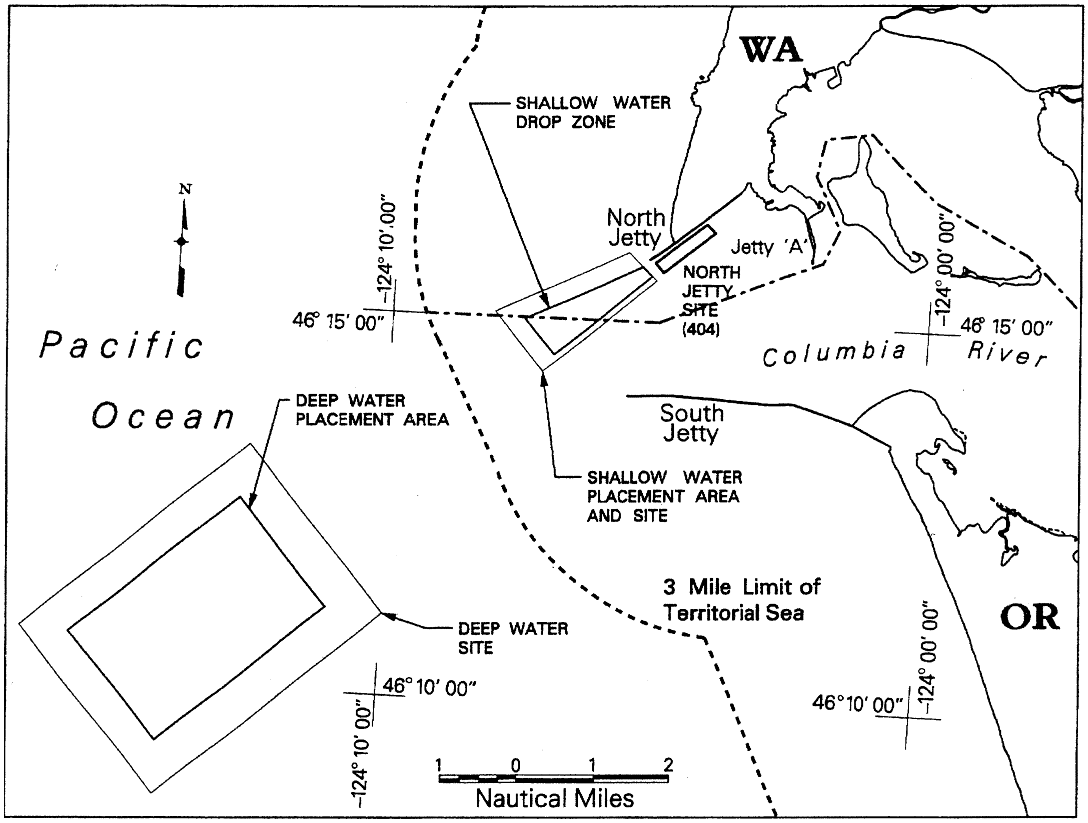

Figure 2: Designated Ocean Dredged Material Disposal Sites by this Action

[FR Doc. 05–4002 Filed 3–1–05; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 05–1]

Federal-State Joint Board on Universal Service, National Telephone Cooperative Association

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission amends its rules so that certain sections do not apply to transfers of telephone exchanges between non-rural carriers following the phase-down of interim hold-harmless support, and the Commission addresses the request to reconsider portions of the Commission's order modifying the Commission's rules for providing high-cost universal service support based on the proposals made by the Rural Task Force by amending its rules to provide that rural carriers may receive ''safety valve'' support for investment made in the first year of operating acquired exchanges.

DATES: Effective April 1, 2005.

FOR FURTHER INFORMATION CONTACT: Katie King, Special Counsel, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order and Order on Reconsideration,* in CC Docket No. 96–45, FCC 05–1, released January 10, 2005. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

I. Introduction

1. In this *Order and Order on Reconsideration,* we amend § 54.305 of the Commission's rules so that it does not apply to transfers of exchanges between non-rural carriers after the phase-down of interim hold-harmless support, as proposed in the *Further Notice of Proposed Rulemaking,* 65 FR 79047, December 18, 2000. In addition, we address the request by the National Telephone Cooperative Association (NTCA) to reconsider portions of the Commission's rules adopted in the *Rural Task Force Order,* 66 FR 30080, June 5, 2001. Specifically, we amend our rules to provide that rural carriers may receive ''safety valve'' support for investment made in the first year of operating acquired exchanges. Based on the record before us, these actions better satisfy our policy goals of ensuring that acquiring carriers receive sufficient high-cost support and preserving the purpose of section 54.305 of discouraging carriers from transferring exchanges merely to increase their share of high-cost universal service support.

