemption from assessments under § 1240.42, such information as deemed necessary by the Board, and approved by the Secretary, concerning the exemption including disposition of exempted honey.

■ 33. Revise § 1240.114 to read as follows:

§ 1240.114 Exemption procedures.

(a) To obtain a Certificate of Exemption for organic honey, an eligible producer shall submit a request for exemption to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption. The request shall include the following: The producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(b) If the producer complies with the requirements of this section, the Board will approve the exemption and issue a

Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(c) A producer receiving an organic exemption shall provide a copy of the Certificate of Exemption to each first handler, producer-packer, importer, and exporter to whom the producer sells honey. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(d) An importer who is eligible to be exempt from the payment of assessments on imported organic honey and honey products may request an exemption from assessment on 100 percent organic honey and honey products—on a form provided by the Board—at any time initially and on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers and producer-packers in paragraph (a) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic honey and honey products bearing this HTS classification assigned by the Board will not be subject to assessments.

(e) The exemption will apply immediately following issuance of the Certificate of Exemption.

(f) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

■ 34. In § 1240.115, revise paragraph (b)(1) to read as follows:

§ 1240.115 Levy of assessments.

* * * * *

(b) * * *

(1) Any persons other than importers holding a valid exemption certificate pursuant to § 1240.42 during the 12-month period ending on December 31;

* * * * *

■ 35. Amend § 1240.118 by revising the first sentence to read as follows:

§ 1240.118 Reports of disposition of exempted honey.

The Board may require reports by first handlers, producer-packers, importers, or any persons who receive an exemption from assessments under § 1240.42 on the handling and disposition of exempted honey. * * *

■ 36. Revise § 1240.120 to read as follows:

§ 1240.120 Retention period for records.

Each producer, first handler, producer-packer, importer, or any person who receives an exemption from assessments under § 1240.42 and is required to make reports pursuant to this subpart shall maintain and retain for at least two years beyond the marketing year of their applicability:

(a) One copy of each report made to the Board;

(b) Records of all exempt producers, producer-packers, and importers including certification of exemption as necessary to verify the address of such exempt person; and

(c) Such records as are necessary to verify such reports.

■ 37. Revise § 1240.121 to read as follows:

§ 1240.121 Availability of records.

Each producer, first handler, producer-packer, importer, or any person who receives an exemption from assessments under § 1240.42 and is required to make reports pursuant to this subpart shall make available for inspection by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

■ 38. Revise § 1240.122 to read as follows:

§ 1240.122 Confidential books, records, and reports.

All information obtained from the books, records, and reports of producers, first handlers, producer-packers, importers or any persons who receive an exemption from assessments under § 1240.42 and all information with respect to refunds of assessments made to individual producers and importers shall be kept confidential in the manner and to the extent provided for in § 1240.52 of the Order.

PART 1250—EGG RESEARCH AND PROMOTION

■ 39. The authority citation for part 1250 is revised to read as follows:

Authority: 7 U.S.C. 2701–2718 and 7 U.S.C. 7401.

■ 40. Revise § 1250.530 to read as follows:

§ 1250.530 Certification of exempt producers.

(a) *Number of laying hens.* Egg producers not subject to the provisions of the Act pursuant to § 1250.348 shall file with all handlers to whom they sell eggs a statement certifying their exemption from the provisions of the Act in accordance with the criterion of § 1250.348. Certification shall be made on forms approved and provided by the Egg Board to collecting handlers for use by exempt producers. The certification form shall be filed with each handler on or before January 1 of each year as long as the producer continues to do business with the handler. A copy of the certificate of exemption shall be forwarded to the Egg Board by the handler within 30 days of receipt. The certification shall list the following: the name and address of the producer, the basis for producer exemption according to the requirements of § 1250.348, and the signature of the producer.

(b) *Organic Production.* A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; only produces products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (b)(6) of this section; and is not a split operation shall be exempt from the payment of assessments.

(1) To apply for an exemption under this section, a producer shall submit a request for exemption to the Board on a form provided by the Board at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption.

(2) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed

certification that the applicant meets all of the requirements specified in paragraph (b) of this section for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(3) If the producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a certificate of exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(4) The producer shall provide a copy of the certificate of exemption to each handler to whom the producer sells eggs. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(5) The exemption will apply at the first reporting period following the issuance of the Certificate of Exemption.

(6) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

(c) If the exempt producer no longer qualifies for an exemption as specified in § 1250.348 or 1250.530(b), that producer shall notify, within 10 days, all handlers with whom the producer has filed a Certificate of Exemption.

PART 1260—BEEF PROMOTION AND RESEARCH

■ 41. The authority citation for part 1260 is revised to read as follows:

Authority: 7 U.S.C. 2901–2911 and 7 U.S.C. 7401.

■ 42. A new § 1260.302 is added to read as follows:

§ 1260.302 Organic exemption.

(a) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; only produces products that re eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (i) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for an exemption under this section, the producer shall submit the request to the Board or QSBC—on a form provided by the Board or QSBC—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If the producer complies with the requirements of this section, the Board or QSBC will grant the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board or QSBC will have 60 days to approve the exemption request; after August 15, 2005, the Board or QSBC will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each person responsible for collecting and remitting the assessment.

(f) The person responsible for collecting and remitting the assessment shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board or QSBC.

(g) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic cattle or beef and beef products—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic cattle or beef and beef products bearing this HTS classification assigned by the Board will not be subject to assessments.

(h) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(i) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

PART 1280—LAMB PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 43. The authority citation for part 1280 is revised to read as follows:

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 44. A new § 1280.406 is added to read as follows:

§ 1280.406 Exemption.

(a) A producer, seed stock producer, or feeder who produces (including producing by feeding) only products that are eligible to be labeled as 100 percent organic under the National Organic Program (NOP) (7 CFR part 205), except as provided for in paragraph (h) of this section; a handler who handles only products that are eligible to be labeled as 100 percent organic under the NOP; or an exporter who exports only products that are eligible to be labeled as 100 percent organic under the NOP; and who operates under an approved NOP system plan and is not a split operation.

(b) To apply for an exemption under this section, the person shall submit the request to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the person continues to be eligible for the exemption.

(c) The request shall include the following: the person's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If the person complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) An exempt producer shall provide a copy of the Certificate of Exemption to each person to whom the producer sells ovine animals or lamb and lamb products. The Certificate of Exemption must accompany the ovine animals through the production chain to the person responsible for remitting the assessment to the Board.

(f) The person shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(g) The exemption will apply at the first reporting period following the issuance of the exemption.

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer, seed stock producer, or feeder from exemption under this section, except that persons producing or feeding both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

Dated: January 5, 2005.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 05–573 Filed 1–13–05; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 900

[Docket No. FV03–900–1 FR]

Exemption of Organic Handlers From Assessments for Market Promotion Activities Under Marketing Order Programs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements the provisions of section 10607 of the 2002 Farm Bill and exempts handlers subject to marketing order requirements from paying assessments for market promotion activities, including paid advertising, to marketing order committees and boards. To obtain an exemption, the handler must operate under an approved organic process system plan authorized by the National Organic Program (NOP), and handle or market only products that are eligible for a 100 percent organic product label under the NOP. The Agricultural Marketing Service (AMS), that oversees and works with the committees and boards in administering the programs, has identified 28 marketing order programs for which assessment exemptions may be established. A separate final rule to exempt any person producing and marketing solely 100 percent organic products from paying assessments to any national research and promotion program administered by AMS also is being published in today's **Federal Register**.

DATES: Effective February 14, 2005.

FOR FURTHER INFORMATION CONTACT: George Kelhart or Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., STOP 0237, Room 2525–South, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938; or E-mail: *George.Kelhart@usda.gov.*

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

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Proposed rule; Published in the **Federal Register** December 2, 2003 (68 FR 67381).

Proposed rule; Extension of comment period; Published in the **Federal Register** December 30, 2003 (68 FR 75148).

Executive Order 12866

This final rule is being issued by the Department of Agriculture (USDA) in conformance with Executive Order 12866.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This final rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674)(Act or AMAA), under which the 28 marketing order programs are established, provides that administrative proceedings must be exhausted before parties may file suit in court. Under the Act, any person subject to an order may file a petition with USDA stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order, or to be exempted therefrom. The petitioner is afforded the opportunity for a hearing on the petition. After the hearing, USDA would make a ruling on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling, provided a complaint is filed within 20 days from the date of the entry of the ruling.

Background

Section 10607 of the Farm Security and Rural Investment Act (Pub. L. 107–171; 2002 Farm Bill) was enacted May 13, 2002. Section 501 of the Federal

Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7401; FAIR Act) was amended by the 2002 Farm Bill. This amendment exempts any person that produces and markets solely 100 percent organic products, and that does not produce any conventional or non-organic products, from paying assessments under a commodity promotion law with respect to any agricultural commodity that is produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502; OFPA). USDA has implemented National Organic Program (NOP) requirements at 7 CFR part 205 to carry out the provisions of the OFPA.

USDA is amending the general regulations (7 CFR part 900) with respect to 28 marketing order programs established under the Act for which it has oversight. These amendments establish provisions for handlers who handle or market solely 100 percent organic products to be exempt from paying assessments for market promotion activities, including paid advertising.

Currently, the FAIR Act amendment covers 28 marketing order programs established under the Act: Texas citrus—7 CFR part 906; Florida avocados—7 CFR part 915; California nectarines—7 CFR part 916; California peaches and pears—7 CFR part 917; Washington apricots— 7 CFR part 922; Washington sweet cherries—7 CFR part 923; Washington/Oregon fresh prunes—7 CFR part 924; Southeastern California grapes—7 CFR part 925; Oregon/Washington winter pears—7 CFR part 927; Cranberries grown in States of Massachusetts, *et al.*—7 CFR part 929; Tart cherries grown in States of Michigan, *et al.*—7 CFR part 930; Oregon/Washington Bartlett pears—7 CFR part 931; California olives—7 CFR part 932; Oregon/California potatoes—7 CFR part 947; Colorado potatoes—7 CFR part 948; Georgia Vidalia onions—7 CFR part 955; Washington/Oregon Walla Walla onions—7 CFR part 956; Idaho-Eastern Oregon onions—7 CFR part 958; Texas onions—7 CFR part 959; Florida tomatoes—7 CFR part 966; Texas melons—7 CFR part 979; California almonds—7 CFR part 981; Oregon-Washington hazelnuts—7 CFR part 982; California walnuts—7 CFR part 984; Far West spearmint oil—7 CFR part 985; California dates—7 CFR part 987; California raisins—7 CFR part 989; and California dried prunes—7 CFR part 993. In addition, § 900.700(a) provides that the assessment exemption also shall apply to any additional marketing orders for fruits, vegetables, or specialty crops that may be established or amended to include market promotion.

These marketing order programs allow for promotion programs designed to assist, improve, or promote the marketing, distribution, or consumption of the commodity covered under the marketing order program. Some of these programs also authorize market promotion in the form of paid advertising. Promotion activities, including paid advertising, are paid for by assessments levied on handlers regulated under the various marketing orders.

Notice of this action was published in the **Federal Register** on December 2, 2003 (68 FR 67381). The period for written comments initially ended on January 2, 2004. However, at the request of the Organic Trade Association, the comment period was extended until February 2, 2004 (68 FR 75148; December 30, 2003).

During the comment period, 147 comments were received from a member of Congress, producers of organic commodities, marketers of organic commodities, organic producer and trade organizations, the management of the tart cherry and almond marketing order boards, cooperative marketing organizations, and interested consumers. About 85 of the commenters used a form letter that discussed eligibility and administrative issues. Another 80 comments were received after the comment period, but they did not introduce any new issues. AMS has considered each comment timely submitted, and they are discussed below.

Summary of Changes From the Proposed Rule

This final rule clarifies that, for the purpose of obtaining an assessment exemption for market promotion activities, a handler (*i.e.*, assessment payer) must operate under a NOP-approved organic process system plan. Further, that handler may handle or market only commodities eligible for a 100 percent organic label under the NOP (7 CFR part 205.300–205.311). This applies to all commodities handled or marketed by the handler, not only those covered by the marketing order programs. Such handlers are considered to be the persons that handle or market solely 100 percent organic commodities for the purposes of the 2002 Farm Bill. The application form has been changed to reflect this as appropriate.

The final rule also clarifies that a handler who handles or markets products produced on buffer zones or chemically-treated products from certified NOP producers is not eligible for an assessment exemption. Moreover, a handler, who is a split operation handling both organic and conventionally-produced product, is not eligible for an assessment exemption. Further, if an NOP handler is also a certified NOP producer, that handler would not be eligible for exemption unless the non-organic production from his or her production operation is handled by another handler.

The final rule provides that the exemption will apply at the beginning of the next assessable period following notification to the applicant of approval of the assessment exemption, in writing, by the committee or board. The final rule requires marketing order committees and boards to grant or deny exemption requests within 30 days. However, for the first 6 months following the final rule's effective date, committees and boards will have 60 days to grant or deny exemption requests. After 6 months, the deadline will revert to 30 days.

The final rule also provides that persons denied the exemption will be notified in writing. The procedures for handlers to follow in the event they are denied exemption status and desire further review are explained in this final rule.

Summary of Comments Received

The comments largely fall into two broad categories. One category addresses issues of assessment exemption eligibility. The other category addresses administrative and procedural issues.

Issues of Eligibility

Numerous commenters, including those that submitted the form letter, stated that the proposed rule changed the eligibility requirements fixed by Congress. They assert that the eligibility criteria for an organic exemption were established by Congress in the exemption statute and are easily implemented using the definitions (*e.g.*, producer, handler, 100 percent organic, *etc.*) of the FAIR Act and the OFPA.

The assessment exemption statute amends section 501 of the FAIR Act to provide that persons that produce and market solely 100 percent organic products shall be exempt from the payment of assessments under a commodity promotion law with respect to any agricultural commodity that is produced on a certified organic farm (as defined in section 2103 of the OFPA). This exemption from assessments applies to a number of programs, including marketing orders that include marketing promotion provisions under section 8c(6)(I) of the AMAA. Marketing orders established under the AMAA regulate the handling of the commodity, not the production; handlers, not producers, pay assessments under marketing order programs. Thus, relevant definitions established under the AMAA for the marketing order programs should apply and not those specified under other statutes.

Other commenters, including those that submitted the form letter, stated that the term "100 percent organic" should refer to 100 percent of a specific commodity, not all commodities. This would mean that a person that handles or markets an organic commodity regulated under a marketing order would be eligible for an exemption even if that person handled other commodities that are not organic. Other commenters stated that the term "100 percent organic" means nothing more than produced on a certified organic farm, and certified organic farms include split operations (*i.e.*, those that produce and market both organic and conventionally-grown commodities). Other commenters stated that rendering a certified organic grower who produces any non-organic commodity ineligible for exemption would conflict with the OFPA and Congressional intent.

USDA considered these comments. Such an interpretation, however, would make the additional statutory qualifications of "solely" and "does not produce any conventional or non-organic products" meaningless. The statutory language of the 2002 Farm Bill provides that to be exempt, a person must produce and market solely 100 percent organic products, and not produce any conventional or non-organic products. Therefore, the interpretation urged by the commenters is not consistent with the statute.

Furthermore, to eliminate uncertainty in interpreting exemption eligibility for programs authorized under the AMAA, the reference to a "person that produces and markets solely 100 percent organic commodities" in the 2002 Farm Bill is the person that handles or markets (*i.e.*, the person that pays assessments) on the commodities under the marketing order. Therefore, for a handler to qualify for an exemption, that handler must handle or market only 100 percent organic products under an approved NOP handler organic process system plan and all of the products handled or marketed by the handler must be eligible for a 100 percent organic label under the NOP.

Handlers handling non-organic products are not eligible for an exemption. For example, NOP recognizes split farm operations and certain NOP permitted practices in which an organic grower produces conventionally-grown product, but maintains his or her organic grower status. Under the NOP, an organic grower may be required to sell a commodity conventionally due to Federal or State emergency chemical spray programs to eliminate pests or diseases. Similarly, the NOP requires an organic operation to maintain a buffer area between the organic crop and the conventional growing areas, and any commodity grown in that buffer area may not be sold as organic. Even if the handler is an organic producer who produces a conventional product consistent with NOP practices (*i.e.*, product from a buffer zone), that handler would only be eligible for an exemption if the conventionally-produced commodity produced by that handler was handled or marketed by another handler.

As defined in the proposed rule, "produce means to grow or produce food, feed, livestock, or fiber or to receive food, feed, livestock or fiber and alter that product by means of feeding, slaughtering, or processing." Commenters, including those who submitted the form letter, noted that there is nothing in the 2002 Farm Bill to require that handlers perform more than their normal activities for the exemption to apply. They assert that the exemptions should apply whether or not the handler alters the commodity.

To address the concerns of the commenters and because the AMAA only authorizes regulation of handlers (the entities required to pay assessments), the exemption eligibility has been modified by removing the requirements for alteration or other forms of processing so all handlers are treated similarly.

In response to the form letter comment, this final rule clarifies that, as long as the handler meets the requirements in § 900.700(b), it is not necessary that the handler label all products as organic. In other words, if the products were produced organically, the fact that they were marketed as conventional products would not nullify a handler's exemption from assessment status. Under the NOP, product produced under an approved system of organic management does not lose its status as the product of a certified organic farm when transacted in the conventional marketplace. Thus, persons who market organic products in conventional markets will not lose their exempt status.

As revised, § 900.700(b) provides that a handler who operates under an NOP-approved organic process system plan; handles or markets under an applicable marketing order or outside the marketing order solely 100 percent organic products produced on a certified organic farm as defined in § 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and NOP regulations; is not a split operation; and is subject to assessments, shall be exempt from the portion of the assessments applicable to marketing promotion.

Examples Illustrating the Application of Handling and Marketing Solely 100 Percent Organic Products

- A handler who handles or markets solely 100 percent organic products under an NOP-approved organic process system plan, and pays marketing order assessments to the board or committee, is eligible for an exemption for the portion of the assessments used for marketing promotion on all products handled or marketed under the applicable marketing order.
- A handler receives products from a certified grower who grows 20 acres organically and 20 acres of another product conventionally. If the handler handles or markets any of the conventionally-produced products, the handler is not eligible for an exemption. Conversely, if the handler receives and markets only 100 percent organic products, the handler is eligible for an exemption even if the producers who grew the product also produced conventional product.
- If a handler produces products organically and conventionally, the conventionally-grown products must be handled or marketed by another handler to be eligible for an exemption from the portion of the assessments used for marketing promotion.

Administrative and Procedural Issues

The proposed rule limited the exemption to that portion of the assessment funds allocated for marketing promotion, including paid advertising. Some commenters, including those who submitted the form letter, said that all eligible persons should be exempt from all of the marketing order assessments collected, not just those assessments used for market promotion activities. The commenters asserted that the intent of Congress was to bar all assessments that might be imposed under generic commodity promotion laws on commodities originating from certified organic farms, not only those earmarked for marketing promotion, including paid advertising.

The assessment exemption only applies to assessments that are spent for market research, market development, market promotion, or paid advertising. Section 501 of the FAIR Act covers all promotion programs and all marketing orders with market research and promotion activities, including industry information and consumer information activities funded by assessments on handlers. Limiting the exemption to such activities is consistent with section 501 of FAIR Act and the marketing orders with market research and promotion activities.

Several commenters requested that USDA list examples of eligible activities in the final rule to help the committees and boards administer the organic assessment exemption program. Others requested that exempt activities be broadened to include all of the activities authorized in section 8c(6)(I) of the AMAA. If this were done, the activities would also include production research. Production research encompasses a whole array of activities including, but not limited to, research on growing techniques, disease control, the development of new varieties, and similar activities relating to the efficient production of the commodity. Production research activities are not within the scope of the 2002 Farm Bill, because they do not directly promote the marketing of the commodity.

To provide guidance to those commenters who requested examples of eligible market promotion activities, market promotion includes a full range of activities designed to assist, improve, or promote the marketing, distribution, and consumption of the applicable commodity. Research related to the traditional market research activities (*e.g.*, surveys of consumer and institutional users, product development, and taste studies) would be covered. Assessments used for the promotion of the nutritional and health benefits of the particular commodity, recipe development, informational packets, and other types of publicity also would be eligible for exemption.

Market development projects would cover the full range of promotional activities generally included in that category, which include—but are not limited to—participation in trade shows, the development and use of internet websites to inform the trade and the public of the uses (*e.g.*, recipes) and/or nutritional value of the regulated commodity, point of purchase materials, publication of promotional materials, the development and dissemination of materials to the media promoting the commodity's uses and benefits, and paid advertising when authorized under a marketing order.

Another commenter objected to the exemption, mentioning that promotion activities implemented under their program promote their commodity and do not distinguish between organic and non-organic. As a consequence, organic producers and handlers would benefit from the industry's investment in market research and trade promotion, without contributing to the cost. The enabling legislation requires the organic assessment exemption to be implemented.

Administrative Costs Involving Market Promotion

Commenters said that the final rule should clarify what portion of administrative costs on exempted activities should be eligible for exemption, because there are administrative costs associated with market promotion activities. Section 900.700(d) has been clarified to provide that the exempted costs include the portion of committee/board administrative costs incurred in implementing market promotion activities. For example, such administrative costs could include prorated amounts for salaries, rents, supplies, and other overhead costs associated with the market promotion activities, as recommended by the committees or boards, and approved by USDA.

The proposed rule specified a calculation of the exemption rate based on the portion of funds allocated for market promotion activities. Some commenters said that the proposed method of calculation of the rate of assessment for exempt handlers, and its implementation, are too complicated and burdensome and should be simplified.

USDA continues to conclude that the method of calculation specified in the proposed rule is necessary to administer the assessment exemption under the applicable marketing orders and should not be changed. Moreover, the assessment formula establishes a uniform method of calculation for all of the committees and boards and should not be overly complicated or burdensome.

One commenter said that USDA should allow committees/boards to certify annually to AMS if they are not planning to conduct any market promotion activities. This process would eliminate the need for administering the exemption authority for the particular marketing order for a given assessment period. Based on this comment, USDA has modified § 900.700(d) to provide that if a committee or board does not plan to conduct any market promotion activities during an assessment period, the committee or board may submit a certification to that effect to AMS. In such a situation, the committee or board would assess all handlers, regardless of their organic status, the full assessment rate applicable to the assessment period.

A commenter suggested that the assessment exemption calculations be based on the previous year's promotion related expenses so that a producer is not required to pay for such activities. All marketing orders require assessments to be computed at the beginning of the assessment period, but the assessments may be modified as necessary during the applicable assessment period. Assessments are paid by handlers.

Commenters, including those that submitted the form letter, stated that USDA seems to be implying that 100 percent organic producers are not exempt from promotion expenses until they are "approved." They contend that approval processes beyond those of the OFPA and the NOP are not necessary. Under marketing orders, handlers pay assessments, and committees and boards administer the assessment provisions with USDA oversight. It is the responsibility of the committees and boards to assure that all persons who handle or market the regulated commodities pay assessments to cover program expenses. Therefore, committees and boards must approve any exemptions for the payment of assessments under the marketing order programs, and approval procedures must be implemented. In turn, persons meeting the exemption criteria will be granted assessment exemptions.

According to the commenters, the application process duplicates the paperwork certified organic producers and handlers submit to their accredited certification agency to demonstrate that certified organic products maintain their organic integrity. They contend that it would be simpler to have the handler operating under the NOP require documentation of organic certification from the producer and verify that the commodity was organic. They further contend that the standard audit processes for the payment of assessments could be applied to determine that the handler properly assessed or exempted producers.

The certificate from a USDA-accredited certifying agent under the OFPA and the NOP indicates whether a farm or operation is certified for organic production. However, the application submitted by handlers requests additional information necessary for committees or boards to determine whether a handler qualifies for an exemption. The information requested is discussed in the **Paperwork Reduction Act** section of this final rule.

This information is necessary to provide information to committees or boards to determine an applicant's eligibility and to verify compliance. Inclusion of this information on the form will assist the applicants in making their certifications and the committees or boards in properly administering the assessment exemption under the various marketing order programs.

The role of the committees and boards has been clarified in this rule to specify that they will approve the applications of persons who meet the specified criteria. With USDA oversight, committees and boards will administer the exemption as they do all other aspects of their programs. Information confirming that an applicant is 100 percent organic for all commodities will be provided to the committees and boards by applicants and will be verified through routine compliance efforts. As discussed previously, to be "100 percent organic", a handler must operate under an NOP-approved organic process system plan and handle or market only products that can be labeled as 100 percent organic under the NOP.

Commenters said that an appeals process should be fully described in the final rule to help the committees or boards and applicants better operate under the exemption program.

A few marketing orders specify provisions allowing handlers to appeal committee or board decisions before seeking review by USDA, but such provisions are not necessary for interested persons to appeal any committee or board decision. Safeguards and avenues for appeal exist and operate without specified order-provided appeal processes. Handlers may request committees or boards to review the decisions with which the handlers question. Further, if the handlers still are not satisfied, they may ask USDA to conduct a final review of the matter. Accordingly, no change to the regulatory text is necessary.

Also, in the proposed rule, provisions were included in § 900.700(c) specifying that USDA may review any decisions made by the committees or boards at its discretion. Because USDA routinely oversees committee or board actions under these programs, these provisions are not necessary in the regulatory text and have been removed.

A commenter requested that a producer who does not agree that the assessment rate is fair, based on the calculation of promotion expenses, be accorded the right of due process, to be exercised through appeal to the National Appeals Division (NAD). The NAD is responsible for all administrative appeals arising from program activities of USDA's Farm Service Agency, Risk Management Agency, Natural Resources Conservation Service, Rural Business-Cooperative Development Service, Rural Housing Service, and the Rural Utilities Service. However, the NAD has no jurisdiction over the programs of AMS, including the administration of the assessment exemption process.

Another commenter said the proposal implements an exemption from assessment and must not require a producer payment followed by a refund. Further, the commenter stated that if the operator provides an affidavit from a USDA-accredited certifying agent that shows the operation has been 100 percent organic during the course of the assessment period, the committee or board must not assess the producer. The commenter also stated that if a producer provides an affidavit demonstrating that the commodity has been 100 percent organically-produced during the assessment period, for which the producer has already paid in full, not having an affidavit at the time of payment, the committee or board must grant a refund of any promotion assessment money paid by the operator during the assessment period. Producers are not assessed under the 28 specified marketing orders. Handlers of the commodities are assessed. The committees and boards have procedures in place to make pro rata adjustments in assessment overpayments when necessary consistent with marketing order procedures.

One commenter stated that the words "application" and "certification" used in the proposed rule should be changed to "affidavit" to avoid confusion with the term "certification" as used in the NOP. USDA believes that the language in § 900.700(c) is clear in the context used and that no change is needed. In fact, it is customary under marketing order programs for handlers to certify that the information they provide to the committees and boards is factually correct.

A few commenters also contended that the proposed rule unnecessarily requires an exempt person to reapply to the committee or board each assessment period. All marketing order programs operate on an annual assessment period basis and annual applications are necessary for the committees and boards to maintain compliance and to ensure that the exemption program is implemented equitably among the eligible persons.

A commenter contends that it is up to USDA not to assess 100 percent organic producers; if USDA questions someone's status, it is up to USDA to prove otherwise. Committee and Board application and review systems are intended to assure that assessment exemptions are properly applied. Moreover, under the various marketing order programs, the payment of assessments is one of a number of requirements applied to handlers, not to producers, and a detailed application process is necessary to oversee handler compliance with these requirements.

Section 900.700(f) of the proposed rule requires a handler to immediately notify the committee or board when the handler is no longer eligible for an exemption. A commenter recommended that the word "immediately" be changed to "within 30 days" to lessen the burden on industry participants. This change has been made and paragraph (f) has been redesignated as paragraph (e).

A commenter requested USDA to clarify that the organic assessment exemption did not apply to State marketing orders. The exemption only applies to the 28 specified Federal marketing orders under the AMAA. The exemption does not apply to assessments under any State marketing order or similar program.

The same commenter requested USDA to specify, in the Small Business Guide for Complying with Marketing Agreements and Orders for Fruits, Vegetables, and Specialty Crops, the activities to which the exemption applies and does not apply. We have provided previously in this document examples of such activities and will do so in the Small Business Guide.

Some commenters said that the effective date and initial coverage (*e.g.*, which assessment period) for the exemption should be clarified, because an initial exemption period was not specified in the proposed rule. Under the proposal, a person can apply for an exemption at any time initially and must reapply every year after that on a specific date.

There is a wide variation among programs in the collection of assessments. For example, in some programs, assessments are collected every month. In others, assessments are collected at the end of the assessable period; *i.e.*, fiscal period, marketing year, crop year, *etc.* Accordingly, to treat the various marketing order programs uniformly, the exemption should be made effective at the beginning of the next assessable period for each marketing order program following the effective date of this final rule. This means that organic assessment exemptions for some applicants will become effective sooner for some marketing orders than others, depending on the beginning of the respective assessable periods.

In the proposed rule, the term "marketing promotion expenditures" was defined in § 900.700(a). This term is not needed because it is not used in § 900.700. The term "marketing promotion" is used and is defined to mean marketing research and development projects, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption of the applicable commodity.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

As previously mentioned, assessments under the 28 marketing order programs are paid by handlers regulated under the various marketing orders. There are approximately 850 handlers regulated under the 28 marketing orders. USDA does not have precise numbers, but believes there may be approximately 84 persons who handle or market solely 100 percent organic products that might be exempt from paying assessments for market promotion, including paid advertising, under the 28 marketing order programs administered by AMS. Thus, the estimated number of prospective applicants eligible for the assessment exemption may represent approximately 10 percent of the total handler population.

Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $5,000,000. Although the exact size of the potential applicants is not known, USDA believes that the majority of persons who might qualify for an exemption may be classified as small entities.

Section 501 of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act) was amended on May 13, 2002 (7 U.S.C 7401). The amendment provides that, notwithstanding any provision of a commodity promotion law, a person that produces and markets solely 100 percent organic products, and that does not produce any conventional or non-organic products, shall be exempt from paying assessments under a commodity promotion law with respect to any agricultural commodity that is produced on a certified organic farm, as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). The amendment further requires USDA to amend any research and promotion regulations to reflect this exemption.

USDA is issuing amendments to the general regulations (7 CFR part 900) affecting 28 of the 34 active marketing order programs established under the Act for which it has oversight. As defined in this final rule, these amendments will establish provisions to exempt any person subject to marketing order requirements who handles and markets solely 100 percent organic products from paying assessments for market promotion activities, including paid advertising.

The 28 marketing order programs allow for promotion activities that are designed to assist, improve, or promote the marketing, distribution, or consumption of the commodity covered under the marketing order. Some of the marketing orders also include authority for paid advertising activities. Market promotion, including paid advertising, activities are paid for by assessments levied on handlers regulated under the various marketing orders.

Under this rule, a new subpart is added in 7 CFR part 900 General Regulations to identify persons eligible to obtain an assessment exemption for marketing promotion, including paid advertising; procedures for applying for an exemption; procedures for calculating the assessment exemption; and other procedural details for the applicable marketing orders. The rule imposes certain reporting and recordkeeping requirements on persons that handle or market solely 100 percent organic products. This form requires the minimum information necessary to effectively administer the exemption from assessment provisions and for compliance purposes.

Regarding the impact of this final rule on affected entities, this rule imposes minimal additional costs incurred in filing the exemption application and in maintaining records for two years needed to verify the applicant's exemption status during the applicable assessment period. Such applicants will be required to submit an application and receive approval from the applicable committee or board to obtain the assessment exemption. USDA estimates that each applicant will submit one application annually. The annual burden for all of the marketing order industries is estimated to total about 42 hours.

The cost burden associated with the information collection is $420 for all applicants, or $5.00 per applicant. The total cost has been estimated by multiplying the burden hours associated with the exemption application by $10.00 per hour, a sum deemed reasonable should the applicants be compensated for their time.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Since this action potentially exempts from assessments handlers who handle or market solely 100 percent organic products, AMS believes that this rule will have a beneficial economic effect on exempted entities by reducing their assessment payments. During the 2001–2002 marketing season, assessments for the 28 marketing orders totaled $44,400,000. Of that amount, about $29,900,000 (or 67 percent) was made available for marketing promotion, including paid advertising, activities. USDA does not have precise information, but believes that about 1 percent on average of the total assessments are for certified organic commodities. Thus, assessments on organic commodities could total about $444,000, and about $300,000 for marketing promotion, including paid advertising, might be exempt under this final rule if all of the approximately 84 handlers of the regulated commodities were eligible for the assessment exemption.

Based on our estimate that there might be a total of 84 handlers exempt from assessments for marketing promotion activities conducted under the various marketing orders, the assessments for each eligible person could be reduced by an average of almost $3,600 ($300,000 divided by 84) on an annual basis.

There is some variation among the 28 marketing orders on the percentage of assessments used for marketing promotion, including paid advertising, as well as the number of handlers handling or marketing solely 100 percent organic commodities. Thus, the actual reduction in assessments will vary among the various orders. In fact, the amounts allocated for marketing promotion, as a percentage of the total marketing order budgets, range from less than 5 percent to over 75 percent.

With regard to alternatives, the FAIR Act requires USDA to take this action, which will lessen the assessment costs for persons who handle and market solely 100 percent organic products. In drafting the exemption procedures, every effort has been made to minimize the burden on the persons impacted, and to simplify the process. The anticipated assessment reductions for eligible persons are expected to greatly outweigh the additional costs related to the reporting required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the reporting and recordkeeping provisions generated by this rule have been approved by the Office of Management and Budget (OMB) as a reinstatement, with change, of previously-approved OMB No. 0581–0216, which has expired. This action is intended to provide relief to handlers of solely 100 percent organic products.

This action will enable handlers that operate under an NOP-approved organic process system plan, and handle or market only organic product that can be labeled "100 percent organic" to apply for exemptions from paying market promotion assessments under the following 28 Federal marketing orders: 7 CFR parts 906, 915, 916, 917, 922, 923, 924, 925, 927, 929, 930, 931, 932, 947, 948. 955, 956, 958, 959, 966, 979, 981, 982, 984, 985, 987, 989, and 993, and such other marketing orders for fruits, vegetables, and specialty crops as may be established or amended to include market promotion.

Title: Organic Handler Market Promotion Assessment Exemption under 28 Federal Marketing Orders

OMB Number: 0581–0216.

Type of Request: Approval of reinstatement, with change, of a previously-approved collection for which approval has expired.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops to solve marketing problems that cannot be solved individually. Marketing order regulations help ensure adequate supplies of high quality products for consumers and adequate returns to producers. Under the Act, orders may authorize marketing research and development, including paid advertising, activities. Such activities to promote the various commodities are paid for with assessments levied on handlers regulated under the 28 Federal marketing orders.

On May 13, 2002, section 501 of the FAIR Act was amended (7 U.S.C. 7401) to exempt any person that handles or markets solely 100 percent organic products, and that does not produce any conventional or non-organic products, from paying assessments under a commodity promotion law, with respect to any agricultural commodity that is produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

To be exempt from paying assessments for marketing promotion, including paid advertising expenses, under the specified marketing orders, the handler who operates under an NOP-approved organic process system plan should submit an application, FV–649, "Certified Organic Handler Application for Exemption from Market Promotion Assessments Paid under Federal Marketing Orders" to the applicable marketing order committee or board. The application needs to be submitted to the committee or board prior to or during the applicable assessment period, and annually thereafter, as long as the applicant continues to be eligible for the exemption.

This application has been changed slightly from the previously approved form to reflect differences in the provisions between the proposed and final rules. The information requested includes (changes from the proposed application are noted): Introductory text explaining who may request an organic assessment exemption, the purpose of the form, and where the application should be submitted has been added; the applicable Marketing Committee/Board and Federal marketing order number has been added; the date; handler's name (applicant); telephone and fax numbers, an optional e-mail address has been added; name and address of the company; certification that the applicant operates under an approved organic process system plan authorized by the National Organic Program (NOP) and handles or markets products that are eligible to be labeled as 100 percent organic, that the applicant is not a split operation as defined by the Organic Foods Production Act of 1990 (OFPA) and the NOP, and that the applicant is subject to assessments under the Federal marketing order program for which this exemption is requested.

A table has been added for the applicant to list *all* commodities handled or marketed and to indicate whether each commodity handled or marketed is eligible to be labeled as 100 percent organic. As revised, the application requires the applicant to list the number of producers for whom the applicant handles or markets products. The applicant also is required to attach a copy of their organic handling operation certificate provided by a USDA-accredited certifying agent under the OFPA and the NOP, and a copy of the applicant's NOP producer certificate, if applicable. An NOP certificate for each producer for whom the applicant handles or markets also must be attached.

The form continues to include language for the applicant to certify that their firm meets the requirements and is eligible for an organic assessment exemption under the applicable Federal marketing order. Language has been added cautioning applicants that any false statement or misrepresentation may result in a fine of not more than $10,000, or imprisonment for not more than five years, or both (18 U.S.C. 1001). Lastly, the form continues to include a section for the committee or board to fill out, indicating whether the application has been approved or disapproved. If disapproved, the reason(s) for denial must be listed.

When the requirements for exemption no longer apply to a handler, the handler shall inform the committee or board within 30 days and pay the full assessment on all remaining assessable product for all committee or board assessments from the date the handler no longer is eligible to the end of the assessment period. The notification by the handler can be made in any manner the handler desires (telephone, fax, e-mail, *etc.*).

This information is necessary to help the committees or boards to determine an applicant's eligibility and to verify compliance. Inclusion of this information on the form will assist the applicants in making their certifications and the committees or boards in properly administering the assessment exemption. The burdens associated with obtaining the certifications under the Organic Foods Production Act of 1990 have already been approved by OMB under OMB Control No. 0581–0191.

In the proposed rule, AMS estimated that this application would take 30 minutes to complete. With the application modifications, the estimated average per response time will remain at

30 minutes, resulting in no change to the total burden hours.

If the applicant complies with these requirements and is eligible for a market promotion assessment exemption, the committee or board will approve the exemption and notify the applicant, in writing, within 30 days of receiving the applicant's application, by filling out the bottom portion of the application. If the application is disapproved, the committee or board will notify the applicant, in writing, of the denial and the reason(s) for denial.

The respective marketing orders (*e.g.*, 7 CFR 932.61 and 7 CFR 981.70) also provide that handlers maintain, and make available, all records necessary to demonstrate compliance with order requirements for two years. The burdens on handlers for such recordkeeping requirements are included in the information collection requests previously-approved by OMB for the respective marketing orders under the following OMB Control Numbers: OMB No. 0581–0178 for Marketing Order Nos. 947, 948, 955, 956, 958, 959, 966, 979, 981, 982, 984, 987, 989, and 993; OMB No. 0581–0189 for Marketing Order Nos. 906, 915, 916, 917, 922, 923, 924, 925, 927, 929, 930, and 931; OMB No. 0581–0142 for Marketing Order No. 932; and OMB No. 0581–0065 for Marketing Order No. 985.

The information collection will be used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters staff, and authorized Committee and Board employees. Authorized Committee and Board employees will be the primary users of the information, and AMS will be the secondary user.

The request for OMB approval of the reinstatement, with change, of OMB No. 0581–0216 under the 28 Federal marketing orders is as follows:

Form FV–649, Certified Organic Handler Application for Exemption From Marketing Promotion Assessments Paid Under Federal Marketing Orders

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Eligible Certified Organic Handlers.

Estimated Number of Respondents: 84.

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 42 hours.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* As previously discussed, AMS intends to revise the guide to list examples of the activities to which the exemption applies and does not apply. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR OTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information submitted by the commenters and other information, it is hereby found that this rule, as hereinafter set forth, tends to effectuate declared policy of the AMAA and 2002 Farm Bill.

List of Subjects in 7 CFR Part 900

Administrative practices and procedures, Freedom of information, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 900 is amended to read as follows:

PART 900—GENERAL REGULATIONS

■ 1. The authority citation for part 900 is revised to read as follows:

Authority: 7 U.S.C. 601–674 and 7 U.S.C. 7401.

■ 2. In part 900, a new subpart heading "Assessment Exemptions" is added after § 900.601, and a new § 900.700 is added to read as follows:

Subpart—Assessment of Exemptions

§ 900.700 Exemption from assessments.

(a) This section specifies criteria for identifying persons eligible to obtain an assessment exemption for marketing promotion, and procedures for applying for an exemption under 7 CFR parts 906, 915, 916, 917, 922, 923, 924, 925, 927, 929, 930, 931, 932, 947, 948, 955, 956, 958, 959, 966, 979, 981, 982, 984, 985, 987, 989, 993, and such other parts (included in 7 CFR parts 905 through 998) covering marketing orders for fruits, vegetables, and specialty crops as may be established or amended to include market promotion. For the purposes of this section, the term "assessment period" means fiscal period, fiscal year, crop year, or marketing year as defined under these parts; the term "marketing promotion" means marketing research and development projects, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption of the applicable commodity.

(b) Any handler who operates under an approved National Organic Program (7 CFR part 205)(NOP) process system plan, only handles or markets organic products that are eligible to be labeled 100 percent organic under the NOP, and are produced on a certified organic farm as defined in § 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and the NOP regulations issued under that Act, is not a split operation, and is subject to assessments under a part or parts specified in paragraph (a) of this section, shall be exempt from the portion of the assessment applicable to marketing promotion, including paid advertising. Any handler so exempted shall be obligated to pay the portion of the assessment for other authorized activities under such part or parts.

(c) To be exempt from paying assessments for these purposes under a part or parts, the handler shall submit an application to the committee or board established under the applicable part or parts prior to or during the assessment period. This application, FV–649, "Certified Organic Handler Application for Exemption from Market Promotion Assessments Paid Under Federal Marketing Orders," shall include: The applicable committee or board and Federal marketing order number; the date; handler's name; company name and address; telephone and fax numbers; an optional e-mail address; certification that the applicant is not a split operation, as defined by the Organic Foods Production Act of 1990 (OFPA) (7 U.S.C. 6502) and the NOP; certification that the applicant only handles and markets organic products eligible to be labeled 100 percent organic under the NOP, and that the applicant is subject to assessments under the Federal marketing order program for which the exemption is requested. The applicant shall list all commodities handled or marketed. The applicant shall list the number of producers for whom they handle or market. The applicant shall attach a copy of their organic handler operation certificate and all applicable producer certificates provided by a USDA-accredited certifying agent under the OFPA and the NOP. The applicant shall certify that the handler meets all of the applicable requirements for an assessment exemption as provided in this section. The handler shall file the application with the committee or board, prior to or during the applicable assessment period, and annually thereafter, as long as the handler continues to be eligible for the exemption. If the person complies with the requirements of this section and is eligible for an assessment exemption, the committee or board will approve the exemption and notify the applicant, in writing, within the applicable timeframe as follows: For exemption requests received on or before August 15, 2005, the committee or board will have 60 days to approve the exemption request; after August 15, 2005, the committee or board will have 30 days to approve the exemption request. If the application is disapproved, the committee or board will notify the applicant, in writing, of the reason(s) for disapproval within the same timeframes.

(d) The applicable assessment rate for any handler approved for an exemption shall be computed by dividing the committee's or board's estimated non-marketing promotion expenditures by the committee's or board's estimated total expenditures approved by the Secretary and applying that percentage to the assessment rate applicable to all persons for the assessment period. The committee's or board's estimated non-marketing promotion expenditures shall exclude the direct costs of marketing promotion and the portion of committee's or board's administrative and overhead costs (*e.g.*, salaries, supplies, printing, equipment, rent, contractual expenses, and other applicable costs) to support and administer the marketing promotion activities. If a committee or board does not plan to conduct any market promotion activities in a fiscal year, the committee or board may submit a certification to that effect to the Secretary, and as long as no assessments for such fiscal year are used for marketing promotion projects, or the administration of projects funded by a previous fiscal period's assessments, the committee or board may assess all handlers, regardless of their organic status, the full assessment rate applicable to the assessment period. For each assessment period, the Secretary shall review the portion of the assessment rate applicable to marketing promotion for persons eligible for an exemption and, if appropriate, approve the assessment rate.

(e) When the requirements of this section for exemption no longer apply to a handler, the handler shall inform the committee or board within 30 days and pay the full assessment on all remaining assessable product for all committee or board assessments from the date the handler no longer is eligible to the end of the assessment period.