II. Discussion

2. We amend § 54.305 of the Commission's rules so that it does not apply to transfers of exchanges between non-rural carriers after the phase-down of interim hold-harmless support. The Commission adopted § 54.305 ''as a stopgap measure to prevent carriers receiving support based on the size of their study areas and embedded costs from 'placing unreasonable reliance upon potential universal service support in deciding whether to purchase exchanges[.]' '' The Commission anticipated that the rule would no longer be necessary once all carriers receive support based on forward-looking economic costs. When all non-rural carriers receive support based on forward-looking economic costs once the phase-down of interim hold-harmless support is complete, we find that the need for § 54.305 will no longer exist with regard to transfers between non-rural carriers. Accordingly, after the complete phase-down of interim hold-harmless support, § 54.305 will not be applicable to the sale or transfer of exchanges between non-rural carriers.

3. We agree with NTCA that we should amend § 54.305 of our rules to provide that rural carriers that acquire high-cost exchanges may receive safety valve support for the investment made in the first year of operating the acquired exchanges. We conclude that this modification to the existing safety valve mechanism is necessary to provide appropriate incentives for rural carriers operating recently acquired exchanges to invest in rural infrastructure. Accordingly, we amend § 54.305 to provide that the index year expense adjustment for purposes of determining safety valve support for the first year of operation shall be defined as the seller's expense adjustment for the twelve-month period prior to the transfer of the exchanges.

4. While we continue to believe that § 54.305 serves the important purpose of discouraging carriers from transferring exchanges merely to increase their share of high-cost support, we are persuaded that the current safety valve rules may have the unintended effect of discouraging investment in newly acquired exchanges during the first year of operation. The current rules not only prevent carriers from receiving safety valve support for any investments made in their first year of operation, but also may encourage carriers to keep first year investment as low as possible in order to maximize safety valve support in subsequent years. Because safety valve support is calculated by taking fifty percent of the difference between the expense adjustment in the index year and the expense adjustment in subsequent years, a lower index year expense adjustment would result in more safety valve support than a higher index year expense adjustment.

5. We are persuaded that the current safety valve formula may prevent rural carriers that make substantial investment in acquired exchanges from receiving the full benefits intended under the safety valve mechanism. One commenter notes that state commissions may require companies to make needed investments and upgrade facilities as a condition of approval of the transfer. If a state commission requires investment in the first year, the acquiring carrier may make substantial investments to enhance the network infrastructure, but would be unable to receive any additional support for that first-year investment.

6. We conclude that making safety valve support available for investment made in the first year of operation is more consistent with the purpose of the safety valve mechanism to provide additional support to rural carriers that acquire high-cost exchanges and make post-transaction investments to enhance network infrastructure than the current rule. Providing safety valve support for first year investment will provide the proper incentives, and carriers will not delay investment solely because our rules would provide more safety valve support in subsequent years. Carriers that make investments in the first year of operation will receive safety valve support for the investments they make in the acquired exchanges.

7. We find that NTCA's proposal to use the selling carrier's expense adjustment for the index year expense adjustment is a reasonable way to calculate safety valve support for the first year. Although the Commission previously said that it would be inappropriate to rely on the cost data of selling carriers in establishing the index year expense adjustment, upon reconsideration, we find that the benefits of providing safety valve support for first year investment outweigh any risks of using the seller's expense adjustment in this limited manner. We agree with NTCA that concerns regarding reliance on the seller's cost data are mitigated because the selling carrier's expense adjustment would be used only for the first year. We also note that the Commission based its concerns on the fact that ''rural carriers most often acquire high-cost exchanges from non-rural carriers operating in large study areas with lower average costs.'' Because non-rural support is targeted to high-cost wire centers, however, the selling carrier's expense adjustment for transferred high-cost exchanges will be higher than the average support per line in the non-rural study area.

8. We disagree with commenters that claim that this limited use of the seller's expense adjustment to provide safety valve support for investment in the first year of operating an acquired exchange would create a ''substantial risk that the acquiring carrier would receive more support than necessary,'' and would ''drive up the price of the exchange.'' Section 54.305 will continue to limit the acquiring carrier's support to the per line amount the selling carrier received and the additional safety valve support for post-acquisition investment, which is limited to fifty percent of the difference between the index year and subsequent year expense adjustments. Such limitation effectively prevents the acquiring carrier from receiving more support than necessary. Moreover, the total amount of safety valve support available to all eligible study areas is limited to no more than five percent of rural incumbent local exchange carrier support available from the annual high-cost loop fund. We do not believe that the additional safety valve support provided in the first year will encourage carriers to transfer exchanges merely to increase their share of high-cost support.

9. Moreover, we find that NTCA's proposal to use the selling carrier's expense adjustment for the index year expense adjustment is an administratively efficient way to calculate safety valve support for the first year and preferable to other proposed alternatives. Using the selling carrier's expense adjustment prior to the sale will not impose any additional filing requirements on carriers and should be readily available from the Universal Service Administrative Company (USAC).

10. In response to AT&T's argument that it is not appropriate to use the seller's expense data because non-rural carriers report their expenses at the study area level, NTCA proposed an alternative method of calculating safety valve support. Specifically, NTCA suggests that the methodologies used to adjust the rate bases of regulated rate of return companies after a sale could be used to determine the rate base of the plant sold, and this amount could be used to determine safety valve support. We find that this alternative would impose considerable administrative burdens on the Commission. Rural carriers most often acquire high-cost exchanges from price-cap regulated non-rural carriers that are not likely to be

regulated as rate-of-return carriers by the state commission. Many states do not regulate the rates of small rural carriers. If the Commission had to determine the rate base of the sold exchanges, it would have to engage in a lengthy process of verifying the reasonableness of the companies' cost allocations, unless it simply accepted the data the companies provided at face value. It also is not clear that using the seller's embedded costs to estimate the index year expense adjustment would be preferable to using the seller's actual expense adjustment, even if the information were readily available and verifiable. The expense adjustment for most non-rural carriers is based on forward-looking economic cost as estimated by the Commission's universal service model. Although some non-rural carriers received hold-harmless support based on embedded costs, the support was targeted to high-cost wire centers based on the model's cost estimates. Safety valve support is designed to provide support in addition to that ''transferred'' from the seller pursuant to § 54.305; it is more appropriate to use the seller's actual expense adjustment to determine safety valve support for the first year than to use an estimate of the what the seller's embedded cost support may have been under rules that are no longer applicable to non-rural carriers.

11. Our action does not modify the existing safety valve mechanism as set forth in the *Rural Task Force Order,* 66 FR 30080, June 5, 2001, for support beginning in an acquiring carrier's second year of operation. For the second year of operation, the acquiring carrier will use its first-year costs to determine a new index year expense adjustment, and from its second year onwards will receive 50 percent of the differential between its new index year expense adjustment and subsequent year expense adjustments, as per the current safety valve mechanism. In addition, the total amount of safety valve support available to all eligible study areas will continue be limited to no more than five percent of rural incumbent local exchange carrier support available from the annual high-cost loop fund. To the extent that rural carriers receive less than the indexed cap on the high-cost loop fund, the five percent cap on the safety valve mechanism shall continue to be based on the lesser amount. In effect, we conclude that the existing safety valve mechanism for acquiring carriers should be preserved and shall function as before, with the sole modification being that rural acquiring carriers can receive safety valve support in their first year of operation, as set forth in this order.

III. Procedural Matters

A. Paperwork Reduction Act

12. This Order 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 businesses 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).

B. Supplemental Final Regulatory Flexibility Analysis

13. In compliance with the Regulatory Flexibility Act (RFA), this Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *Rural Task Force Order,* to the extent that changes to that Order adopted here on reconsideration require changes in the conclusions reached in the FRFA. As required by the RFA, that previous FRFA was preceded by an Initial Regulatory Flexibility Analysis (IRFA) incorporated in the Further Notice of Proposed Rulemaking, which sought public comment on the proposals in the Further Notice.

1. Need for, and Objective of, the Order

14. Section 254 of the Communications Act of 1934, as amended by the 1996 Act, requires the Commission to promulgate rules to preserve and advance universal service support. In the *Rural Task Force Order*, the Commission modified § 54.305 of the Commission's rules to provide safety valve support to rural carriers that make substantial investment after acquiring exchanges. For purposes of determining a rural carrier's safety valve support, the index year expense adjustment was defined as the high-cost loop support expense adjustment for the acquired exchanges calculated at the end of the company's first year of operating the exchanges. In this Order, we amend § 54.305 of the Commission's rules to provide that rural carriers may receive safety valve support for investment made in the first year of operating acquired exchanges.

2. Summary of Significant Issues Raised by the Public

15. No petition for reconsideration was submitted directly in response to the previous FRFA. On reconsideration, however, NTCA argued that reconsideration of § 54.305 of the Commission's rules was needed to create the proper incentive for rural carriers to invest in acquired exchanges in the first year after acquisition. NTCA proposed that the selling carrier's expense adjustment at the time of the sale be used as the index year expense adjustment to determine safety valve support for the first year of operation of the acquired exchanges.