(f) Within 30 days following the applicable assessment period, the committee or board shall re-compute the applicable assessment rate for handlers exempt under this section based on the actual expenditures incurred during the applicable assessment period. The Secretary shall review, and if appropriate, approve any change in the portion of the assessment rate for market promotion applicable to exempt handlers, and authorize adjustments for any overpayments.

(g) The exemption will apply at the beginning of the next assessable period following notification of approval of the assessment exemption, in writing, by the committee or board.

Dated: January 5, 2005.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 05–572 Filed 1–13–05; 8:45 am]

BILLING CODE 3410–02–P

Federal Register

Friday,
January 14, 2005

Part IV

Department of Housing and Urban Development

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors, Fiscal Year 2005; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4957–N–01]

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors, Fiscal Year 2005

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of revised contract rent annual adjustment factors.

SUMMARY: This notice announces revised Annual Adjustment Factors (AAFs) for adjustment of Section 8 contract rents for specified programs. These factors apply to housing assistance payment contract anniversaries for calendar months commencing after the date of publication of this notice. The AAFs are based on residential rent and utilities time-series cost indices from the Bureau of Labor Statistics Consumer Price Index (CPI) survey and from HUD's Random Digit Dialing (RDD) rent change surveys.

DATES: *Effective Date:* January 14, 2005.

FOR FURTHER INFORMATION CONTACT: David Vargas, Acting Director, Office of Housing Voucher Programs, Office of Public and Indian Housing, (202) 708–2815, can respond to questions relating to the Section 8 Voucher, Certificate, and Moderate Rehabilitation programs; Mark Johnston, Office of Special Needs Assistance Programs, Office of Community Planning and Development, (202) 708–1234, for questions regarding the Single Room Occupancy Moderate Rehabilitation program; Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, (202) 708–3000, for questions relating to all other Section 8 programs. Marie L. Lihn, Economic and Market Analysis Division, Office of Policy Development and Research, (202) 708–0590, is the contact for technical information regarding the development of the schedules for specific areas or the methods used for calculating the AAFs. Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Hearing- or speech-impaired persons may contact the Federal Information Relay Service at 1–800–877–8339 (TTY). (Other than the "800" TTY number, the above-listed telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In addition to being published in the **Federal Register**, this data will be available electronically from the HUD data information page: *http://www.huduser.org*.

I. Methodology

AAFs are calculated using CPI data on rents and utilities for all metropolitan areas with metropolitan-area specific CPI estimates. AAFs for other areas are calculated using HUD RDD telephone and mail surveys. AAFs are rent change factors. Two types of AAFs are calculated. One type is a gross rent change factor that should be used when the primary utility (normally heating) is included in the rent. The other type is a shelter rent (*i.e.*, rents without utilities) factor that should be used when the primary utility is not included in rent. Decennial census data are used to establish the relationship between gross rents and shelter rents.

Areas Covered by CPI Surveys

For areas where CPI surveys are conducted, changes in the shelter rent and utilities components are calculated based on the most recent CPI annual average change data. In this publication, the rent and utility CPIs for metropolitan areas are based on changes in the index from 2002 to 2003. The "Highest Cost Utility Included" column in Schedule C is calculated by weighting the rent and utility change factors using the corresponding components of gross rent in a particular area as calculated in the 2000 Census. The "Highest Cost Utility Excluded" column in Schedule C is calculated by eliminating the utility portion of the gross rent change factor.

Areas Not Covered by CPI Surveys

For areas without CPI surveys, HUD conducts multi-state regional telephone and mail RDD surveys of rents. A total of 20 RDD surveys are conducted to determine the rent change factors for the metropolitan parts (exclusive of CPI areas) and nonmetropolitan parts of the 10 HUD regions. For regional RDD survey areas, the "Highest Cost Utility Included" factor was calculated using the average of the ratios of gross rent in the current year RDD survey divided by the previous year's for the respective metropolitan or nonmetropolitan parts of the HUD region. The factor for the "Highest Cost Utility Excluded" (*i.e.*, paid separately by the tenant) was calculated in a similar manner, after subtracting the median values of each utility cost from the gross rents in the two years. The median utility cost values used for each utility type come from a base year period in the early 1990's with large regional samples that have been updated each year with CPI data. This was done because research has shown that tenants can be unreliable sources of information on utility dollar amounts, which means that use of tenant-reported utility costs would introduce large fluctuations in rent change estimates unrelated to real changes. Each year a modeled estimate for each type of utility cost is updated with CPI factors. These appropriate utility costs are then added to contract rents from regional surveys to produce a gross rent estimate.

Geographic Areas

The metropolitan areas that use the CPI are listed in the tables according to the metropolitan area. Each AAF applies to a specified geographic area and to units of all bedroom sizes. AAFs are provided:

• For the metropolitan parts of the ten HUD regions exclusive of CPI areas;

• For the nonmetropolitan parts of these regions; and

• For separate metropolitan AAF areas for which local CPI survey data are available.

The AAFs shown in Schedule C use the same Office of Management and Budget (OMB) definitions of Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) that are used in the FY2005 Fair Market Rents. HUD modified six metropolitan area definitions to separate out peripheral counties with significantly different income and rent levels, as listed below:

Metropolitan area	Separated counties
Chicago, IL	DeKalb, Grundy and Kendall counties in IL.
Cincinnati-Hamilton, OH-KY-IN	Brown County, OH; Gallatin, Grant and Pendleton counties in KY; and Ohio County, IN.
Dallas, TX	Henderson County, TX.
Flagstaff, AZ-UT	Kane County, UT.
New Orleans, LA	St. James Parish, LA.

Metropolitan area	Separated counties
Washington, DC-VA-MD-WV	Berkeley and Jefferson counties in WV; and Clarke, Culpeper, King George and Warren counties in VA.

Separate AAFs are listed in this publication for the above counties. They and the metropolitan area of which they are a part are identified with an asterisk (*) next to the area name. The asterisk indicates that there is a difference between the OMB metropolitan area and the HUD AAF area definition for these areas.

Area Definitions in Schedule C

To make certain that they are using the correct AAFs, users should refer to the area definitions section at the end of Schedule C. For units located in metropolitan areas with a local CPI survey, AAFs are listed separately. For units located in areas without a local CPI survey, the appropriate HUD regional metropolitan or nonmetropolitan AAFs are used.

The AAF area definitions shown in Schedule C are listed in alphabetical order by state. The associated HUD region is shown next to each state name. Areas whose AAFs are determined by local CPI surveys are listed first. All metropolitan CPI areas have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. The non-CPI metropolitan and nonmetropolitan counties of each state are listed after the metropolitan CPI areas (in those states that have such areas). In the six New England states, the listings are for counties or parts of counties as defined by towns or cities.

Puerto Rico and the Virgin Islands use the Southeast AAFs. All areas in Hawaii use the AAFs identified in the Table as "STATE: Hawaii," which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the Pacific/Hawaii nonmetropolitan AAFs. The Anchorage metropolitan area uses the AAFs based on the local CPI survey; all other areas in Alaska use the Northwest/Alaska nonmetropolitan AAFs.

II. Applying AAFs to Various Section 8 Programs

AAFs established by this notice are used to adjust contract rents for units assisted in certain Section 8 housing assistance payments programs during the original (*i.e.*, pre-renewal) term of the Housing Assistance Payments (HAP) contract. Three categories of Section 8 programs use the AAFs:

Category 1—The Section 8 New Construction and Substantial Rehabilitation programs and the Section 8 Moderate Rehabilitation program.

Category 2—The Section 8 Loan Management (LM) and Property Disposition (PD) programs.

Category 3—The Section 8 Project-based Certificate (PBC) program.

Each Section 8 program category uses the AAFs differently. The specific HAP contract, program regulation, program requirement, or law determines the application of the AAFs. Restrictions to the use of AAF are discussed below:

Renewal Rents. AAFs are not used to determine renewal rents after expiration of the original Section 8 HAP contract (either for projects where the Section 8 HAP contract is renewed under a restructuring plan adopted under 24 CFR part 401; or renewed without restructuring under 24 CFR part 402). In general, renewal rents are determined by applying a state-by-state operating cost adjustment factor (OCAF) published by HUD.

Budget-based Rents. AAFs are not used for budget-based rent adjustments. For projects receiving Section 8 subsidies under the LM program (24 CFR part 886, subpart A) or under the PD program (24 CFR part 886, subpart C), contract rents are adjusted, at HUD's option, either by applying the AAFs or by budget-based adjustments in accordance with 24 CFR 207.19(e). Budget-based adjustments are used for most Section 8/202 projects.

Certificate Program. In the past, AAFs were used to adjust the contract rent (including manufactured home space rentals) in the tenant-based certificate program. However, this program has been terminated. All tenancies in the tenant-based certificate program have been converted to the Housing Choice Voucher Program. AAFs are still used for adjustment of contract rent for outstanding HAP contracts under the project-based certificate program.

Moderate Rehabilitation Program. Under the Section 8 Moderate Rehabilitation program (both the regular program and the single room occupancy program), the public housing agency (PHA) applies the AAF to the base rent component of the contract rent, not the full contract rent. For the other covered programs, the AAF is applied to the whole amount of the pre-adjustment contract rent.

III. Adjustment Procedures

This section of the notice provides a broad description of procedures for adjusting the contract rent. Technical details and requirements are described in HUD notices, issued by the Office of Housing and the Office of Public and Indian Housing.

Because of statutory and structural distinctions among the various Section 8 programs, there are separate rent adjustment procedures for the three program categories:

Category 1: Section 8 New Construction, Substantial Rehabilitation, and Moderate Rehabilitation Programs

In the Section 8 New Construction and Substantial Rehabilitation programs, the published AAF factor is applied to the pre-adjustment contract rent. In the Section 8 Moderate Rehabilitation program, the published AAF is applied to the pre-adjustment base rent.

For category 1 programs, the Table 1 AAF factor is applied before determining comparability (rent reasonableness). Comparability applies if the pre-adjustment gross rent (pre-adjustment contract rent plus any allowance for tenant-paid utilities) is above the published FMR.

If the comparable rent level (plus any initial difference) is lower than the contract rent as adjusted by application of the Table 1 AAF, the comparable rent level (plus any initial difference) will be the new contract rent. However, the pre-adjustment contract rent will not be decreased by application of comparability.

In all other cases (*i.e.*, unless the contract rent is reduced by comparability):

- The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 2: The Loan Management Program (24 CFR Part 886, Subpart A) and Property Disposition Program (24 CFR Part 886, Subpart C)

At this time, rent adjustment by the AAF in the Category 2 programs is not subject to comparability. (Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).) Rents are adjusted by applying the full amount of the applicable AAF under this notice.

The applicable AAF is determined as follows:

• The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.

• The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 3: Section 8 Certificate Project-Based Certificate Program

The following procedures are used to adjust contract rent for outstanding HAP contracts in the Section 8 PBC program:

• The Table 2 AAF is always used. The Table 1 AAF is not used.

• The Table 2 AAF is always applied before determining comparability (rent reasonableness).

• Comparability always applies. If the comparable rent level is lower than the rent to owner (contract rent) as adjusted by application of the Table 2 AAF, the comparable rent level will be the new rent to owner.

IV. When To Use Reduced AAFs (From AAF Table 2)

In accordance with Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)), the AAF is reduced by 0.01:

• For all tenancies assisted in the Section 8 Project-Based Certificate program.

• In other Section 8 programs, for a unit occupied by the same family at the time of the last annual rent adjustment (and where the rent is not reduced by application of comparability (rent reasonableness)).

The law provides that:

> Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type, and age in the market area. 42 U.S.C. 1437f(c)(2)(A).

To implement the law, HUD publishes two separate AAF Tables, contained in Schedule C, Tables 1 and 2 of this notice. The difference between Table 1 and Table 2 is that each AAF in Table 2 is 0.01 less than the corresponding AAF in Table 1. Where an AAF in Table 1 would otherwise be less than 1.0, it is held harmless at 1.0; the corresponding AAF in Table 2 will also be held harmless at 1.0.

V. How To Find the AAF

The AAFs are contained in Schedule C, Tables 1 and 2 of this notice. There are two columns in each table. The first column is used to adjust contract rent for units where the highest cost utility is included in the contract rent, *i.e.*, where the owner pays for the highest cost utility. The second column is used where the highest cost utility is not included in the contract rent, *i.e.*, where the tenant pays for the highest cost utility.

The applicable AAF is selected as follows:

• Determine whether Table 1 or Table 2 is applicable.

• In Table 1 or Table 2, locate the AAF for the geographic area where the contract unit is located.

• Determine whether the highest cost utility is or is not included in contract rent for the contract unit.

• If highest cost utility is included, select the AAF from the column for "highest cost included". If highest cost utility is not included, select the AAF from the column for "utility excluded".

Accordingly, HUD publishes these Annual Adjustment Factors for the Section 8 Housing Assistance Payments programs as set forth in the Tables:

Dated: January 4, 2005.

Dennis C. Shea,

Assistant Secretary for Policy Development and Research.