3. Description and Estimate of the Number of Small Entities to Which This Order Will Apply

16. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

17. In the FRFA at paragraphs 218–229 of the *Rural Task Force Order*, we described and estimated the number of small entities that would be affected by the new universal service rules for rural carriers. These entities consisted of local exchange carriers, competitive access providers, cellular licensees, broadband personal communications service (PCS), rural radiotelephone service specialized mobile radio (SMR), fixed microwave services, and 39 GHz licensees. The rule amendment adopted herein may apply to the same entities affected by the rules adopted in that order. We therefore incorporate by reference paragraphs 218–229 of the *Rural Task Force Order*.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

18. The rule amendment adopted in this Order contains no new reporting, recordkeeping, or other compliance requirements.

5. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

19. In the *Rural Task Force Order*, we described the steps taken to minimize the significant economic impact on small entities consistent with the stated objectives associated with the adopted plan for providing high-cost support to rural carriers. Because many of the same

issues are presented in this Order, we incorporate by reference paragraphs 233–235 of the *Rural Task Force Order*. In this Order, we amend § 54.305 of our rules consistent with the intent of the Commission in adopting the safety valve mechanism to provide additional support to rural carriers that make substantial investment after acquiring exchanges. The adopted rule, however, may have prevented rural carriers that make substantial investment in acquired exchanges from receiving the full benefits intended under the safety valve mechanism. As discussed above, the alternative option of denying the request for reconsideration on this issue was considered and deemed to be inconsistent with Commission's intent in adopting the safety valve mechanism.

6. Report to Congress

20. The Commission will send a copy of this Order, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this Order, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

IV. Ordering Clauses

21. Pursuant to the authority contained in sections 1, 4(i), 4(j), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C 151, 154(i), 154(j), 214, and 254, and 1.425 of the Commission's rules, 47 CFR 1.425, this *Order and Order on Reconsideration* is adopted.

22. Pursuant to the authority contained in sections 1, 4(i), 4(j), 214, 218–220, 254, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 214, 218–220, 254, and 405, and 1.429 of the Commission's rules, 47 CFR 1.429, the petition for reconsideration filed by National Telephone Cooperative Association on July 5, 2001 is granted in part, to the extent discussed herein.

23. Part 54 of the Commission's rules, 47 CFR 54.305, is amended, as set forth effective April 1, 2005.

24. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Order and Order on Reconsideration*, including the Final Supplemental Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR part 54

Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214 and 254 unless otherwise noted.

■ 2. Section 54.305 is revised to read as follows:

§ 54.305 Sale or transfer of exchanges.

(a) The provisions of this section are not applicable to the sale or transfer of exchanges between non-rural carriers after the complete phase-down of interim hold-harmless support, pursuant to § 54.311, for the non-rural carriers subject to the transaction.

(b) Except as provided in paragraph (c) of this section, a carrier that acquires telephone exchanges from an unaffiliated carrier shall receive universal service support for the acquired exchanges at the same per-line support levels for which those exchanges were eligible prior to the transfer of the exchanges. If the acquired exchanges are incorporated into an existing rural incumbent local exchange carrier study area, the rural incumbent local exchange carrier shall maintain the costs associated with the acquired exchanges separate from the costs associated with its pre-acquisition study area. The transferred exchanges may be eligible for safety valve support for loop related costs pursuant to paragraph (d) of this section.

(c) A carrier that has entered into a binding agreement to buy or acquire exchanges from an unaffiliated carrier prior to May 7, 1997 will receive universal service support for the newly acquired lines based upon the average cost of all of its lines, both those newly acquired and those it had prior to execution of the sales agreement.

(d) Transferred exchanges in study areas operated by rural telephone companies that are subject to the limitations on loop-related universal service support in paragraph (b) of this section may be eligible for a safety valve loop cost expense adjustment based on the difference between the rural incumbent local exchange carrier's index year expense adjustment and subsequent year loop cost expense adjustments for the acquired exchanges. Safety valve loop cost expense adjustments shall only be available to rural incumbent local exchange carriers that, in the absence of restrictions on high-cost loop support in § 54.305(b), would qualify for high-cost loop support for the acquired exchanges under § 36.631 of this chapter.