BILLING CODE 4210–62–P

SCHEDULE C - TABLE 1 - 2005 CONTRACT RENT AAFS

11/17/04

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
New England Metropolitan	1.043	1.036	New England Nonmetropolitan	1.036	1.026
New York/New Jersey Metropolitan	1.029	1.013	New York/New Jersey Nonmetropolitan	1.037	1.021
Mid-Atlantic Metropolitan	1.030	1.020	Mid-Atlantic Nonmetropolitan	1.037	1.023
Southeast Metropolitan	1.023	1.015	Southeast Nonmetropolitan	1.028	1.011
Midwest Metropolitan	1.020	1.011	Midwest Nonmetropolitan	1.030	1.017
Southwest Metropolitan	1.025	1.014	Southwest Nonmetropolitan	1.031	1.012
Great Plains Metropolitan	1.024	1.014	Great Plains Nonmetropolitan	1.035	1.019
Rocky Mountains Metropolitan	1.015	1.011	Rocky Mountains Nonmetropolitan	1.021	1.015
Pacific/Hawaii Metropolitan	1.027	1.029	Pacific/Hawaii Nonmetropolitan	1.027	1.028
Northwest/Alaska Metropolitan	1.009	1.012	Northwest/Alaska Nonmetropolitan	1.008	1.012
Akron, OH PMSA	1.042	1.016	Anchorage, AK MSA	1.034	1.042
Ann Arbor, MI PMSA	1.043	1.037	Atlanta, GA MSA	1.004	1.000
Atlantic--Cape May, NJ PMSA	1.042	1.037	Baltimore, MD PMSA	1.052	1.051
Bergen--Passaic, NJ PMSA	1.049	1.038	Berkeley County MSA**	1.053	1.051
Boston, MA--NH PMSA	1.058	1.045	Boulder--Longmont, CO PMSA	1.002	1.000
Brazoria, TX PMSA	1.056	1.029	Bremerton, WA PMSA	1.000	1.000
Bridgeport, CT PMSA	1.051	1.036	Brockton, MA PMSA	1.061	1.043
Brown County MSA**	1.041	1.019	Chicago, IL PMSA	1.043	1.028
Cincinnati, OH--KY--IN PMSA	1.035	1.021	Clarke County MSA**	1.052	1.051
Cleveland--Lorain--Elyria, OH PMSA	1.042	1.015	Culpeper County MSA**	1.052	1.051
Dallas, TX PMSA	1.022	1.001	Danbury, CT PMSA	1.049	1.038
DeKalb County MSA**	1.044	1.028	Denver, CO PMSA	1.006	1.000
Detroit, MI PMSA	1.044	1.036	Dutchess County, NY PMSA	1.050	1.036
Fitchburg--Leominster, MA PMSA	1.062	1.042	Flint, MI PMSA	1.045	1.035
Fort Lauderdale, FL PMSA	1.039	1.037	Fort Worth--Arlington, TX PMSA	1.024	1.001
Gallatin County MSA**	1.037	1.020	Galveston--Texas City, TX PMSA	1.055	1.029
Gary, IN PMSA	1.047	1.026	Grant County MSA**	1.037	1.020
Greeley, CO PMSA	1.014	1.000	Grundy County MSA**	1.044	1.027
Hagerstown, MD PMSA	1.053	1.051	Hamilton--Middletown, OH PMSA	1.036	1.021
Henderson County MSA**	1.033	1.000	HAWAII State	1.031	1.026
Houston, TX PMSA	1.050	1.029	Jefferson County MSA**	1.053	1.051
Jersey City, NJ PMSA	1.047	1.040	Kankakee, IL PMSA	1.046	1.026
Kansas City, MO--KS MSA	1.034	1.023	Kendall County MSA**	1.043	1.028
Kenosha, WI PMSA	1.044	1.028	King George County MSA**	1.052	1.051
Lawrence, MA--NH PMSA	1.062	1.043	Los Angeles--Long Beach, CA PMSA	1.047	1.053
Lowell, MA--NH PMSA	1.060	1.044	Manchester, NH PMSA	1.062	1.043

SCHEDULE C - TABLE 1 - 2005 CONTRACT RENT AAFS

11/17/04

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
Miami, FL PMSA	1.040	1.037
Milwaukee--Waukesha, WI PMSA	1.040	1.022
Monmouth--Ocean, NJ PMSA	1.051	1.036
Nassau--Suffolk, NY PMSA	1.050	1.037
New Haven--Meriden, CT PMSA	1.050	1.036
Newark, NJ PMSA	1.050	1.037
Oakland, CA PMSA	1.008	1.001
Olympia, WA PMSA	1.000	1.000
Pendleton County MSA**	1.037	1.020
Phoenix--Mesa, AZ MSA	1.009	1.011
Portland--Vancouver, OR--WA PMSA	1.000	1.000
Racine, WI PMSA	1.042	1.021
St. Louis, MO--IL MSA	1.041	1.027
San Diego, CA MSA	1.068	1.069
San Jose, CA PMSA	1.006	1.001
Santa Rosa, CA PMSA	1.008	1.001
Stamford--Norwalk, CT PMSA	1.048	1.039
Tampa--St. Petersburg--Clearwater, FL MSA	1.020	1.019
Vallejo--Fairfield--Napa, CA PMSA	1.008	1.000
Vineland--Millville--Bridgeton, NJ PMSA	1.042	1.037
Washington, DC--MD--VA--WV PMSA	1.052	1.051
Westchester County, NY	1.050	1.038
Worcester, MA--CT PMSA	1.062	1.043
Middlesex--Somerset--Hunterdon, NJ PMSA	1.049	1.038
Minneapolis--St. Paul, MN--WI MSA	1.022	1.005
Nashua, NH PMSA	1.060	1.043
New Bedford, MA PMSA	1.066	1.041
New York, NY PMSA	1.047	1.040
Newburgh, NY--PA PMSA	1.050	1.037
Ohio County MSA**	1.038	1.020
Orange County, CA PMSA	1.049	1.053
Philadelphia, PA--NJ PMSA	1.042	1.037
Pittsburgh, PA MSA	1.040	1.012
Portsmouth--Rochester, NH--ME PMSA	1.061	1.043
Riverside--San Bernardino, CA PMSA	1.045	1.054
Salem, OR PMSA	1.000	1.000
San Francisco, CA PMSA	1.005	1.001
Santa Cruz--Watsonville, CA PMSA	1.008	1.001
Seattle--Bellevue--Everett, WA PMSA	1.000	1.000
Tacoma, WA PMSA	1.000	1.000
Trenton, NJ PMSA	1.049	1.037
Ventura, CA PMSA	1.048	1.053
Warren County MSA**	1.052	1.051
Waterbury, CT PMSA	1.052	1.035
Wilmington--Newark, DE--MD PMSA	1.041	1.037

SCHEDULE C - TABLE 2 - 2005 CONTRACT RENT AAFS 11/17/04

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
New England Metropolitan	1.033	1.026
New York/New Jersey Metropolitan	1.019	1.003
Mid-Atlantic Metropolitan	1.020	1.010
Southeast Metropolitan	1.013	1.005
Midwest Metropolitan	1.010	1.001
Southwest Metropolitan	1.015	1.004
Great Plains Metropolitan	1.014	1.004
Rocky Mountains Metropolitan	1.005	1.001
Pacific/Hawaii Metropolitan	1.017	1.019
Northwest/Alaska Metropolitan	1.000	1.002
Akron, OH PMSA	1.032	1.006
Ann Arbor, MI PMSA	1.033	1.027
Atlantic--Cape May, NJ PMSA	1.032	1.027
Bergen--Passaic, NJ PMSA	1.039	1.028
Boston, MA--NH PMSA	1.048	1.035
Brazoria, TX PMSA	1.046	1.019
Bridgeport, CT PMSA	1.041	1.026
Brown County MSA**	1.031	1.009
Cincinnati, OH--KY--IN PMSA	1.025	1.011
Cleveland--Lorain--Elyria, OH PMSA	1.032	1.005
Dallas, TX PMSA	1.012	1.000
DeKalb County MSA**	1.034	1.018
Detroit, MI PMSA	1.034	1.026
Fitchburg--Leominster, MA PMSA	1.052	1.032
Fort Lauderdale, FL PMSA	1.029	1.027
Gallatin County MSA**	1.027	1.010
Gary, IN PMSA	1.037	1.016
Greeley, CO PMSA	1.004	1.000
Hagerstown, MD PMSA	1.043	1.041
Henderson County MSA**	1.023	1.000
Houston, TX PMSA	1.040	1.019
Jersey City, NJ PMSA	1.037	1.030
Kansas City, MO--KS MSA	1.024	1.013
Kenosha, WI PMSA	1.034	1.018
Lawrence, MA--NH PMSA	1.052	1.033
Lowell, MA--NH PMSA	1.050	1.034

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
New England Nonmetropolitan	1.026	1.016
New York/New Jersey Nonmetropolitan	1.027	1.011
Mid-Atlantic Nonmetropolitan	1.027	1.013
Southeast Nonmetropolitan	1.018	1.001
Midwest Nonmetropolitan	1.020	1.007
Southwest Nonmetropolitan	1.021	1.002
Great Plains Nonmetropolitan	1.025	1.009
Rocky Mountains Nonmetropolitan	1.011	1.005
Pacific/Hawaii Nonmetropolitan	1.017	1.018
Northwest/Alaska Nonmetropolitan	1.000	1.002
Anchorage, AK MSA	1.024	1.032
Atlanta, GA MSA	1.000	1.000
Baltimore, MD PMSA	1.042	1.041
Berkeley County MSA**	1.043	1.041
Boulder--Longmont, CO PMSA	1.000	1.000
Bremerton, WA PMSA	1.000	1.000
Brockton, MA PMSA	1.051	1.033
Chicago, IL PMSA	1.033	1.018
Clarke County MSA**	1.042	1.041
Culpeper County MSA**	1.042	1.041
Danbury, CT PMSA	1.039	1.028
Denver, CO PMSA	1.000	1.000
Dutchess County, NY PMSA	1.040	1.026
Flint, MI PMSA	1.035	1.025
Fort Worth--Arlington, TX PMSA	1.014	1.000
Galveston--Texas City, TX PMSA	1.045	1.019
Grant County MSA**	1.027	1.010
Grundy County MSA**	1.034	1.017
Hamilton--Middletown, OH PMSA	1.026	1.011
HAWAII State	1.021	1.016
Jefferson County MSA**	1.043	1.041
Kankakee, IL PMSA	1.036	1.016
Kendall County MSA**	1.033	1.018
King George County MSA**	1.042	1.041
Los Angeles--Long Beach, CA PMSA	1.037	1.043
Manchester, NH PMSA	1.052	1.033

SCHEDULE C - TABLE 2 - 2005 CONTRACT RENT AAFS

11/17/04

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
Miami, FL PMSA	1.030	1.027
Milwaukee--Waukesha, WI PMSA	1.030	1.012
Monmouth--Ocean, NJ PMSA	1.041	1.026
Nassau--Suffolk, NY PMSA	1.040	1.027
New Haven--Meriden, CT PMSA	1.040	1.026
Newark, NJ PMSA	1.040	1.027
Oakland, CA PMSA	1.000	1.000
Olympia, WA PMSA	1.000	1.000
Pendleton County MSA**	1.027	1.010
Phoenix--Mesa, AZ MSA	1.000	1.001
Portland--Vancouver, OR--WA PMSA	1.000	1.000
Racine, WI PMSA	1.032	1.011
St. Louis, MO--IL MSA	1.031	1.017
San Diego, CA MSA	1.058	1.059
San Jose, CA PMSA	1.000	1.000
Santa Rosa, CA PMSA	1.000	1.000
Stamford--Norwalk, CT PMSA	1.038	1.029
Tampa--St. Petersburg--Clearwater, FL MSA	1.010	1.009
Vallejo--Fairfield--Napa, CA PMSA	1.000	1.000
Vineland--Millville--Bridgeton, NJ PMSA	1.032	1.027
Washington, DC--MD--VA--WV PMSA	1.042	1.041
Westchester County, NY	1.040	1.028
Worcester, MA--CT PMSA	1.052	1.033
Middlesex--Somerset--Hunterdon, NJ PMSA	1.039	1.028
Minneapolis--St. Paul, MN--WI MSA	1.012	1.000
Nashua, NH PMSA	1.050	1.033
New Bedford, MA PMSA	1.056	1.031
New York, NY PMSA	1.037	1.030
Newburgh, NY--PA PMSA	1.040	1.027
Ohio County MSA**	1.028	1.010
Orange County, CA PMSA	1.039	1.043
Philadelphia, PA--NJ PMSA	1.032	1.027
Pittsburgh, PA MSA	1.030	1.002
Portsmouth--Rochester, NH--ME PMSA	1.051	1.033
Riverside--San Bernardino, CA PMSA	1.035	1.044
Salem, OR PMSA	1.000	1.000
San Francisco, CA PMSA	1.000	1.000
Santa Cruz--Watsonville, CA PMSA	1.000	1.000
Seattle--Bellevue--Everett, WA PMSA	1.000	1.000
Tacoma, WA PMSA	1.000	1.000
Trenton, NJ PMSA	1.039	1.027
Ventura, CA PMSA	1.038	1.043
Warren County MSA**	1.042	1.041
Waterbury, CT PMSA	1.042	1.025
Wilmington--Newark, DE--MD PMSA	1.031	1.027

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

ALABAMA (SOUTHEAST)

METROPOLITAN COUNTIES
Autauga, Baldwin, Blount, Calhoun, Colbert, Dale, Elmore, Etowah, Houston, Jefferson, Lauderdale, Lawrence, Lee, Limestone, Madison, Mobile, Montgomery, Morgan, Russell, Shelby, St. Clair, Tuscaloosa

NONMETROPOLITAN COUNTIES
Barbour, Bibb, Bullock, Butler, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dallas, Dekalb, Escambia, Fayette, Franklin, Geneva, Greene, Hale, Henry, Jackson, Lamar, Lowndes, Macon, Marengo, Marion, Marshall, Monroe, Perry, Pickens, Pike, Randolph, Sumter, Talladega, Tallapoosa, Walker, Washington, Wilcox, Winston

ALASKA (NORTHWEST/ALASKA)

CPI AREAS:	COUNTIES
MSA Anchorage, AK:	Anchorage

NONMETROPOLITAN COUNTIES
Aleutian East, Aleutian West, Bethel, Bristol Bay, Denali, Dillingham, Fairbanks North Star, Haines, Juneau, Kenai Peninsula, Ketchikan Gateway, Kodiak Island, Lake & Peninsula, Matanuska-Susitna, Nome, North Slope, Northwest Arctic, Pr. Wales-Outer Ketchikan, Sitka, Skagway-Yakutat-Angoon, Southeast Fairbanks, Valdez-Cordova, Wade Hampton, Wrangell-Petersburg, Yukatat, Yukon-Koyukuk.

ARIZONA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Coconino, Maricopa, Mohave, Pima, Pinal, Yuma

NONMETROPOLITAN COUNTIES
Apache, Cochise, Gila, Graham, Greenlee, La Paz, Navajo, Santa Cruz, Yavapai

ARKANSAS (SOUTHWEST)

METROPOLITAN COUNTIES
Benton, Crawford, Craighead, Crittenden, Faulkner, Jefferson, Lonoke, Miller, Pulaski, Saline, Sebastian, Washington

NONMETROPOLITAN COUNTIES
Arkansas, Ashley, Baxter, Boone, Bradley, Calhoun, Carroll, Chicot, Clark, Clay, Cleburne, Cleveland, Columbia, Conway, Cross, Dallas, Desha, Drew, Franklin, Fulton, Garland, Grant, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Madison, Marion, Mississippi, Monroe, Montgomery, Nevada, Newton, Ouachita, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Randolph, Scott, Searcy, Sevier, Sharp, St. Francis, Stone, Union, Van Buren, White, Woodruff, Yell

CALIFORNIA (PACIFIC/HAWAII)

CPI AREAS:	COUNTIES
PMSA Los Angeles-Long Beach, CA:	Los Angeles
PMSA Oakland, CA:	Alameda, Contra Costa
PMSA Orange County, CA:	Orange
PMSA Riverside-San Bernardino, CA:	Riverside, San Bernardino
MSA San Diego, CA:	San Diego
PMSA San Francisco, CA:	Marin, San Francisco, San Mateo
PMSA San Jose, CA:	Santa Clara
PMSA Santa Cruz-Watsonville, CA:	Santa Cruz
PMSA Santa Rosa, CA:	Sonoma
PMSA Vallejo-Fairfield-Napa, CA:	Napa, Solano
PMSA Ventura, CA:	Ventura

METROPOLITAN COUNTIES
Butte, El Dorado, Fresno, Kern, Madera, Merced, Monterey, Placer, Sacramento, San Joaquin, San Luis Obispo, Santa Barbara, Shasta, Stanislaus, Sutter, Tulare, Yolo, Yuba

NONMETROPOLITAN COUNTIES
Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Mariposa, Mendocino, Modoc, Mono, Nevada, Plumas, San Benito, Sierra, Siskiyou, Tehama, Trinity, Tuolumne

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

COLORADO (ROCKY MOUNTAIN)

CPI AREAS:	COUNTIES
PMSA Boulder-Longmont, CO:	Boulder
PMSA Denver, CO:	Adams, Arapahoe, Broomfield, Denver, Douglas, Jefferson
PMSA Greeley, CO:	Weld

METROPOLITAN COUNTIES
El Paso, Larimer, Mesa, Pueblo

NONMETROPOLITAN COUNTIES
Alamosa, Archuleta, Baca, Bent, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Dolores, Eagle, Elbert, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Kiowa, Kit Carson, La Plata, Lake, Las Animas, Lincoln, Logan, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, Yuma

CONNECTICUT (NEW ENGLAND)

CPI AREAS: COUNTIES	
PMSA Bridgeport, CT	
Fairfield County part:	Bridgeport city, Easton town, Fairfield town, Monroe town, Shelton city, Stratford town, Trumbull town
New Haven County part:	Ansonia city, Beacon Falls town, Derby city, Milford city, Oxford town, Seymour town
PMSA Danbury, CT	
Fairfield County part:	Bethel town, Brookfield town, Danbury city, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town
Litchfield County part:	Bridgewater town, New Milford town, Roxbury town, Washington town
PMSA New Haven-Meriden, CT	
Middlesex County part:	Clinton town, Killingworth town
New Haven County part:	Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, North Haven town, Woodbridge town
PMSA Stamford-Norwalk, CT	
Fairfield County part:	Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town
PMSA Waterbury, CT	
Litchfield County part:	Bethlehem town, Thomaston town, Watertown town, Woodbury town
New Haven County part:	Middlebury town, Naugatuck borough, Prospect town, Southbury town, Waterbury city, Wolcott town
PMSA Worcester, MA-CT	
Windham County part:	Thompson town

METROPOLITAN COUNTIES

Hartford County part:	Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford city, Manchester town, Marlborough town, New Britain city, Newington town, Plainville town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town
Litchfield County part:	Barkhamsted town, Harwinton town, New Hartford town, Plymouth town, Winchester town
Middlesex County part:	Cromwell town, Durham town, East Haddam town, East Hampton town, Haddam town, Middlefield town, Middletown city, Portland town, Old Saybrook town
New London County part:	Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Montville town, New London city, North Stonington town, Norwich city, Old Lyme town, Preston town, Salem town, Sprague town, Stonington town, Waterford town, Colchester town, Lebanon town
Tolland County part:	Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Vernon town, Willington town
Windham County part:	Ashford town, Canterbury town, Chaplin town, Plainfield town, Windham town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

NONMETROPOLITAN COUNTIES

Hartford County part:	Hartland town
Litchfield County part:	Canaan town, Colebrook town, Cornwall town, Goshen town, Kent town, Litchfield town, Morris town, Norfolk town, North Canaan town, Salisbury town, Sharon town, Torrington town, Warren town
Middlesex County part:	Chester town, Deep River town, Essex town, Westbrook town
New London County part:	Lyme town, Voluntown town
Tolland County part:	Union town
Windham County part:	Brooklyn town, Eastford town, Hampton town, Killingly town, Pomfret town, Putnam town, Scotland town, Sterling town, Woodstock town

DELAWARE (MID-ATLANTIC)

CPI AREAS:	COUNTIES
PMSA Wilmington-Newark, DE-MD:	New Castle

METROPOLITAN COUNTIES
Kent

NONMETROPOLITAN COUNTIES
Sussex

DIST. OF COLUMBIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
District of Columbia

FLORIDA (SOUTHEAST)

CPI AREAS:	COUNTIES
PMSA Fort Lauderdale, FL:	Broward
PMSA Miami, FL:	Miami-Dade
MSA Tampa-St. Petersburg-Clearwater, FL	Hernando, Hillsborough, Pasco, Pinellas

METROPOLITAN COUNTIES
Alachua, Bay, Brevard, Charlotte, Clay, Collier, Duval, Escambia, Flagler, Gadsden, Lake, Lee, Leon, Manatee, Marion, Martin, Nassau, Okaloosa, Orange, Osceola, Palm Beach, Polk, Santa Rosa, Sarasota, Seminole, St. Johns, St. Lucie, Volusia

NONMETROPOLITAN COUNTIES
Baker, Bradford, Calhoun, Citrus, Columbia, Desoto, Dixie, Franklin, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Monroe, Okeechobee, Putnam, Sumter, Suwannee, Taylor, Union, Wakulla, Walton, Washington

GEORGIA (SOUTHEAST)

CPI AREAS:	COUNTIES
*Atlanta, GA:	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding, Walton

METROPOLITAN COUNTIES
Bibb, Bryan, Catoosa, Chatham, Chattahoochee, Clarke, Columbia, Dade, Dougherty, Effingham, Harris, Houston, Jones, Lee, Madison, Mcduffie, Muscogee, Oconee, Peach, Richmond, Twiggs, Walker

NONMETROPOLITAN COUNTIES
Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Ben Hill, Berrien, Bleckley, Brantley, Brooks, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Charlton, Chattooga, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Dawson, Decatur, Dodge, Dooly, Early, Echols, Elbert, Emanuel, Evans, Fannin, Floyd, Franklin, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Habersham, Hall, Hancock, Haralson, Hart, Heard, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Lamar, Lanier, Laurens, Liberty, Lincoln, Long, Lowndes, Lumpkin, Macon, Marion, Mcintosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Oglethorpe, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Schley, Screven, Seminole, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Union, Upson, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, Worth

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

HAWAII (PACIFIC/HAWAII)

CPI AREAS:	COUNTIES
STATE Hawaii:	Hawaii, Honolulu, Kauai, Maui

IDAHO (NORTHWEST/ALASKA)

METROPOLITAN COUNTIES
Ada, Bannock, Canyon

NONMETROPOLITAN COUNTIES
Adams, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Madison, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Twin Falls, Valley, Washington

ILLINOIS (MIDWEST)

CPI AREAS:	COUNTIES
*Chicago, IL:	Cook, Dupage, Kane, Lake, McHenry, Will
*COUNTY De Kalb, IL:	Dekalb
*COUNTY Grundy, IL:	Grundy
PMSA Kankakee, IL:	Kankakee
*COUNTY Kendall, Il:	Kendall
MSA St. Louis, MO-IL:	Clinton, Jersey, Madison, Monroe, St. Clair

METROPOLITAN COUNTIES
Boone, Champaign, Henry, Macon, Mclean, Menard, Ogle, Peoria, Rock Island, Sangamon, Tazewell, Winnebago, Woodford

NONMETROPOLITAN COUNTIES
Adams, Alexander, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Christian, Clark, Clay, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Henderson, Iroquois, Jackson, Jasper, Jefferson, Jo Daviess, Johnson, Knox, La Salle, Lawrence, Lee, Livingston, Logan, Macoupin, Marion, Marshall, Mason, Massac, Mcdonough, Mercer, Montgomery, Morgan, Moultrie, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Saline, Schuyler, Scott, Shelby, Stark, Stephenson, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Whiteside, Williamson

INDIANA (MIDWEST)

CPI AREAS:	COUNTIES
*Cincinnati, OH-KY-IN:	Dearborn
PMSA Gary, IN:	Lake, Porter
*COUNTY Ohio, IN:	Ohio

METROPOLITAN COUNTIES
Adams, Allen, Boone, Clark, Clay, Clinton, De Kalb, Delaware, Elkhart, Floyd, Hamilton, Hancock, Harrison, Hendricks, Howard, Huntington, Johnson, Madison, Marion, Monroe, Morgan, Posey, Scott, Shelby, St. Joseph, Tippecanoe, Tipton, Vanderburgh, Vermillion, Vigo, Warrick, Wells, Whitley

NONMETROPOLITAN COUNTIES
Bartholomew, Benton, Blackford, Brown, Carroll, Cass, Crawford, Daviess, Decatur, Dubois, Fayette, Fountain, Franklin, Fulton, Gibson, Grant, Greene, Henry, Jackson, Jasper, Jay, Jefferson, Jennings, Knox, Kosciusko, La Porte, Lagrange, Lawrence, Marshall, Martin, Miami, Montgomery, Newton, Noble, Orange, Owen, Parke, Perry, Pike, Pulaski, Putnam, Randolph, Ripley, Rush, Spencer, Starke, Steuben, Sullivan, Switzerland, Union, Wabash, Warren, Washington, Wayne, White

IOWA (GREAT PLAINS)

METROPOLITAN COUNTIES
Black Hawk, Dallas, Dubuque, Johnson, Linn, Polk, Pottawattamie, Scott, Warren, Woodbury

NONMETROPOLITAN COUNTIES
Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Davis, Decatur, Delaware, Des Moines, Dickinson, Emmet, Fayette, Floyd, Franklin, Fremont,

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

IOWA (Cont.)
Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Jones, Keokuk, Kossuth, Lee, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Washington, Wayne, Webster, Winnebago, Winneshiek, Worth, Wright

KANSAS (GREAT PLAINS)

CPI AREAS:	COUNTIES
MSA Kansas City, MO-KS:	Johnson, Leavenworth, Miami, Wyandotte

METROPOLITAN COUNTIES
Butler, Douglas, Harvey, Sedgwick, Shawnee

NONMETROPOLITAN COUNTIES
Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Doniphan, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Franklin, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jackson, Jefferson, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Linn, Logan, Lyon, Marion, Marshall, Mcpherson, Meade, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osage, Osborne, Ottawa, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wabaunsee, Wallace, Washington, Wichita, Wilson, Woodson

KENTUCKY (SOUTHEAST)

CPI AREAS:	COUNTIES
*Cincinnati, OH-KY-IN:	Boone, Campbell, Kenton
*COUNTY Gallatin, KY:	Gallatin
*COUNTY Grant, KY:	Grant
*COUNTY Pendleton, KY:	Pendleton

METROPOLITAN COUNTIES
Bourbon, Boyd, Bullitt, Carter, Christian, Clark, Daviess, Fayette, Greenup, Henderson, Jefferson, Jessamine, Madison, Oldham, Scott, Woodford

NONMETROPOLITAN COUNTIES
Adair, Allen, Anderson, Ballard, Barren, Bath, Bell, Boyle, Bracken, Breathitt, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Carroll, Casey, Clay, Clinton, Crittenden, Cumberland, Edmonson, Elliott, Estill, Fleming, Floyd, Franklin, Fulton, Garrard, Graves, Grayson, Green, Hancock, Hardin, Harlan, Harrison, Hart, Henry, Hickman, Hopkins, Jackson, Johnson, Knott, Knox, Larue, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Livingston, Logan, Lyon, Magoffin, Marion, Marshall, Martin, Mason, Mccracken, Mccreary, Mclean, Meade, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Owen, Owsley, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Shelby, Simpson, Spencer, Taylor, Todd, Trigg, Trimble, Union, Warren, Washington, Wayne, Webster, Whitley, Wolfe

LOUISIANA (SOUTHWEST)

METROPOLITAN COUNTIES
Acadia, Ascension, Bossier, Caddo, Calcasieu, East Baton Rouge, Jefferson, Lafayette, Lafourche, Livingston, Orleans, Ouachita, Plaquemines, Rapides, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Tammany, Terrebonne, Webster, West Baton Rouge

NONMETROPOLITAN COUNTIES
Allen, Assumption, Avoyelles, Beauregard, Bienville, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson Davis, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Pointe Coupee, Red River, Richland, Sabine, St. Helena, St. Mary, Tangipahoa, Tensas, Union, Vermilion, Vernon, Washington, West Carroll, West Feliciana, Winn

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

MAINE (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Portsmouth-Rochester, NH-ME	
York County part:	Berwick town, Eliot town, Kittery town, South Berwick town, York town

METROPOLITAN COUNTIES

Androscoggin County part:	Auburn city, Greene town, Lewiston city, Lisbon town, Mechanic Falls town, Poland town, Sabattus town, Turner town, Wales town
Cumberland County part:	Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Gorham town, Gray town, Long Island town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town
Penobscot County part:	Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island, Veazie town
Waldo County part:	Winterport town
York County part:	Buxton town, Hollis town, Limington town, Old Orchard Beach

NONMETROPOLITAN COUNTIES

Aroostook, Franklin, Hancock, Kennebec, Knox, Lincoln, Oxford, Piscataquis, Sagadahoc, Somerset, Washington

Androscoggin County part:	Durham town, Leeds town, Livermore town, Livermore Falls town, Minot town
Cumberland County part:	Baldwin town, Bridgton town, Brunswick town, Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town
Penobscot County part:	Alton town, Argyle unorg., Bradford town, Bradley town, Burlington town, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penob, East Millinocket town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Greenbush town, Greenfield town, Howland town, Hudson town, Kingman unorg., Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town, Newport town, North Penobscot unorg., Passadumkeag town, Patten town, Plymouth town, Prentiss plantation, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly unorg., Webster plantation, Whitney unorg., Winn town, Woodville town
Waldo County part:	Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town, Northport town, Palermo town, Prospect town, Searsmont town, Searsport town, Stockton Springs, Swanville town, Thorndike town, Troy town, Unity town, Waldo town
York County part:	Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town

MARYLAND (MID-ATLANTIC)

CPI AREAS:	COUNTIES
PMSA Baltimore, MD:	Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city, Columbia city
PMSA Hagerstown, MD:	Washington
*Washington, DC-MD-VA:	Calvert, Charles, Frederick, Montgomery, Prince George's
PMSA Wilmington-Newark, DE-MD:	Cecil

METROPOLITAN COUNTIES

Allegany

NONMETROPOLITAN COUNTIES

Caroline, Dorchester, Garrett, Kent, Somerset, St. Mary's, Talbot, Wicomico, Worcester

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

MASSACHUSETTS (NEW ENGLAND)

CPI AREAS: COUNTIES	
PMSA Boston, MA-NH	
Bristol County part:	Berkley town, Dighton town, Mansfield town, Norton town, Taunton city
Essex County part:	Amesbury town, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester-by-the-Sea town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town
Middlesex County part:	Acton town, Arlington town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown town, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city
Norfolk County part:	Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin town, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town
Plymouth County part:	Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town
Suffolk county part:	Boston city, Chelsea city, Revere city, Winthrop town
Worcester County part:	Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town, Mendon town, Milford town, Millville town, Southborough town, Upton town
PMSA Brockton, MA	
Bristol County part:	Easton town, Raynham town
Norfolk County part:	Avon town
Plymouth County part:	Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Middleborough town, Plympton town, West Bridgewater town, Whitman town
PMSA Fitchburg-Leominster, MA	
Middlesex County part:	Ashby town
Worcester County part:	Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town
PMSA Lawrence, MA-NH	
Essex County part:	Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen town, North Andover town, West Newbury town
PMSA Lowell, MA-NH	
Middlesex County part:	Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town
PMSA New Bedford, MA	
Bristol County part:	Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city
Plymouth County part:	Marion town, Mattapoisett town, Rochester town
PMSA Worcester, MA-CT	
Hampden County part:	Holland town
Worcester County part:	Auburn town, Barre town, Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town, Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westborough town, West Boylston town, West Brookfield town, Worcester city

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MASSACHUSETTS (NEW ENGLAND) cont.