(1) For carriers that buy or acquire telephone exchanges on or after January 10, 2005 from an unaffiliated carrier, the index year expense adjustment for the acquiring carrier's first year of operation shall equal the selling carrier's loop-related expense adjustment for the transferred exchanges for the 12-month period prior to the transfer of the exchanges. At the acquiring carrier's option, the first year of operation for the transferred exchanges, for purposes of calculating safety valve support, shall commence at the beginning of either the first calendar year or the next calendar quarter following the transfer of exchanges. For the first year of operation, a loop cost expense adjustment, using the costs of the acquired exchanges submitted in accordance with §§ 36.611 and 36.612 of this chapter, shall be calculated pursuant to § 36.631 of this chapter and then compared to the index year expense adjustment. Safety valve support for the first period of operation will then be calculated pursuant to paragraph (d)(3) of this section. The index year expense adjustment for years after the first year of operation shall be determined using cost data for the first year of operation of the transferred exchanges. Such cost data for the first year of operation shall be calculated in accordance with §§ 36.611, 36.612 and 36.631 of this chapter. For each year, ending on the same calendar quarter as the first year of operation, a loop cost expense adjustment, using the loop costs of the acquired exchanges, shall be submitted and calculated pursuant to §§ 36.611, 36.612, and 36.631 of this chapter and will be compared to the index year expense adjustment. Safety valve support for the second year of operation and thereafter will then be calculated pursuant to paragraph (d)(3) of this section.

(2) For carriers that bought or acquired exchanges from an unaffiliated carrier before January 10, 2005, and are not subject to the exception in paragraph (c) of this section, the index year expense adjustment for acquired exchange(s) shall be equal to the rural incumbent local exchange carrier's high-cost loop expense adjustment for the acquired exchanges calculated for the carrier's first year of operation of the

acquired exchange(s). At the carrier's option, the first year of operation of the transferred exchanges shall commence at the beginning of either the first calendar year or the next calendar quarter following the transfer of exchanges. The index year expense adjustment shall be determined using cost data for the acquired exchange(s) submitted in accordance with §§ 36.611 and 36.612 of this chapter and shall be calculated in accordance with § 36.631 of this chapter. The index year expense adjustment for rural telephone companies that have operated exchanges subject to this section for more than a full year on the effective date of this paragraph shall be based on loop cost data submitted in accordance with § 36.612 of this chapter for the year ending on the nearest calendar quarter following the effective date of this paragraph. For each subsequent year, ending on the same calendar quarter as the index year, a loop cost expense adjustment, using the costs of the acquired exchanges, will be calculated pursuant to § 36.631 of this chapter and will be compared to the index year expense adjustment. Safety valve support is calculated pursuant to paragraph (d)(3) of this section.

(3) Up to fifty (50) percent of any positive difference between the transferred exchanges loop cost expense adjustment and the index year expense adjustment will be designated as the transferred exchange's safety valve loop cost expense adjustment and will be available in addition to the per-line loop-related support transferred from the selling carrier to the acquiring carrier pursuant to § 54.305(b). In no event shall a study area's safety valve loop cost expense adjustment exceed the difference between the carrier's study area loop cost expense adjustment calculated pursuant to § 36.631 of this chapter and transferred support amounts available to the acquired exchange(s) under paragraph (b) of this section. Safety valve support shall not transfer with acquired exchanges.

(e) The sum of the safety valve loop cost expense adjustment for all eligible study areas operated by rural telephone companies shall not exceed five (5) percent of the total rural incumbent local exchange carrier portion of the annual nationwide loop cost expense adjustment calculated pursuant to § 36.603 of this chapter. The five (5) percent cap on the safety valve mechanism shall be based on the lesser of the rural incumbent local exchange carrier portion of the annual nationwide loop cost expense adjustment calculated pursuant to § 36.603 of this chapter or the sum of rural incumbent local exchange carrier expense adjustments calculated pursuant to § 36.631 of this chapter. The percentage multiplier used to derive study area safety valve loop cost expense adjustments for rural telephone companies shall be the lesser of fifty (50) percent or a percentage calculated to produce the maximum total safety valve loop cost expense adjustment for all eligible study areas pursuant to this paragraph. The safety valve loop cost expense adjustment of an individual rural incumbent local exchange carrier also may be further reduced as described in paragraph (d)(3) of this section.

(f) Once an acquisition is complete, the acquiring rural incumbent local exchange carrier shall provide written notice to the Administrator that it has acquired access lines that may be eligible for safety valve support. Rural telephone companies also shall provide written notice to the Administrator defining their index year for those years after the first year of operation for purposes of calculating the safety valve loop cost expense adjustment.

[FR Doc. 05–4018 Filed 3–1–05; 8:45 am]

BILLING CODE 6712–01–P