METROPOLITAN COUNTIES

Barnstable County part:	Barnstable town, Brewster town, Chatham town, Dennis town, Eastham town, Harwich town, Mashpee town, Orleans town, Sandwich town, Yarmouth town
Berkshire County part:	Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
Bristol County part:	Attleboro city, Fall River city, North Attleborough, Rehoboth town, Seekonk town,Somerset town, Swansea town, Westport town
Franklin County part:	Sunderland town
Hampden County part:	Agawam town, Chicopee city, East Longmeadow town, Hampden town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, Westfield city, West Springfield town, Wilbraham town
Hampshire County part:	Amherst town, Belchertown town, Easthampton town, Granby town, Hadley town, Hatfield town, Huntington town, Northampton city, Southampton town, South Hadley town, Ware town, Williamsburg town

NONMETROPOLITAN COUNTIES

Dukes	
Nantucket	
Barnstable County part:	Bourne town, Falmouth town, Provincetown town, Truro town, Wellfleet town
Berkshire County part:	Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town
Franklin County part:	Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town
Hampden County part:	Blandford town, Brimfield town, Chester town, Granville town, Tolland town, Wales town
Hampshire County part:	Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town
Worcester County part:	Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town

MICHIGAN (MIDWEST)

CPI AREAS:	COUNTIES
PMSA Ann Arbor, MI:	Lenawee, Livingston, Washtenaw
PMSA Detroit, MI:	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
PMSA Flint, MI:	Genesee

METROPOLITAN COUNTIES

Allegan, Bay, Berrien, Calhoun, Clinton, Eaton, Ingham, Jackson, Kalamazoo, Kent, Midland, Muskegon, Ottawa, Saginaw, Van Buren

NONMETROPOLITAN COUNTIES

Alcona, Alger, Alpena, Antrim, Arenac, Baraga, Barry, Benzie, Branch, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Crawford, Delta, Dickinson, Emmet, Gladwin, Gogebic, Grand Traverse, Gratiot, Hillsdale, Houghton, Huron, Ionia, Iosco, Iron, Isabella, Kalkaska, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Missaukee, Montcalm, Montmorency, Newaygo, Oceana, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Sanilac, Schoolcraft, Shiawassee, St. Joseph, Tuscola, Wexford

MINNESOTA (MIDWEST)

CPI AREAS:	COUNTIES
MSA Minneapolis-St. Paul, MN-WI:	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright

METROPOLITAN COUNTIES

Benton, Clay, Houston, Olmsted, Polk, St. Louis, Stearns

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

NONMETROPOLITAN COUNTIES
Aitkin, Becker, Beltrami, Big Stone, Blue Earth, Brown, Carlton, Cass, Chippewa, Clearwater, Cook, Cottonwood, Crow Wing, Dodge, Douglas, Faribault, Fillmore, Freeborn, Goodhue, Grant, Hubbard, Itasca, Jackson, Kanabec, Kandiyohi, Kittson, Koochiching, Lac qui Parle, Lake, Lake of the Woods, Le Sueur, Lincoln, Lyon, Mahnomen, Marshall, Martin, Mcleod, Meeker, Mille Lacs, Morrison, Mower, Murray, Nicollet, Nobles, Norman, Otter Tail, Pennington, Pine, Pipestone, Pope, Red Lake, Redwood, Renville, Rice, Rock, Roseau, Sibley, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Waseca, Watonwan, Wilkin, Winona, Yellow Medicine

MISSISSIPPI (SOUTHEAST)

METROPOLITAN COUNTIES
Desoto, Forrest, Hancock, Harrison, Hinds, Jackson, Lamar, Madison, Rankin

NONMETROPOLITAN COUNTIES
Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, Franklin, George, Greene, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo

MISSOURI (GREAT PLAINS)

CPI AREAS:	COUNTIES
MSA Kansas City, MO-KS:	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
MSA St. Louis, MO-IL:	Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city, Crawford-Sullivan (part)

METROPOLITAN COUNTIES
Andrew, Boone, Buchanan, Christian, Greene, Jasper, Newton, Webster

NONMETROPOLITAN COUNTIES
Adair, Atchison, Audrain, Barry, Barton, Bates, Benton, Bollinger, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cedar, Chariton, Clark, Cole, Cooper, Crawford, Dade, Dallas, Daviess, Dekalb, Dent, Douglas, Dunklin, Gasconade, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Iron, Johnson, Knox, Laclede, Lawrence, Lewis, Linn, Livingston, Macon, Madison, Maries, Marion, Mcdonald, Mercer, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Nodaway, Oregon, Osage, Ozark, Pemiscot, Perry, Pettis, Phelps, Pike, Polk, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, Saline, Schuyler, Scotland, Scott, Shannon, Shelby, St. Clair, St. Francois, Ste. Genevieve, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Washington, Wayne, Worth, Wright

MONTANA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Cascade, Missoula, Yellowstone

NONMETROPOLITAN COUNTIES
Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, Madison, Mccone, Meagher, Mineral, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Powell, Prairie, Ravalli, Richland, Roosevelt, Rosebud, Sanders, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux

NEBRASKA (GREAT PLAINS)

METROPOLITAN COUNTIES
Cass, Dakota, Douglas, Lancaster, Sarpy, Washington

NONMETROPOLITAN COUNTIES
Adams, Antelope, Arthur, Banner, Blaine, Boone, Box Butte, Boyd, Brown, Buffalo, Burt, Butler, Cedar, Chase, Cherry, Cheyenne, Clay, Colfax, Cuming, Custer, Dawes, Dawson, Deuel, Dixon, Dodge, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lincoln, Logan, Loup, Madison, Mcpherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Wayne, Webster, Wheeler, York

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NEVADA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Clark, Nye, Washoe

NONMETROPOLITAN COUNTIES
Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Pershing, Storey, White Pine, Carson City

NEW HAMPSHIRE (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Boston, MA-NH	
Rockingham County part:	Seabrook town, South Hampton town
PMSA Lawrence, MA-NH	
Rockingham County part:	Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town
PMSA Lowell, MA-NH	
Hillsborough county pt:	Pelham town
PMSA Manchester, NH	
Hillsborough county pt:	Bedford town, Goffstown town, Manchester city, Weare town
Merrimack county part:	Allenstown town, Hooksett town
Rockingham county part:	Auburn town, Candia town, Londonderry town
PMSA Nashua, NH	
Hillsborough county pt:	Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Wilton town
PMSA Portsmouth-Rochester, NH-ME	
Rockingham County part:	Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town, Portsmouth city, Rye town, Stratham town
Strafford County part:	Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Milton town, Rochester city, Rollinsford town, Somersworth city

NONMETROPOLITAN COUNTIES

Belknap	
Carroll	
Cheshire	
Coos	
Grafton	
Sullivan	
Hillsborough County part:	Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town, Windsor town
Merrimack County part:	Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hopkinton town, Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town
Rockingham County part:	Deerfield town, Northwood town, Nottingham town,
Strafford County part:	Middleton town, New Durham town, Strafford town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

NEW JERSEY (NEW YORK/NEW JERSEY)

CPI AREAS:	COUNTIES
PMSA Atlantic-Cape May, NJ:	Atlantic, Cape May
PMSA Bergen-Passaic, NJ:	Bergen, Passaic
PMSA Jersey City, NJ:	Hudson
PMSA Middlesex-Somerset-Hunterdon, NJ:	Hunterdon, Middlesex, Somerset
PMSA Monmouth-Ocean, NJ:	Monmouth, Ocean
PMSA Newark, NJ:	Essex, Morris, Sussex, Union, Warren
PMSA Philadelphia, PA-NJ:	Burlington, Camden, Gloucester, Salem
PMSA Trenton, NJ:	Mercer
PMSA Vineland-Millville-Bridgeton, NJ:	Cumberland

NEW MEXICO (SOUTHWEST)

METROPOLITAN COUNTIES
Bernalillo, Dona Ana, Los Alamos, Sandoval, Santa Fe, Valencia

NONMETROPOLITAN COUNTIES
Catron, Chaves, Cibola, Colfax, Curry, Debaca, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Luna, Mckinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, San Juan, San Miguel, Sierra, Socorro, Taos, Torrance, Union

NEW YORK (NEW YORK/NEW JERSEY)

CPI AREAS:	COUNTIES
PMSA Dutchess County, NY :	Dutchess
PMSA Nassau-Suffolk, NY:	Nassau, Suffolk
PMSA New York, NY:	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
*COUNTY Westchester, NY:	Westchester
PMSA Newburgh, NY-PA:	Orange

METROPOLITAN COUNTIES
Albany, Broome, Cayuga, Chautauqua, Chemung, Erie, Genesee, Herkimer, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Rensselaer, Saratoga, Schenectady, Schoharie, Tioga, Warren, Washington, Wayne

NONMETROPOLITAN COUNTIES
Allegany, Cattaraugus, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Jefferson, Lewis, Otsego, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tompkins, Ulster, Wyoming, Yates

NORTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES
Alamance, Alexander, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cumberland, Currituck, Davidson, Davie, Durham, Edgecombe, Forsyth, Franklin, Gaston, Guilford, Johnston, Lincoln, Madison, Mecklenburg, Nash, New Hanover, Onslow, Orange, Pitt, Randolph, Rowan, Stokes, Union, Wake, Wayne, Yadkin

NONMETROPOLITAN COUNTIES
Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Camden, Carteret, Caswell, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Dare, Duplin, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Jones, Lee, Lenoir, Macon, Martin, Mcdowell, Mitchell, Montgomery, Moore, Northampton, Pamlico, Pasquotank, Pender, Perquimans, Person, Polk, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wilkes, Wilson, Yancey

NORTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Burleigh, Cass, Grand Forks, Morton

NONMETROPOLITAN COUNTIES
Adams, Barnes, Benson, Billings, Bottineau, Bowman, Burke, Cavalier, Dickey, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Griggs, Hettinger, Kidder, Lamoure, Logan, Mchenry, Mcintosh, Mckenzie, Mclean, Mercer, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stutsman, Towner, Traill, Walsh, Ward, Wells, Williams

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

OHIO (MIDWEST)

CPI AREAS:	COUNTIES
PMSA Akron, OH:	Portage, Summit
*COUNTY Brown, OH:	Brown
*Cincinnati, OH-KY-IN:	Clermont, Hamilton, Warren
PMSA Cleveland-Lorain-Elyria, OH:	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
PMSA Hamilton-Middletown, OH:	Butler

METROPOLITAN COUNTIES
Allen, Auglaize, Belmont, Carroll, Clark, Columbiana, Crawford, Delaware, Fairfield, Franklin, Fulton, Greene, Jefferson, Lawrence, Licking, Lucas, Madison, Mahoning, Miami, Montgomery, Pickaway, Richland, Stark, Trumbull, Washington, Wood

NONMETROPOLITAN COUNTIES
Adams, Ashland, Athens, Champaign, Clinton, Coshocton, Darke, Defiance, Erie, Fayette, Gallia, Guernsey, Hancock, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Knox, Logan, Marion, Meigs, Mercer, Monroe, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Perry, Pike, Preble, Putnam, Ross, Sandusky, Scioto, Seneca, Shelby, Tuscarawas, Union, Van Wert, Vinton, Wayne, Williams, Wyandot

OKLAHOMA (SOUTHWEST)

METROPOLITAN COUNTIES
Canadian, Cleveland, Comanche, Creek, Garfield, Logan, Mcclain, Oklahoma, Osage, Pottawatomie, Rogers, Sequoyah, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES
Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Carter, Cherokee, Choctaw, Cimarron, Coal, Cotton, Craig, Custer, Delaware, Dewey, Ellis, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Love, Major, Marshall, Mayes, Mccurtain, Mcintosh, Murray, Muskogee, Noble, Nowata, Okfuskee, Okmulgee, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pushmataha, Roger Mills, Seminole, Stephens, Texas, Tillman, Washington, Washita, Woods, Woodward

OREGON (NORTHWEST/ALASKA)

CPI AREAS:	COUNTIES
PMSA Portland-Vancouver, OR-WA:	Clackamas, Columbia, Multnomah, Washington, Yamhill
PMSA Salem, OR:	Marion, Polk

METROPOLITAN COUNTIES
Benton, Jackson, Lane

NONMETROPOLITAN COUNTIES
Baker, Clatsop, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jefferson, Josephine, Klamath, Lake, Lincoln, Linn, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler

PENNSYLVANIA (MID-ATLANTIC)

CPI AREAS:	COUNTIES
PMSA Newburgh, NY-PA:	Pike
PMSA Philadelphia, PA-NJ:	Bucks, Chester, Delaware, Montgomery, Philadelphia
PMSA Pittsburgh, PA:	Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland

METROPOLITAN COUNTIES
Berks, Blair, Cambria, Carbon, Centre, Columbia, Cumberland, Dauphin, Eric, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Northampton, Perry, Somerset, Wyoming, York

NONMETROPOLITAN COUNTIES
Adams, Armstrong, Bedford, Bradford, Cameron, Clarion, Clearfield, Clinton, Crawford, Elk, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Mc Kean, Mifflin, Monroe, Montour, Northumberland, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Wayne

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

RHODE ISLAND (NEW ENGLAND)

METROPOLITAN COUNTIES

Bristol County part:	Barrington town, Bristol town, Warren town
Kent County part:	Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town
Newport County part:	Jamestown town, Little Compton town, Tiverton town
Providence County part:	Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city
Washington County part:	Charlestown town, Exeter town, Hopkinton town, Narragansett town, North Kingstown town, Richmond town, South Kingstown town, Westerly town

NONMETROPOLITAN COUNTIES

Newport County part:	Middletown town, Newport city, Portsmouth town
Washington County part:	New Shoreham town

SOUTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES
Aiken, Anderson, Berkeley, Charleston, Cherokee, Dorchester, Edgefield, Florence, Greenville, Horry, Lexington, Pickens, Richland, Spartanburg, Sumter, York

NONMETROPOLITAN COUNTIES
Abbeville, Allendale, Bamberg, Barnwell, Beaufort, Calhoun, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Fairfield, Georgetown, Greenwood, Hampton, Jasper, Kershaw, Lancaster, Laurens, Lee, Marion, Marlboro, Mccormick, Newberry, Oconee, Orangeburg, Saluda, Union, Williamsburg

SOUTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Lincoln, Minnehaha, Pennington

NONMETROPOLITAN COUNTIES
Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lawrence, Lyman, Marshall, Mccook, Mcpherson, Meade, Mellette, Miner, Moody, Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Sully, Todd, Tripp, Turner, Union, Walworth, Yankton, Ziebach

TENNESSEE (SOUTHEAST)

METROPOLITAN COUNTIES
Anderson, Blount, Carter, Cheatham, Chester, Davidson, Dickson, Fayette, Hamilton, Hawkins, Knox, Loudon, Madison, Marion, Montgomery, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, Wilson

NONMETROPOLITAN COUNTIES
Bedford, Benton, Bledsoe, Bradley, Campbell, Cannon, Carroll, Claiborne, Clay, Cocke, Coffee, Crockett, Cumberland, Dekalb, Decatur, Dyer, Fentress, Franklin, Gibson, Giles, Grainger, Greene, Grundy, Hamblen, Hancock, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Mcminn, Mcnairy, Meigs, Monroe, Moore, Morgan, Obion, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, Weakley, White

TEXAS (SOUTHWEST)

CPI AREAS: COUNTIES

PMSA Brazoria, TX:	Brazoria
*Dallas, TX:	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
PMSA Fort Worth-Arlington, TX:	Hood, Johnson, Parker, Tarrant
PMSA Galveston-Texas City, TX:	Galveston
*COUNTY Henderson, TX:	Henderson
PMSA Houston, TX:	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller

METROPOLITAN COUNTIES
Archer, Bastrop, Bell, Bexar, Bowie, Brazos, Caldwell, Cameron, Comal, Coryell, Ector, El Paso, Grayson, Gregg, Guadalupe, Hardin, Harrison, Hays, Hidalgo, Jefferson, Lubbock, Mclennan, Midland, Nueces, Orange, Potter, Randall, San Patricio, Smith, Taylor, Tom Green, Travis, Upshur, Victoria, Webb, Wichita, Williamson, Wilson

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

TEXAS (Cont.)

NONMETROPOLITAN COUNTIES
Anderson, Andrews, Angelina, Aransas, Armstrong, Atascosa, Austin, Bailey, Bandera, Baylor, Bee, Blanco, Borden, Bosque, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Calhoun, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Colorado, Comanche, Concho, Cooke, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Dewitt, Deaf Smith, Delta, Dickens, Dimmit, Donley, Duval, Eastland, Edwards, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Franklin, Freestone, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grimes, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hill, Hockley, Hopkins, Houston, Howard, Hudspeth, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jim Hogg, Jim Wells, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, Mcculloch, Mcmullen, Medina, Menard, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parmer, Pecos, Polk, Presidio, Rains, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Terrell, Terry, Throckmorton, Titus, Trinity, Tyler, Upton, Uvalde, Val Verde, Van Zandt, Walker, Ward, Washington, Wharton, Wheeler, Wilbarger, Willacy, Winkler, Wise, Wood, Yoakum, Young, Zapata, Zavala

UTAH (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Davis, Kane, Salt Lake, Utah, Weber

NONMETROPOLITAN COUNTIES
Beaver, Box Elder, Cache, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Iron, Juab, Millard, Morgan, Piute, Rich, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Wasatch, Washington, Wayne

VERMONT (NEW ENGLAND)

METROPOLITAN COUNTIES

Chittenden County part:	Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Jericho town, Milton town, Richmond town, St. George town, Shelburne town, South Burlington city, Williston town, Winooski city
Franklin County part:	Fairfax town, Georgia town, St. Albans city, St. Albans town, Swanton town
Grand Isle County part:	Grand Isle town, South Hero town

NONMETROPOLITAN COUNTIES

Addison	
Bennington	
Caledonia	
Essex	
Lamoille	
Orange	
Orleans	
Rutland	
Washington	
Windham	
Windsor	
Chittenden County part:	Bolton town, Buels gore, Huntington town, Underhill town, Westford town
Franklin County part:	Bakersfield town, Berkshire town, Enosburg town, Fairfield town, Fletcher town, Franklin, Highgate town, Montgomery town, Richford town, Sheldon town
Grand Isle County part:	Alburg town, Isle La Motte town, North Hero town

VIRGINIA (MID-ATLANTIC)

CPI AREAS:	COUNTIES
*COUNTY Clarke, VA:	Clarke
*COUNTY Culpeper, VA:	Culpeper
*COUNTY King George, VA:	King George
*COUNTY Warren, VA:	Warren

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

VIRGINIA (MID-ATLANTIC) cont.

CPI AREAS:	COUNTIES
*Washington, DC-MD-VA:	Arlington, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas Park city, Manassas city

METROPOLITAN COUNTIES
Albemarle, Amherst, Bedford, Botetourt, Campbell, Charles City, Chesterfield, Dinwiddie, Fluvanna, Gloucester, Goochland, Greene, Hanover, Henrico, Isle of Wight, James City, Mathews, New Kent, Pittsylvania, Powhatan, Prince George, Roanoke, Scott, Washington, York, Bedford city, Bristol city, Charlottesville city, Chesapeake city, Colonial Heights city, Danville city, Hampton city, Hopewell city, Lynchburg city, Newport News city, Norfolk city, Petersburg city, Poquoson city, Portsmouth city, Richmond city, Roanoke city, Salem city, Suffolk city, Virginia Beach city, Williamsburg city

NONMETROPOLITAN COUNTIES
Accomack, Alleghany, Amelia, Appomattox, Augusta, Bath, Bland, Brunswick, Buchanan, Buckingham, Caroline, Carroll, Charlotte, Craig, Cumberland, Dickenson, Essex, Floyd, Franklin, Frederick, Giles, Grayson, Greensville, Halifax, Henry, Highland, King William, King and Queen, Lancaster, Lee, Louisa, Lunenburg, Madison, Mecklenburg, Middlesex, Montgomery, Nelson, Northampton, Northumberland, Nottoway, Orange, Page, Patrick, Prince Edward, Pulaski, Rappahannock, Richmond, Rockbridge, Rockingham, Russell Shenandoah, Smyth, Southampton, Surry, Sussex, Tazewell, Westmoreland, Wise, Wythe

WASHINGTON (NORTHWEST/ALASKA)

CPI AREAS:	COUNTIES
PMSA Bremerton, WA:	Kitsap
PMSA Olympia, WA:	Thurston
PMSA Portland-Vancouver, OR-WA:	Clark
PMSA Seattle-Bellevue-Everett, WA:	Island, King, Snohomish
PMSA Tacoma, WA:	Pierce

METROPOLITAN COUNTIES
Benton, Franklin, Spokane, Whatcom, Yakima

NONMETROPOLITAN COUNTIES
Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla, Whitman

WEST VIRGINIA (MID-ATLANTIC)

CPI AREAS:	COUNTIES
*COUNTY Berkeley, WV:	Berkeley
*COUNTY Jefferson, WV:	Jefferson

METROPOLITAN COUNTIES
Brooke, Cabell, Hancock, Kanawha, Marshall, Mineral, Ohio, Putnam, Wayne, Wood

NONMETROPOLITAN COUNTIES
Barbour, Boone, Braxton, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Lewis, Lincoln, Logan, Marion, Mason, Mcdowell, Mercer, Mingo, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, Wyoming

WISCONSIN (MIDWEST)

CPI AREAS:	COUNTIES
PMSA Kenosha, WI:	Kenosha
PMSA Milwaukee-Waukesha, WI:	Milwaukee, Ozaukee, Washington, Waukesha
MSA Minneapolis-St. Paul, MN-WI:	Pierce, St. Croix
PMSA Racine, WI:	Racine

METROPOLITAN COUNTIES
Brown, Calumet, Chippewa, Dane, Douglas, Eau Claire, La Crosse, Marathon, Outagamie, Rock, Sheboygan, Winnebago

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

WISCONSIN (Cont.)

NONMETROPOLITAN COUNTIES
Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Clark, Columbia, Crawford, Dodge, Door, Dunn, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Iron, Jackson, Jefferson, Juneau, Kewaunee, Lafayette, Langlade, Lincoln, Manitowoc, Marinette, Marquette, Menominee, Monroe, Oconto, Oneida, Pepin, Polk, Portage, Price, Richland, Rusk, Sauk, Sawyer, Shawano, Taylor, Trempealeau, Vernon, Vilas, Walworth, Washburn, Waupaca, Waushara, Wood

WYOMING (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Laramie, Natrona

NONMETROPOLITAN COUNTIES
Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Lincoln, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, Weston

PACIFIC ISLANDS (PACIFIC/HAWAII)

NONMETROPOLITAN COUNTIES
American Samoa, Guam, Northern Mariana Islands, Palau

PUERTO RICO (SOUTHEAST)

METROPOLITAN COUNTIES
Aguada, Aguadilla, Aguas Buenas, Anasco, Arecibo, Barceloneta, Bayamon, Cabo Rojo, Caguas, Camuy, Canovanas, Carolina, Catano, Cayey, Ceiba, Cidra, Comerio, Corozal, Dorado, Fajardo, Florida, Guayanilla, Guaynabo, Gurabo, Hatillo, Hormigueros, Humacao, Juana Diaz, Juncos, Las Piedras, Loiza, Luquillo, Manati, Mayaguez, Moca, Morovis, Naguabo, Naranjito, Penuelas, Ponce, Rio Grande, Sabana Grande, San German, San Juan, San Lorenzo, Toa Alta, Toa Baja, Trujillo Alto, Vega Alta, Vega Baja, Villalba, Yabucoa, Yauco

NONMETROPOLITAN COUNTIES
Aibonito, Arroyo, Adjuntas, Barranquitas, Ciales, Coamo, Culerbra, Guanica, Guayama, Isabela, Jayuya, Lajas, Lares, Las Marias, Maricao, Maunabo, Orocovis, Patillas, Quebradillas, Rincon, Salinas, San Sebastia, Santa Isabel, Utuado, Vieques

VIRGIN ISLANDS (SOUTHEAST)

NONMETROPOLITAN COUNTIES
Virgin Island

* HUD-defined Metropolitan areas.

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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.

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LIST OF PUBLIC LAWS

This is the first in 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.*

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H.R. 241/P.L. 109-1
To accelerate the income tax benefits for charitable cash contributions for the relief of victims of the Indian Ocean tsunami. (Jan. 7, 2005; 119 Stat. 3)

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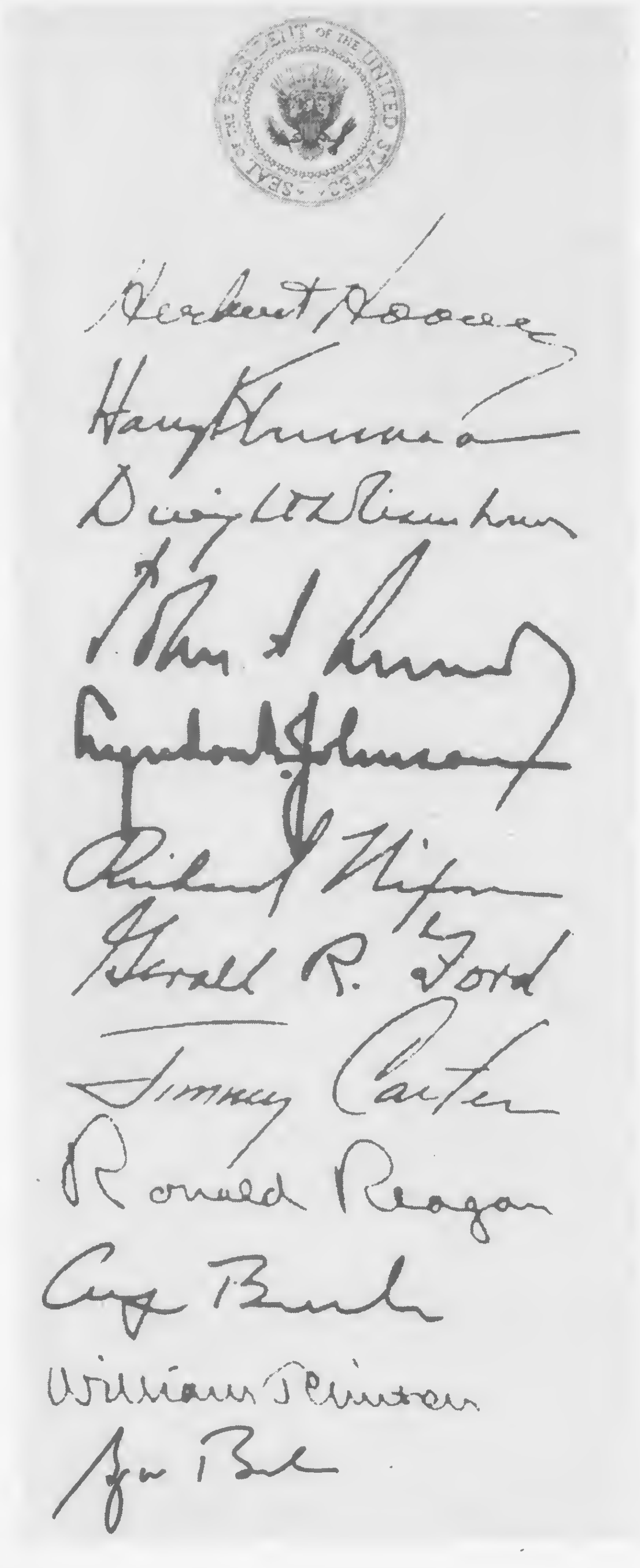

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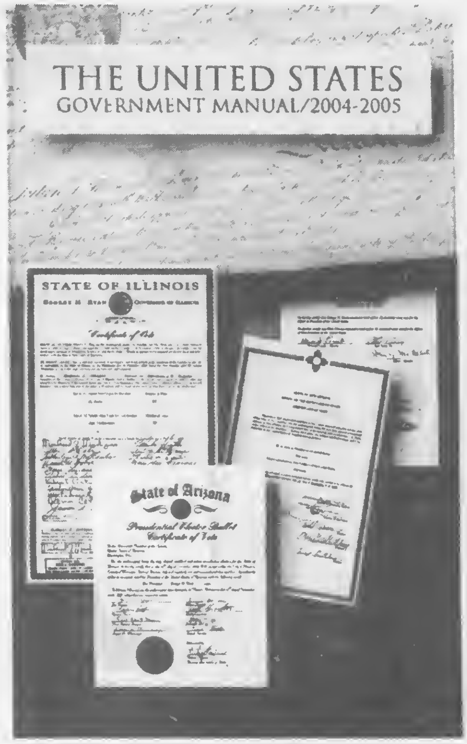

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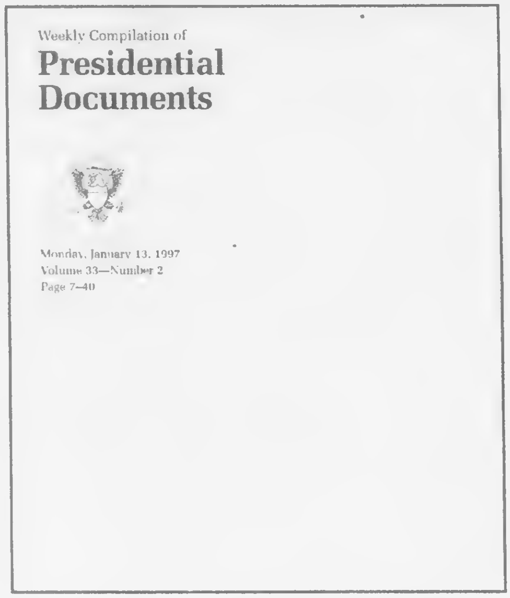
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